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APPENDIX.
Volume I
(Pages 1 to 571.)

Office-Supreme Court, U.
FILED
JUL 3 1968
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, [redacted] 1968

No. [redacted] 13

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,
Appellants,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,
Appellees.

No. [redacted] 15

INTERSTATE COMMERCE COMMISSION,
Appellant,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,
Appellees.

Appeals From the United States District Court
for the Eastern District of Louisiana,
New Orleans Division.

Probable Jurisdiction noted November 18 and 25, 1968.

Termination of segregation noted March 3, 1969.

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CIVIL DOCKET NO. 15454, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION C—THREE JUDGE CASE—WISDOM, HUNTER, WEST.

ABERDEEN AND ROCKFISH RAILROAD COMPANY; * * *,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

Date

3/31/65 Flg. complaint. Exhibit annexed.

3/31/65 Flg. Application for Interlocutory Injunction and, if needed, Temporary Restraining Order. Exhibits annexed.

4/1/65 Flg. motion of The Southern Governors' Conference and The Southeastern Association of Railroad and Utilities Commissioners for leave to Intervene as Pltfs. in support of the action to set aside in part an Order of the Interstate Commerce Commission; notice of hearing and memo annexed.

4/5/65 Flg. motion and ORDER, dated 4/6/65, PERMITTING the following parties to intervene as Defendants in this matter: Baltimore & Ohio R. R. Co.; * * *; FURTHER ORDER permitting said intervening Defts. to file intervening answer to the Motion of Pltf. for Interlocutory Injunction; and further permitting above intervening Defts. to file, if needed, a Temporary Restraining Order. Ent. 4/8/65.

4/6/65 Flg. ANSWER by the above listed intervening Defts. to the complaint.

4/6/65 Flg. Answer of the above listed intervening Defts. to the application of Pltfs. for interlocutory injunction and, if needed, temporary restraining order; photostats annexed.

4/6/65 ORDER FIXING a hearing at the Federal Courthouse at Baton Rouge, La., on 4/12/65 to consider the question of whether or not a temporary restraining order should be issued in this matter; Counsel for all parties are ordered to attend. Ent. 4/8/65.

4/8/65 ORDER from Judge Tuttle APPOINTING Judges: John Minor Wisdom, Edwin F. Hunter of the Western District of La., and E. Gordon West to constitute a Three Judge Court in this matter. Ent. 4/9/65.

4/12/65 Flg. Answer of Intervening Defendants, Baltimore & Ohio R. R. Co., et als., to the Intervening complaint of Southern Governors' Conference, et al.

4/12/65 Flg. ORDER, granting Temporary Restraining Order on condition that a bond be filed by Pltfs. in the sum of $50,000.00 as security. Ent. 4/13/65.

4/26/65 ORDER FIXING THREE JUDGE HEARING on Pltfs. application for the issuance of a preliminary injunction on 5/27/65. Ent. 4/27/65. Dated 4/23/65.

5/27/65 Hearing and ORDER that the Court that a preliminary injunction should not issue, but that a protective Order should issue in lieu of; FURTHER ORDER that the temporary restraining Order be, EXTENDED for five days to allow parties to agree on the protective order. Should the parties fail to reach an agreement, then the Court will issue its own order. Ent. 5/28/65.

6/1/65 Flg. JOINT ANSWER by The United States of America and The Interstate Commerce Commission.

6/1/65 Flg. consent to the conditions made part of the order denying application of Pltfs. and intervening Pltfs. for an interlocutory injunction and dissolving temporary restraining order by Intervening Defts.

6/3/65 ORDER denying application of Pltfs. and intervening Pltfs. for an interlocutory injunction and dissolving the temporary restraining order. Ent. 6/4/65.

7/29/65 Flg. supplemental complaint by Pltfs. and ORDER permitting filing of same. Ent. 7/30/65.

8/18/65 Flg. Answer of the intervening Defts. to supplemental complaint.

8/23/65 Flg. JOINT ANSWER by Defts. The U. S. of America and The Interstate Commerce Commission to the supplemental complaint.

8/23/65 Flg. supplemental intervening complaint of The Sou. Governors' conference and The Southeastern Association of RR and Utilities Commissioners.

8/26/65 Flg. Reporter's transcript of hearing on 5/27/65.

9/14/65 Flg. Answer of intervening Defts. to supplemental intervening complaint.

10/7/65 Flg. Joint Answer of The U. S. of America and The Interstate Commerce Commission to the supplemental Intervening Complaint of the Sou. Governors' Conference et al.

1/25/66 Flg. ORDER the [that] the pre-trial procedure be observed in the matter of Aberdeen and Rockfish Railroad Co., and that all parties of record shall confer no later than 3/1/66, etc. Ent. 1/25/66.

2/11/66 Flg. joint motion of the U. S. of America, the Interstate Commerce Commission and ORDER, dated 2/14/66, that the date fixed as the latest date that counsel for all parties shall meet shall be changed to 3/15/66, and that the latest date within which the proposed pretrial order shall be submitted to the Court shall be changed to 3/29/66, and that the remainder of the order of 1/25/66 shall remain in full force and effect. Ent. 2/16/66.

3/29/66 Flg. Pre-Trial ORDER by the Court. (Dated 4/15/66). Ent. 4/18/66.

9/13/66 Flg. motion of Pltfs. to amend pre-trial Order and ORDER approving pre-trial Order. (Judge Wisdom.) Ent. 9/15/66.

10/15/66 Flg. joint appendix of record (Volume 1).

10/15/66 Flg. joint appendix of record (Volume 2).

10/14/66 Flg. Findings of fact and conclusion of law proposed by Pltfs.

10/14/66 Flg. Findings of Fact and Conclusions of Law proposed by Defts. and Intervening Defts.

11/30/66 ORDER that this case be, SET for hearing before the three Judge Court designated in this matter on 12/12/66, Etc. Ent. 11/30/66.

12/12/66 Hearing, Argument, Nat. B. Knight, Jr. orally moved to introduce the Honorable Carl B. Sanders, Gov. of Ga., requesting that he be allowed to argue this matter on behalf of intervening pltfs., same GRANTED. Argument, Rebuttal. All parties given 30 days w/in which to file briefs. SUBMITTED. Ent. 12/28/66.

1/23/67 Flg. Reporter's transcript of hearing on 12/12/66.

6/30/67 Flg. OPINION by the Court Judges Wisdom, Hunter and West. Ent. 7/5/67.

8/22/67 Flg. FINAL DECREE and ORDER, dated 8/8/67, that orders of 2/3/65 and 5/18/65 be, set aside and that said cause be remanded to the Commission for further proceedings consistent with the Opinion, Findings of Fact and Conclusions of Law of this Court (Judges Wisdom, Hunter and West). Ent. 8/22/67.

8/22/67 Flg. ORDER STAYING DECREE for the period of 60 days, Etc. Ent. 8/22/67.

9/15/67 Flg. Stipulation covering record on appeal by all parties.

10/2/67 Flg. motion of The Baltimore and Ohio RR Co. and ORDER, dated 10/4/67, that the Clerk of Court be directed to include in the certified record on appeal to the Supreme Court the briefs of the parties, joint appendix and the reporter's transcript, Etc. Ent. 10/12/67.

10/23/67 Flg. notice of appeal by U. S. A. and Interstate Commerce Comm.

10/2/67 Flg. notice of appeal to [by] The Baltimore and Ohio RR Co. et al. etc.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION NO. 15454

ABERDEEN AND ROCKFISH RAILROAD COMPANY; THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY; APALACHICOLA NORTHERN RAILROAD COMPANY; ATLANTA AND WEST POINT RAILROAD COMPANY; ATLANTIC COAST LINE RAILROAD COMPANY; BIRMINGHAM SOUTHERN RAILROAD COMPANY; CAPE FEAR RAILWAYS, INCORPORATED; CAROLINA AND NORTHWESTERN RAILWAY COMPANY; CENTRAL OF GEORGIA RAILWAY COMPANY; CHATTAHOOCHEE VALLEY RAILWAY COMPANY; THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY; CLINCHFIELD RAILROAD COMPANY; COLUMBUS AND GREENVILLE RAILWAY COMPANY; DURHAM AND SOUTHERN RAILWAY COMPANY; FLORIDA EAST COAST RAILWAY COMPANY; FRANKFORT AND CINCINNATI RAILROAD COMPANY; GEORGIA & FLORIDA RAILWAY COMPANY; GEORGIA, ASHBURN, SYLVESTER AND CAMILLO RAILWAY COMPANY; GEORGIA NORTHERN RAILWAY COMPANY; GEORGIA RAILROAD AND BANKING COMPANY; GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY; GULF, MOBILE & OHIO RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; INTERSTATE RAILROAD COMPANY; LAURINBURG AND SOUTHERN RAILROAD COMPANY; LOUISIANA AND ARKANSAS RAILWAY COMPANY; LOUISIANA SOUTHERN RAILWAY COMPANY; LOUISVILLE AND NASHVILLE RAILROAD COMPANY; MERIDIAN AND BIGBEE RAILROAD COMPANY; MISSISSIPPI CENTRAL RAILROAD COMPANY; NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY; NEW ORLEANS TERMINAL COMPANY; NORFOLK SOUTHERN RAILWAY COMPANY; PIEDMONT AND NORTHERN

RAILWAY COMPANY; ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY; SAVANNAH & ATLANTA RAILWAY COMPANY; SEABOARD AIR LINE RAILROAD COMPANY; SOUTHERN RAILWAY COMPANY; TENNESSEE, ALABAMA AND GEORGIA RAILWAY COMPANY; TENNESSEE CENTRAL RAILWAY COMPANY; VALDOSTA SOUTHERN RAILROAD; WESTERN RAILWAY OF ALABAMA;

Plaintiffs,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Defendants.

Complaint to Set Aside in Part an Order of the Interstate Commerce Commission—Filed March 31, 1965.

Plaintiffs above named, by their attorneys, for statement of their claim against defendants, respectfully allege:

I.

This is a proceeding to set aside in part the order entered by the Interstate Commerce Commission (hereinafter referred to as the Commission) in an administrative proceeding identified as I. C. C. Docket No. 29799, *Akron, Canton & Youngstown Railroad Co., et al. v. Aberdeen and Rockfish Railroad Co. et al.*, and I. C. C. Docket No. 29885, *In the Matter of Divisions of Joint Rates Between Official and Southern Territories.*

II.

Plaintiffs are common carriers engaged in the transportation of property and persons for hire and are subject to the Interstate Commerce Act (49 U. S. C. § 1, *et seq.*) in respect of their interstate operations. Plaintiff Aberdeen and Rockfish Railroad Company is a corporation organized under the laws of the State of North Carolina, having its principal office at Aberdeen, North Carolina, and operating lines of railroad in North Carolina. * * * Plaintiff Louisiana

Southern Railway Company is a corporation organized under the laws of the State of Louisiana, having its principal office at New Orleans, Louisiana, and operating lines of railroad in the Eastern District of Louisiana. * * * Plaintiff New Orleans and Northeastern Railroad Company is a corporation organized under the laws of the State of Louisiana, having its principal office at New Orleans, Louisiana, and operating lines of railroad in two states, including lines in the Eastern District of Louisiana. Plaintiff New Orleans Terminal Company is a corporation organized under the laws of the State of Louisiana, having its principal office at New Orleans, Louisiana, and operating lines of railroad in the Eastern District of Louisiana. * * *

III.

The United States of America is made defendant in this proceeding pursuant to Title 28, United States Code, Section 2322. Defendant Interstate Commerce Commission is an agency of the United States created pursuant to the Interstate Commerce Act (49 U.S. C. § 1, *et seq.*)

IV.

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1336, 2284 and 2321 through 2325, inclusive, and Title 5, United States Code, Section 1009. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.

V.

The venue of this proceeding is in this Court pursuant to Title 28, United States Code, Section 1398.

VI.

This proceeding arises from a dispute as to the lawful and proper division of revenues derived from freight traffic moving by rail between Official and Southern territories. Official territory (hereinafter also referred to as the North) is generally east of the Mississippi River and north of the

Ohio River. Southern territory (hereinafter also referred to as the South) is generally east of the Mississippi River and south of the Ohio River. The movements of freight traffic at issue in this case require the participation of both Northern railroads and Southern railroads.

VII.

Pursuant to the mandate of Section 1(4) of the Interstate Commerce Act (49 U.S.C. § 1(4)), Northern and Southern railroads have jointly established many "reasonable rates, fares, charges, and classifications applicable thereto . . ." with respect to movements of freight between the South and the North. Section 1(4) of the Act also provides that the carriers are entitled to just, reasonable and equitable divisions of the joint rates applicable to these movements, and Section 15(6) of the Act provides that the Commission may "after full hearing upon complaint or upon its own initiative . . . prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers . . ." (49 U. S. C. § 15(6)).

VIII.

In 1947, the Commission instituted a general investigation into the lawfulness of the divisions of rates on railroad traffic moving between the North and the South. In 1953, the Commission entered an order prescribing a uniform scale of "prorating factors" under which the percentage division of each rate to be received by Northern and Southern railroads is calculated by providing a terminal allowance plus an allowance for the line-haul service performed by each group of railroads. *Official-Southern Divisions*, 287 I. C. C. 497, 547, 552. Under this scale, allowances for terminal and for line-haul services are identical for each group of railroads, each group receiving the same allowance for terminal service plus the same allowance per mile for the mileage haul performed in handling each shipment of freight traffic. This uniform scale is the present basis for dividing joint rates on substantially all freight traffic (ex-

cepting coal and coke made from coal) moving between the North and the South.

IX.

In 1956 the Northern lines filed a petition with the Commission requesting a general reopening of the *Official-Southern Divisions* investigation. The Northern lines did not activate their petition until 1959, in which year the Commission reopened the investigation. The Southern Governors' Conference and the state regulatory commissions of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee sought and obtained leave to participate in the investigation as representatives of the public in their respective states.

X.

In their petition, and throughout the reopened proceedings before the Commission, the Northern railroads asked the Commission to prescribe an inflation in the "prorating factors" of the Northern railroads so that the Northern railroads, instead of receiving compensation on the basis of the same factors as the Southern railroads, would receive greater compensation than the Southern railroads for the same amount of terminal service and for the same amount of mileage service.

XI.

In addition to resisting the request of the Northern railroads for inflated divisions, the Southern railroads asked for affirmative relief in the reopened proceedings before the Commission. In doing so, the Southern railroads raised, as a separate and distinct issue to be determined in those proceedings, the question of the lawfulness of the construction of the present uniform divisional scale. The Southern railroads claimed that the terminal allowance included in the initial mileage block of the uniform scale was excessive under the standards of Section 15(6), and that such an excessive terminal allowance was prejudicial

to railroads principally interested in traffic moving a longer haul in the South than in the North.

XII.

On February 3, 1965, the Commission made its report and entered its order, both of which were served upon the parties on March 2, 1965. In its report (325 I. C. C. 1), marked as Exhibit A, annexed to this Complaint and made a part hereof, the Commission resolved the aforesaid issues as follows:

(1) The Commission found that the existing scale of prorating factors contained a terminal allowance included in the initial mileage block that is excessive to the extent of 37 integers; and,

(2) The Commission accorded the Northern lines an inflation in their divisional "prorating factors." The new divisions were prescribed in the form of two separate scales of "prorating factors." The scale prescribed for application to service in the North contains factors which are 45 percent higher for terminal and border interchange service and 10 percent higher per mile for line-haul service than the scale prescribed for service in the South.

In accordance with its determination of these two issues, the Commission, in its order of February 3, 1965, marked as Exhibit B, annexed to this Complaint and made a part hereof, ordered that the participating railroads, including plaintiffs, be required to establish on or before April 20, 1965, and thereafter to apply, the newly prescribed divisions for general freight traffic between the North and the South.

XIII.

The Commission based its prescription of higher divisional factors for the North directly and exclusively upon its findings as to relative cost of service. The Commission found that its order would produce increases in the reve-

nues of Northern railroads and corresponding decreases in the revenues of Southern railroads in an aggregate amount of $7,948,004 per year. The Commission did not find the effect that its order would have upon the revenues of individual railroads, either Northern or Southern railroads. The Commission did not find the effect of the inflation which it prescribed for the North either upon individual railroads or upon the railroads as a group.

XIV.

The Commission's report contains no findings which relate to evidence of record the specific cost factors used in the construction of the divisional scales which it prescribed. Plaintiffs are unable to trace these cost factors to evidence in this record. From the record, it can be calculated that the application of the divisional scales prescribed by the Commission would reduce the revenues of the Southern railroads by $8,745,000. From the record, it can also be calculated that the inflation prescribed by the Commission would accord to the Northern railroads approximately $16 million per year more than those Northern railroads would receive under the uniform divisional scale found by the Commission to be proper.

XV.

The Cost Finding Section of the Commission is composed of employees of the Commission engaged in, among other duties, the performance of investigative or prosecuting functions relating to the application of costs to rates on freight traffic between the North and the South. The Cost Finding Section furnished advice to the Commission's Examiners, and to the Commission, which was relied upon in the determination of the issue of relative cost of service in the proceedings in this case. In furnishing such advice, the Cost Finding Section resorted to factual data, and assumptions with respect to factual data, not contained in the record in this proceeding.

XVI.

This action is brought to obtain judicial relief from the Commission's order of February 3, 1965. This order constitutes final agency action for the purpose of judicial review pursuant to Section 10(c) of the Administrative Procedure Act (5 U. S. C. § 1009(c)).

XVII.

The Commission's order dated February 3, 1965, to make effective on and after April 20, 1965, a new basis of divisions on traffic between the North and the South is unlawful and is in violation of the Interstate Commerce Act (49 U. S. C., Sec. 1, *et seq.*), and the Administrative Procedure Act (5 U. S. C., Sec. 1001, *et seq.*), and the Due Process Clause of the Federal Constitution (Amendment V), insofar as it establishes an inflation in divisional factors for the Northern railroads:

(1) The Commission made no findings with respect to the threshold issue of the lawful standards for determining the adequacy of cost evidence to support an inflation in divisions.

(2) The Commission's determination of higher costs for service in the North is in violation of lawful standards, and in disregard of the legal requirements that—

(a) the Northern railroads, as proponents of an increase in their revenues through an inflation in their divisional factors, had the burden of proving their right to such an inflation;

(b) the Northern railroads, having in their exclusive possession the data disclosing their actual costs of handling the freight traffic in issue, had the burden of coming forward with that data; and,

(c) when confronted with a record containing non-comparable or otherwise inadequate cost data,

the Commission had an affirmative responsibility for the development of an adequate record.

(3) The Commission did not adhere to any rational or consistent standard for determining the relative cost of handling freight traffic between the North and the South but relied upon costs influenced by, and attributable to, other traffic not at issue in this proceeding.

(4) The Commission failed and refused to make findings, or to state the reasons or basis for its decisions and conclusions, with respect to material issues of fact, law and discretion.

(5) The Commission erred in relying upon findings and conclusions which are arbitrary, are unsupported by substantial evidence, or are based upon factual data, or assumptions with respect to factual data, not contained in the record in this proceeding.

(6) The Commission erred in arbitrarily refusing to permit plaintiffs to impeach, or even to make an offer of proof which would impeach, a witness for the Northern railroads testifying upon a material issue.

(7) The Commission erred in refusing to reflect changes in cost relationships resulting from railroad actions designed to eliminate excessive capacity.

(8) The Commission erred in refusing to give effective consideration to the relative efficiency with which the carriers are operated and the relative importance of their transportation services to the public.

(9) The Commission has prescribed an inflation in the divisions of the Northern railroads that would severely reduce the revenues of plaintiffs without making findings of, or giving effective consideration to, the revenue loss imposed upon individual railroads or groups of railroads.

(10) The Commission's action rests upon an unlawful conception of the rule that there must be evi-

dence typical in character and ample in quantity with respect to the divisions and services performed under the particular rates being divided.

(11) The Commission erred in failing to articulate a rational basis for the determination of lawful divisions consistent with Section 15(6) of the Interstate Commerce Act in light of the National Transportation Policy.

(12) Plaintiffs were denied the full and fair hearing to which they were entitled by law.

XVIII.

The Commission threatens to enforce the part of its order dated February 3, 1965, requiring that the Southern railroads accord the Northern railroads an inflated basis of divisions on and after April 20, 1965, and said order will, if enforced, cause immediate and irreparable injury to plaintiffs. As specific grounds for the issuance of a temporary restraining order and for the issuance of an interlocutory injunction pending final disposition of these proceedings, plaintiffs allege, in addition to the facts heretofore set forth, the following:

(1) If plaintiffs refuse to comply with the part of the Commission's order prescribing an inflation in the divisions of the Northern lines, such refusal will constitute a violation of Section 16(8) of the Interstate Commerce Act and such refusal may subject plaintiffs to statutory penalties of $5,000 for each offense, each day of such refusal being deemed a separate offense, and such refusal will expose plaintiffs to an action by the United States for the recovery of such penalties;

(2) If plaintiffs are required to comply with said part of the Commission's order, they will suffer an immediate and substantial loss of revenues which they receive as their share of the revenues from Official-Southern traffic. Plaintiffs are without any plain or

adequate remedy at law because a multiplicity of actions would be required to recover divisions from the Northern lines. Plaintiffs are without any administrative remedy because substantially none of the rates between the North and the South were "established pursuant to a finding and order of the Commission" within the meaning of Section 15(6) of the Interstate Commerce Act and are thus not subject to the Commission's power to require retroactive adjustments of divisions;

(3) No injury will be sustained by defendants or by the public through the issuance of a temporary restraining order and an interlocutory injunction pending final disposition of this proceeding.

WHEREFORE, plaintiffs pray that:

(1) A temporary restraining order issue, restraining operation, enforcement or execution of the order of the Commission dated February 3, 1965, insofar as it prescribes an inflation in divisional factors for the Northern railroads, pending hearing on the issuance of interlocutory injunction sought herein;

(2) Process may issue against defendants the United States of America and Interstate Commerce Commission;

(3) A court constituted as required by Title 28 of the United States Code, Sections 2284 and 2321-2325, consisting of three judges, be convened;

(4) The operation, enforcement and execution of said part of the Commission's order of February 3, 1965, be enjoined pending final hearing and determination of this action;

(5) Said part of the Commission's order of February 3, 1965, be set aside;

(6) Plaintiffs recover their proper costs;

(7) Plaintiffs have such other and further relief in the premises as in equity may be deemed meet and just by this Honorable Court.

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS,
Ashton Phelps, Jack M. Gordon
SIDLEY, AUSTIN, BURGESS & SMITH,
Douglas F. Smith, Howard J. Trienens,
George L. Saunders, Jr.

By Ashton Phelps.

OF COUNSEL: John W. Adams, Phil C. Beverly, James A. Bistline, H. T. Cook, R. Wray Henriott, Howard D. Koontz, John E. McCullough, Donal L. Turkal and Arthur J. Winder.

(Duly sworn to by W. W. Wolford, Jurat and Certificate of Service omitted in printing).

EXHIBIT A

Interstate Commerce Commission Reports.

1

No. 29885 [1]

OFFICIAL-SOUTHERN DIVISIONS

IN THE MATTER OF DIVISIONS OF JOINT RATES BETWEEN OFFICIAL AND SOUTHERN TERRITORIES

Decided February 3, 1965

Upon further hearing, present divisions of joint interterritorial rates between official and southern territories found unjust, unreasonable, and inequitable. Just, reasonable, and equitable divisions prescribed. Prior reports, 287 I.C.C. 497, 289 I.C.C. 4, 291 I.C.C. 90, 294 I.C.C. 739, and 298 I.C.C. 83.

REPORT OF THE COMMISSION ON FURTHER HEARING

2

FREAS, *Commissioner:*

By complaint in No. 29799, filed July 24, 1947, the northern lines assailed as unlawful the divisions of joint rates on citrus fruit from points in Florida to destinations

1. This report also embraces No. 29799, Akron, Canton & Youngstown Railroad Company et al. v. Aberdeen & Rockfish Railroad Company et al.

in official territory. Thereafter, on December 4, 1947, we instituted, on our own motion, the investigation in the title case for the purpose of determining whether the then existing divisions of joint class and commodity rates between points in official territory and points in southern territory (as both territories are defined in *Class Rate Investigation, 1939*, 262 I.C.C. 447, 457) were unjust, unreasonable, or otherwise unlawful. All railroad carriers in the two territories were named as respondents.[2] Thus, as originally instituted, the two proceedings brought in issue the divisions of all joint interterritorial rates between the North and the South, except those on coal and coke made from coal which were excluded by mutual consent of the parties.

The original principal decision dated January 12, 1953, 287 I.C.C. 497, called the first 1953 report, embraced all involved traffic. By it, we prescribed primary divisions based upon equal mileage factors for the northern and southern lines, except that as to joint proportional rates on grain and grain products from East St. Louis, Mo., Louisville, Ky., and Cincinnati, Ohio, to points in southern territory, the northern factors prescribed were 75 percent of the northern general factors. That report also provided that arbitraries which were included in the joint rates should be deducted before prorating and that in lieu of specific apportionment of the arbitrary in respect of the rates on citrus fruit from Florida to official territory one percentage point should be deducted from the northern division and added to the southern division.[3] Also in that report the dividing points for such primary divisions were

2. Individual carriers will sometimes be referred to by their initials or other short titles.

3. Southern lines now ask that these findings relating to arbitraries be affirmed. Northern lines voiced no objection thereto, although they include as an arbitrary to be deducted before prorating an excess of $57 per car in the rates on vegetables to New York over the rates to New Jersey. This latter matter is discussed separately hereinafter and is denied. Under the circumstances, the prior findings as to arbitraries will be adopted herein.

fixed at the points of actual interchange rather than at the territorial boundaries.

In a report on reargument, 289 I.C.C. 4, decided May 26, 1953, called the second 1953 report, the prior report was modified so as to make the prescribed divisions applicable only to and from the existing primary dividing points. This report also postponed the effectiveness of the prescribed divisions to and from points on the Norfolk Southern
3 Railway Company, the Atlantic and East Carolina Railway Company, and the Beaufort & Morehead railroad Company (A. T. Leary, lessee) pending further hearing. The prescribed divisions became effective on July 15, 1953.

Upon petitions of various parties the findings in the two prior reports were interpreted and certain conclusions were revised in three supplemental reports. In 291 I.C.C. 90, of November 2, 1953, the definition of northern lines was broadened to include the Toledo, Peoria & Western Railroad Company, and the proceeding was reopened for further hearing with respect to divisions of rates between points on certain western trunklines and points in southern territory where no northern (official territory) carrier was a party to such rates, and with respect to divisions of joint interterritorial rates between points on the line of the Atlantic and Danville Railway Company west of Suffolk, Va., and points in official territory. The third and fourth supplemental reports, 294 I.C.C. 739 and 298 I.C.C. 83, made certain interpretations of previous findings.

On November 2, 1956, the northern lines petitioned for general reopening of these proceedings for further hearing and for modification of the order of January 12, 1953, as modified by the order of May 26, 1953. The petition was held in abeyance at the request of the interested parties until April 1, 1959, when the northern lines asked that the petition be processed. After replies had been duly filed, we reopened the proceeding for further hearing by order

dated July 20, 1959. The scope of the divisions now at issue is in some respects more limited than that covered in the 1953 reports. The joint interterritorial rates now excluded and the reasons therefor are listed in appendix A hereto.

The instant proceedings have been the subject of lengthy hearings during which considerable evidence was adduced by all parties in light of the criteria of section 15(6) of the Interstate Commerce Act. The hearing examiners found the present divisions unjust, unreasonable, and inequitable, and prescribed new divisions. Exceptions to the recommended report and order were filed by the official territory respondents, the southern territory respondents, and jointly by the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners. These parties also filed replies. Exceptions were also filed by the Norfolk Southern Railway Company and the North Carolina Utilities Commission. We have heard the parties in oral argument. Our conclusions differ in part from those recommended.

4 We consider the examiners' statement of facts to be substantially correct, as material, and in this report adopt it as our own. We have used here verbatim certain portions of that statement where necessary for clarity of discussion.

Prior to our consideration of the evidence, however, certain preliminary matters must be resolved. Initially, the southern lines contend on exceptions that our Section of Cost Ending has consulted with and furnished advice to the examiners upon the issues, and although the southern lines specifically requested that they be given notice of and an opportunity to participate in any such consultations they were denied this right. Such action is said to deny the full and fair hearing guaranteed by section 15(6) of the Interstate Commerce Act, sections 5, 7, and 8 of the Ad-

ministrative Procedure Act, and the fifth amendment to the Constitution.

In our opinion, hearing examiners and the Commission itself may properly consult with staff members of the cost section or receive from them analyses of the cost evidence in the record, and such advice or analyses need not be furnished to the parties when given or prepared by cost section employees who have neither testified nor prepared exhibits in the case. See *United States v. Morgan,* 313 U.S. 409 (1941); *T.S.C. Motor Freight Lines, Inc., v. United States,* 186 F. Supp. 777 (S.D. Tex. 1960), affirmed *sub nom. Herrin Transportation Co. v. United States,* 366 U.S. 419 (1961). Any such cost section assistance is a part of, and solely in aid of, the internal process of decision. There was no error prejudicial to the southern lines. The southern lines also contend that the examiners erred in refusing to receive or mark certain exhibits dealing with switching minutes and empty-return ratios. However, the examiners' ruling related to exhibits offered after the southern lines had rested their case and after the date fixed for the submission of their evidence. Such action was in accord with the procedural order adopted in this proceeding. It did not constitute an abuse of discretion nor deny the southern lines a fair hearing. The ruling is affirmed.

The northern lines contend that the examiners erred in rejecting certain portions of their rebuttal cost exhibit. The involved rejected data was found by the examiners to be new and additional material beyond the scope of rebuttal. Since the northern lines refused to incorporate the material as part of their case in chief and to accord the southern lines the right of rebuttal, the examiners were correct in their ruling that the matter constituted improper rebuttal and in excluding it.

5 Finally, at oral argument, counsel for the southern lines in response to a question by counsel for the northern lines indicated an intent to rely on the holding as

to the typical evidence rule set forth in *Atchinson, T. & S. F. Ry. Co. v. United States,* 225 F. Supp. 584 (D. Colo. 1964), hereinafter called the *Western Trunklines* case. There, the court in reviewing the *Orient* case (*United States v. Abilene & S. Ry. Co.,* 265 U.S. 274 (1924)) and other decisions, held that in finding an existing scale of divisions unlawful the Commission cannot rely exclusively on aggregate or average data in making this initial determination but must have representative evidence which it considers typical in character and ample in quantity to permit a determination with respect to each division of each rate of every carrier. As we understand the position of the southern lines at oral argument, they contend that no such evidence is of record and that only "conglomerate averages" are shown.

The court in the *Western Trunklines* case stated, at page 595:

> Far from precluding Commission consideration and use of average data, the opinion in the *Orient* case states that "aggregate results should properly be taken into consideration by the Commission." The point of the *Orient* case is that the Commission may not rely wholly and exclusively on average or aggregate data. Before it relies on average or aggregate data, the Commission must make sure that the divisions formula under consideration (although seemingly just and equitable when viewed in terms of its impact on a group of railroads as a group), has not been construed in such a way that its impact on any particular division of any particular rate as applied to any particular carrier is unjust. This the Commission must do by considering evidence fairly representative of each division of each rate of every carrier in order that some inequity which might remain undisclosed by average or aggregate data is not permitted to slip in unnoticed.

It also indicated at page 592:

> The "typical evidence" rule in divisions cases, however, does not have to do with individual shipments made by particular carriers, as plaintiff's contend; rather, it has to do with particular divisions of particular rates among particular carriers. Evidence showing the volume and type of traffic moving subject to the representative rates, although highly probative, and probably otherwise essential to a just and equitable decision, is not absolutely required by the "typical evidence" rule.

Counsel for the northern railroads then indicated at the conclusion of oral argument that, if the Commission chooses to rely on the *Western Trunklines* case, it should require both sides to submit the abstracts of settlement statements among the various carriers which would reflect the specific data mentioned in the court's holding. It was urged,
6 however that the holding in the *Western Trunklines* case was erroneous, and that, in any event, no lack of evidence had been advanced of record by the southern lines, except perhaps as to grain and grain products, during the lengthy hearings herein. Both sides had freely exchanged such settlement sheets during the hearing, but they were not made part of the record. If submission of such data were required, the northern railroads indicated that they would waive cross-examination.

Except as hereinafter indicated, necessary typical evidence is of record, and we have properly considered and evaluated it. At this point, we note that the southern lines on brief have characterized their traffic study as providing—

> The most current data available with respect to the normal annual movement of Official-Southern traffic ever presented to the Commission. This information shows the services performed and revenue received by each carrier participating in the movement of the precise traffic at issue. It measures the participation of

Class I and Class II railroads, individually and as groups, in each territory, and shows the relative importance of Official-Southern revenues and ton miles to the railroad groups and individual carriers.

Moreover, both the northern and southern lines' traffic studies are based on samples of the interline abstracts, the regularly maintained basic records, freely exchanged at the hearing, on which interline revenues from particular rates are divided among each participating carrier. Under the circumstances, as will be further shown and except as hereinafter indicated, we find the typical evidence contention of the southern lines to be without merit. To the extent that the *Western Trunklines* case also requires due consideration of all of the criteria of section 15(6), we have done so.

Traffic Studies

Introduction.—Both the northern and the southern lines made traffic studies for use in this proceeding. The northern lines introduced two studies developed from sampling, embracing carload shipments (except coal and coke made from coal) moving on joint rates (including aggregate-of-intermediate rates which automatically displace single-factor joint rates) between points in southern territory and points in official territory. The southern lines' study, also developed in accordance with a sampling procedure, was broader in scope and coverage than that of the northern lines. The studies of both groups do not
7 cover less-than-carload traffic.

The southern lines' tabulations show many of the characteristics of the traffic in the same form as that produced in the northern lines' study. The southern lines' study, unlike that of the northern lines, does not make separate showings as to citrus fruit and vegetables, such traffic having been included in the overall general study. However, the southern study shows separately the traffic units and revenue, and permits an application and comparison of costs thereto. Coal and coke made from coal

are not included in the southerns' final tabulations. Certain classes of traffic are not embraced in the study since, for reasons shown, the southern lines deem the divisions of rates thereon not here in issue. These segments are: (1) traffic to and from western carriers' stations in official territory, (2) traffic subject to grain proportional and reshipping rates subject to docket No. 29885 prescribed divisions, both categories having been excluded for the reason that no evidence thereon was introduced by an official territory respondent, (3) border traffic between border points and official territory which was the subject of litigation in docket No. 32055 (the parties have stipulated that this traffic is not in issue), (4) Norfolk Southern general traffic between stations on that line and points in official territory, having been excluded because docket No. 29885 divisions were not prescribed thereon and that respondent made a separate presentation thereof in a study including its overhead traffic, and (5) traffic to and from Morehead City, N.C., on the Atlantic & East Carolina, having been excluded for the same reasons as in (4) above.

Northern lines' general traffic study.—The northern lines' general traffic study embracing traffic for the months of March and September 1956 was expanded to a year's basis by multiplying by six. This study, so expanded, embraced a movement of 983,664 cars, 28,416,839.4 tons, with total revenue of $450,909,348. Northbound traffic exceeded the southbound by substantial amounts. About 70 percent of the carloads and 74 percent of the through revenue were in the manufacturers and miscellaneous category. About 75 percent moved in boxcars and refrigerator cars. As in the original case (the first 1953 report), the most important interchange points were Cincinnati, Richmond, and Potomac Yard, Va., with over half being interchanged at Virginia gateways, the remainder at the Ohio River crossings.

The average hauls on the general traffic per car-mile and per ton-mile are shown below:

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	North	South	Total
Car-miles	*Miles*	*Miles*	*Miles*
Route of movement	408	519	927
Short line	362	475	837
Ton-miles			
Route of movement	392	508	900
Short line	347	464	811

The average hauls of the northbound traffic (not including Florida vegetables) in the southern lines' general 1947 study (based on average short-line ton-miles) were 370 miles in the North and 500 miles in the South, and of the southbound, 325 miles in the North and 440 miles in the South. On the same basis, the present northern lines' general traffic study shows on northbound traffic, 371 miles in the North and 496 miles in the South, on southbound, 313 miles in the North and 419 miles in the South, and on total traffic 347 miles in the North and 464 miles in the South, compared with the 1947 study figures of 345 miles north and 478 miles south.

The total revenue of $450,909,348, including the arbitraries was divided between the two groups, 45.44 percent north and 54.56 percent south. The study shows that the northern lines performed 42.8 percent of the short-line ton-miles of service, and 44 percent of actual route of movement car-miles, the southern lines 57.2 and 56 percent, respectively.

The citrus fruit and vegetables study.—This northern lines' study, also developed by sampling, covered the movement of these commodities from southern territory to points in official territory on lines of the northern lines for the 5 months, January through May 1956, and embraced 43,810 cars (713,618 tons). The total revenue was $19,660,843, which was settled 33.38 percent North and 66.62 percent South. The northern carriers performed 29.4 percent of the short-line ton-miles of service, the southern, 70.6 per-

cent. The preponderance of this traffic moved through Richmond and Potomac Yard. Cincinnati was the important Ohio River gateway.

The following table shows the average short-line hauls on this traffic:

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	Short-line miles		
Car-miles	*North*	*South*	*Total*
Citrus fruit	356	830	1,186
Vegetables	360	893	1,253
Weighted average	359	871	1,230
Ton-miles			
Citrus fruit	355	830	1,185
Vegetables	361	890	1,251
Weighted average	358	860	1,218

Southern lines' study.—This study for the 12-month period July 1958 to June 1959 produced an estimated total of 967,554 cars containing 28,055,720.7 tons of freight yielding total through freight revenue of $496,086,766, including arbitraries totalling $1,365,705. The study included traffic originating or terminating on western or southern lines in official territory when a northern line participated in the haul, and, as stated above, coal and coke made from coal and certain other classes of traffic, not considered by the southern lines as here in issue, were not included in the final tabulations.

By directional flow, by commodity groups, and by types of equipment, this study follows closely those characteristics as produced in the northern lines' study. As in the northern study, Cincinnati led as the principal primary breakpoint, with Richmond and Potomac Yard in second and third place. Of the total cars embraced in the study, 55.4 percent passed through the Ohio River-Illinois-Kentucky gateways, and 44.6 percent through the Virginia gateways.

The average hauls per car and per ton, both route-of-movement and short-line, for the total traffic included in the study are shown below:

	North	South	Total
Per car	*Miles*	*Miles*	*Miles*
Route of movement	420	567	987
Short line	372	522	894
Per ton			
Route of movement	410	557	967
Short line	361	511	872

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The following table compares the "as settled" division of the total through revenue in the two groups' studies:

	Combined northern lines' studies, including arbitraries	*Southern lines' study*	
		Including arbitraries	*Excluding arbitraries*
	Percent	*Percent*	*Percent*
North	44.93	44.64	44.75
South	55.07	55.36	55.25

The northern lines point out that the southern study is subject to criticism for failure to include Norfolk Southern traffic so as to permit such traffic to be considered separately or together with Southern traffic as a whole. As stated, the Norfolk Southern submitted a separate presentation for itself with respect to traffic originating or terminating on its line and passing over its line to or from stations on the Atlantic & East Carolina and the Beaufort & Morehead. The divisional situation as to these lines is the subject of later discussion herein. Inclusion of Norfolk Southern originated or terminated traffic reduces by 8 miles the average haul in the South, based on average short-line ton-miles.

Preliminary conclusions as to the traffic studies.—The studies of the two groups are basically similar as to the

general characteristics of the traffic. The least similar results are the average hauls. These differences may be accounted for principally in the difference in the periods studied as well as the inclusion or exclusion of certain traffic in the one and not in the other. The northern study does not include an estimated annual movement of 46,201 cars which originated or terminated on western district lines on which the northern lines performed only intermediate service. Also excluded was traffic (4,092 cars) to or from southern lines' stations in official territory on which the northern lines performed only intermediate service. A third category not included in the northern lines' study (2,955 cars) which the southern study embraces was traffic between the South and Canadian points moving on combination rates breaking at the international boundary on which the revenue accruing to domestic carriers is divided on the 1953 prescribed basis. On the other hand, the northern study includes traffic between points on the Norfolk & Western in southern territory and points in official territory. The extent of this traffic is not revealed but its inclusion tends to understate the southern lines' average haul since such traffic always has a relatively short haul in the South.

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The northern study does not reflect the changes in effective divisions which have occurred since 1956, brought about by vacation of the 1953 order as to certain categories of traffic as requested by mutual petitions. Thus, the "as settled" revenue which the northern lines received is understated under present divisional bases. This is particularly true as to vegetables. Since 1957 most vegetable traffic to the New York rate group has moved on per-car rates, the divisions thereon providing that the charge of $57 per car in the New York City rates, over and above the rates to Jersey City, N. J., shall accrue to the delivering lines before prorating. Thus, the northern lines' study shows that during the first 5 months of 1956 the northern lines received 32.23 percent of the "as settled" revenue on

northbound fresh vegetables whereas the southern lines' study of 21,785 cars of fresh vegetables moved in a year subsequent to the establishment of the per-car rates shows the northern lines received 35.28 percent. The southern study includes vacated order traffic: (1) liquid soda and soda ash from Saltville, Va., to Kingsport and Port Rayon, Tenn., and (2) peaches and fresh vegetables moving on per car rates to piers 22, 27, 28, and 29 at New York City. These two categories represent only 1,209 cars, an inclusion of little significance, but the divisions thereon remain in issue here as do the divisions on trailer-on-flatcar traffic not covered by stipulation of the parties.

We agree with the aforementioned characterization by the southern lines, stated earlier, as to the evidentiary worth of their traffic study. The basic abstract sample of southern lines consists of 100 percent of those abstracts covering $10,000 or more of revenue ("A" abstracts) with a 5-percent random sample of the remaining abstracts ("B" abstracts). The northern lines accepted the reliability of the southern lines' study by using it as the basis for their own final cost computations, and we have used the service units produced by the study in our restatement of the costs. Moreover, a careful consideration of the traffic studies and the abstract samples reveals that there are typical and ample representations of the roads involved, large and small, covering typical movements in ample number for a normal annual period with appropriate adjustments to reflect seasonal variations. A totalling of the divisions on particular traffic (which reflects the rates involved) permits an appropriate consideration of individual carriers and their movements.

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ECONOMIC TRENDS

At pages 501-505 of the first 1953 report, 287 I.C.C. 497, various statistical comparisons were set forth which supported a conclusion "that in the past 20 years the South has bettered its relative economic position in comparison

with the North" and "that the southern railroads have benefited from this improvement in the economic situation of the South." The record in this reopened phase indicates a continuation of these trends. The number of employees in the South in 1958 increased 28 percent over 1947, the number in the North was approximately the same in 1958 as in 1947, while there was an increase of 12 percent for the entire country. In absolute figures, the North in 1958 had almost 10 million employed persons, 5 times as many as the South. The value of manufactures for the Nation almost doubled between 1947 and 1958. It increased about 67 percent in the North, and slightly more than doubled in the South. From 1930 to 1958 the population of the United States increased 41 percent and in the southern States, 44 percent. The percentage population gains during the 20 years 1930 to 1950 were 22.7 percent for the entire country, 24.5 percent in the South, and 18.8 percent in the North, as shown in the 1953 report. A southern respondent in 1960 represented "that the South's economic development since World War II has outpaced the national rate of growth in practically every category you can name." Data adduced also show increases for the South of 40 percent in the number of manufacturing establishments, and 57 percent in the number of industrial and commercial firms, compared with respective national increases of 26 and 25 percent.

However, the South, as an area, was below national levels in several respects on a per capita basis. In 1956 manufacturers' expenditures for new plants and equipment per capita in the South were $48 as compared with $67 on a national level. In the same year value added by manufacture per capita in the South was $500 as compared with $835 in the Nation. In 1955, total bank assets per capita in the South were $670, or 48 percent of the national level of $1,398. The total value of farm products sold per capita in the South in 1954 was $131 as compared with $153 in the

Nation, while retail sales per capita in that year were $815 in the South compared with the national average of $1,054.

Operating and Revenue Results

There has been a relatively greater increase in freight traffic in the South than in official territory since 1947. The number of cars and tons handled within the South in 1958 were 100.40 and 120.21 percent, respectively, of that for 1947 while corresponding percentages for official territory were 64.14 and 68.19. Revenue ton-miles for the southern region in 1958 were 99.6 percent of those shown for 1947, and revenue tonnage originated and terminated in 1958 was 105.5 and 113.6 percent, respectively, of that handled in 1950. Corresponding percentages for the eastern district and Pocahontas region were for revenue ton-miles, 85.4 percent, and for tons originated and terminated, 77.3 and 77.5 percent, respectively. Revenue tons originated and terminated in the entire country in 1958 were 87.9 and 91.3 percent, respectively, of that in 1950.

As shown below, there has been a relatively greater increase in freight revenue of the southern lines since 1950 than in that of the northern lines:

Freight revenue	*Southern region*		*Eastern district and Pocahontas region*	
for—	*Amount*	*Percent*	*Amount*	*Percent*
1950	$1,098,229,000	100	$3,374,542,000	100
1958	1,175,318,000	107	3,217,516,000	95.3

The average net ton-miles of revenue and nonrevenue freight per annum in the southern region for 1956-58, 91.8 billion, were 2.1 billion more than those for 1950, and 37.9 billion greater than in 1940. The annual average for the eastern district and the Pocahontas region in 1956-58 was 253.2 billion, 6.3 billion less than in 1950, and 53.8 billion greater than in 1940.

In the first 1953 report, 287 I.C.C. at page 503, the operating ratios of the two groups of carriers shown for the

years 1941-50 indicate that ratios for the southern lines were consistently below the ratios of the northern lines. The present record does not show freight operating ratios separately. The total operating ratios continue to favor the southern lines as shown below:

	Southern region	*Eastern district and Pocahontas region*
Year	*Percent*	*Percent*
1951	75.14	79.58
1952	73.26	79.03
1953	72.64	78.79
1954	76.00	81.14
1955	72.79	77.09
1956	74.73	77.62
1957	77.68	79.53
1958	78.61	81.20
1959	76.22	80.52

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The first 1953 report also showed that the increase in net railway operating income received by the southern lines in the period 1941-51 had been relatively larger than for the northern lines. Continuation of that trend is shown below:

Net railway operating income

Annual average for—	*Southern region*		*Eastern district and Pocahontas region*	
	Millions	*Percent*	*Millions*	*Percent*
1948-53	$157.8	100	$395.4	100
1954-59	162.4	103	361.1	91

The above table reflects operations of the two groups for the 6 full years prior to and after the presently prescribed divisions became effective under which the prior divisions giving the southern lines on general traffic a 25-percent factor advantage was eliminated. Revenue in 1956 for the northern lines from the traffic at issue was 6 percent of their total freight revenues, while for the southern lines the percentage was 21.4.

Rates of return on depreciated book investment, set forth in the first 1953 report, 287 I.C.C. at page 503, indicate that for the years 1941 to 1951 those for the southern lines consistently exceeded those for the northern lines. In this phase of the instant proceeding, the rates of return based on the net investment [4] are as follows:

Year	*Southern region percent return*	*Eastern district and Pocahontas region percent return*
1952	5.27	3.86
1953	5.45	4.01
1954	4.48	2.89
1955	5.45	4.19
1956	5.02	4.05
1957	4.14	3.29
1958	3.68	2.00
1959	3.63	2.27

Again comparing these statistics for the 6 full years since the present divisions became effective with the 6 years prior thereto, the average rate of return (net investment method) for the southern lines was 4.40 percent in 1954-59 and 4.79 percent in 1948-53, while the northern lines' average was 3.11 and 3.60 percent, respectively.

The southern lines take the position that returns for the calendar years 1958 and 1959 should not be used for comparative purposes to determine future divisions in view of the recession in business activity affecting the first half of 1958 and the severe steel strike affecting the last half of 1959, which affected the northern lines to a greater degree than the southern lines. The rates of return of both groups for these years were lower than for any other year since 1949. A comparison, omitting 1958 and 1959, shows average annual rates of return for the southern lines, 1954-57, 4.77

4. The net investment method is the carriers' investment in road and equipment, material and supplies, and cash, less accrued depreciation and amortization at the end of the year under consideration.

percent and 1950-53, 5.19 percent and for the northern lines during the same respective periods, 3.60 and 3.76 percent. Thus, the spread between the two groups in the 4-year period before the present divisions became effective, 1.43 percentage points, was reduced to 1.17 in the like period subsequent thereto.

The following table shows changes in revenue per ton and revenue per ton-mile for the two groups in the first 4 years since the present divisions became effective:

	Official territory		*Southern region*	
	Revenue per ton	*Revenue per ton-mile*	*Revenue per ton*	*Revenue per ton-mile*
Year		*Cents*		*Cents*
1954	$2.98	1.55	$2.98	1.46
1955	2.91	1.48	2.89	1.40
1956	2.95	1.49	2.82	1.43
1957	3.14	1.56	2.97	1.48

The southern lines observe that the location of new industries in the South near abundant sources of raw materials has meant that the long-haul movement of manufactured products into the South has been replaced by the movement of low-rated raw materials to nearby plants. Increased population in the South has caused finished products to be consumed locally, and the southern lines contend that they are left with less remunerative movements of low-rated raw materials. As an example, the Seaboard handled 33.9 percent more tonnage of low-rated commodities in 1959 than it did in 1951. Between the same years its tonnage of high-rated traffic increased only 5.6 percent. Its revenue increases in the same period were 28.7 percent on low-rated and 2.4 percent on high-rated commodities. The northern lines' tonnage and revenues in the eastern district for both groups of commodities decreased in 1959 compared with 1951. The decrease on low-grade tonnage and revenues was 27.4 and 15.8 percent, re-

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spectively, while on high-grade, 22.4 and 15.2 percent, respectively.

In August 1959, 12.1 percent of the northern lines' cars were undergoing or awaiting repairs; the figure for the southern lines was 5.3 percent. In July 1959, 6.7 percent of the North's locomotives were in or awaiting shop; for the South, 3.1 percent. Using the 4-year period of 1950-53 as a base index of 100 for new rail laid in replacement, the northern lines' indices were 60.6, 60.9, 56.6, 54.4, and 20.5 in the 5 years, 1954-58, respectively, while the respective indices for the southern region roads were 101.2, 90.9, 76.7, 80.7, and 49.8. Indices for crosstie and secondhand rail replacements in the two groups follow similar patterns during the same 5-year period.

The first 1953 report, 287 I.C.C. at page 505, discussed the efforts by each group to show that its revenue was more adversely affected by motor and water competition. However, it was not found there that such competition would be felt more keenly in the future by one group than by the other. Facts respecting such matters, including truck registration, highway construction, truck versus rail tonnage, revenue, and ton-mile revenue, waterborne diversions, and competitive rate reductions, were shown. However, those factors are not shown to have a measurably greater effect on one group as against the other on interterritorial traffic. We find that no adjustment of divisions is in order as a result of competition from other modes of transport.

Efficiency of Operation

In prescribing divisions the Commission is required by section 15(6) of the act to "give due consideration, among other things, to the efficiency with which the carriers concerned are operated." In the original phase of this case the relative efficiency of the northern lines was the subject of substantial evidence directed to support the southern lines' assertion that "performance in the North reflects

less efficient operation than in the South." After reviewing the various statistical indicators of efficiency in the prior record, it was stated at page 519 of the first 1953 report: "In our opinion the figures disprove the charge that the northern lines are less efficiently operated than the southern lines * * *."

17 In this reopened phase, the southern lines do not question the relative efficiency, as such, of their opponents. Instead, they charge that the northern lines have been unwise in choosing to devote available funds to reduction of debt rather than making capital improvements in their transportation plant, that the primary problem confronting the northern lines must be met through the elimination of duplicate facilities and modernization of railroad plant, and that cost savings are available to those lines through elimination of excess and duplicate facilities.

The northern lines assert that the same conclusion as to relative efficiency as made in the first 1953 report is warranted upon this record. It was there stated at page 525:

> We do not interpret section 15(6) as requiring us to determine whether one group of carriers is more or less efficiently operated than another, but rather to give due consideration to any evidence which might tend to indicate that the showing as to cost of service is affected by wasteful or inefficient management.

The record shows that the traffic density in the North is appreciably greater than in the South. From this fact the southern lines reason that the unit costs shown in Rail Form A for recent years for the northern lines should be lower than for the southern lines. However, many factors other than density, as will be hereinafter discussed, affect the operating expenses of a group of railroads. In any event, railroads in the North, including the larger ones, are shown to be in the process of eliminating unnecessary facilities

and services. At the same time, the evidence shows that the northern lines exercised their best managerial judgment, when faced with rising debt, in dealing with problems affecting the cost of service at the time they were encountered. We find no basis for giving effect to criticism of such action. Nor is there a basis for criticizing the judgment of southern lines in expanding and developing their operations. Also the record does not establish that the northern lines' costs are overstated relative to the southern lines' costs as a result of differences in the timing of the modernization programs in each territory. It is true that the savings expected from proposed mergers and consolidations are not reflected in the cost studies of record. However, the southern lines themselves have noted that mergers are now going forward in all territories, including the South. If and when such proposed mergers are ultimately approved and finally consummated in both groups the savings produced thereby will be then reflected in the respective unit costs. The economies hoped to be effected thereby
18 and the savings exepected are not ascertainable for future operation to the degree required for any specific adjustment here of the cost studies of record. We find upon this record that the northern lines' cost of service is not shown to be affected by purported waste or inefficiency. More affirmatively, we find that both groups are being operated efficiently and that neither group should be considered as more or less efficient than the other.

Relative Cost of Service

It was stated in the first 1953 report, when prescribing the present divisions, that: "* * * it is to be the safest assumption for the future upon the facts before us that neither contesting group will have an appreciably lower basis of operating costs than the other,* * *." 287 I.C.C. at page 526. To demonstrate changed conditions, the northern lines presented evidence as to the relationship of territorial average costs, the trend of those costs over a period

of years, and the cost of moving the traffic at issue based on territorial average unit costs applied to traffic samples. They contend that their cost evidence reflects higher costs in the North than in the South for equivalent hauls and loads, that the difference has increased over a period of years, and that the division of the revenues which they receive for hauling the traffic at issue is less than their proportion of the costs of hauling it, thus proving the aforesaid assumption was not well founded.

The basic formula used by both parties was Rail Form A, entitled "Formula for Use in Determining Rail Freight Service Costs," which utilizes the expenses and statistics for a given year as reported to this Commission by the carriers as well as supplemental data derived from special studies made by the carriers. The traffic here at issue moves over three statistical and cost territories: the southern region south of the divisional breakpoints, the eastern district, and the Pocahontas region north of the breakpoints or border. The northern lines rely in these proceedings upon eastern district territorial costs as developed by Rail Form A. It is their view that such Rail Form A costs—unadjusted—should be used to measure the relative costs of service for the two groups of carriers involved.

The southern lines contend that eastern district territorial costs are appropriate only for the eastern district, and that Pocahontas region costs should be used for
19 the Pocahontas carriers; or that at least official territory cost should be used for official territory (made up of eastern district and Pocahontas region). It is also their view that territorial costs should be somewhat narrowed down to the North-South traffic in issue. Endeavoring to adjust Rail Form A costs to the interterritorial traffic in issue, there are a number of adjustments presented by the southern lines purportedly improving the accuracy of the territorial costs for the two groups of carriers. These adjustments are dealt with in full in subsequent treatment of this subject.

The following table shows the relative participation of the carriers in the traffic at issue as shown in the southern traffic study.

	Cars originated or terminated	*Percent*	*Car-miles*	*Percent*
Official-southern traffic north of gateway:				
Eastern district roads	769,700	79.55	276,278,108	67.98
Pocahontas roads	130,877	13.53	95,562,990	23.51
Class II roads ..	16,697	1.73	417,948	.10
Southern lines in official territory	4,092	.42	24,030,862	5.91
Western lines in official territory	46,201	4.77	10,108,571	2.49
Total	967,567	100.00	406,398,479	99.99
All traffic:				
Eastern district ..	25,434,220	——	6,124,710;420	——
Pocahontas region	5,056,002	16.6	1,397,141,776	18.6
Official	30,490,222	——	7,521,852,196	——
Official-southern traffic south of gateway:				
Southern region roads	894,461	92.44	532,811,465	97.15
Pocahontas roads	0	——	3,006,325	.55
Class II roads ...	55,829	5.77	3,228,070	.59
Western district roads	17,277	1.79	9,412,641	1.72
Total	967,567	100.00	548,458,501	100.01

The participation of the Pocahontas lines in the traffic at issue compared to all traffic is less when measured by cars originated and terminated and more when measured by car-miles. One is related to terminal costs and the other to line-haul costs. A part of the traffic at issue is carried over those portions of southern lines which extend into official territory and over those portions of western lines which extend into official territory and southern re-

gion. The relative participation of the Pocahontas lines in the issue traffic is not shown to be sufficiently different than in the total traffic so as to require separate costing, nor is there any sound evidentiary basis for applying western district costs to traffic moving in official territory which is carried on western lines which lap over into that territory. In view of the foregoing, we find that the most appropriate and reasonable approach to the determination of costs in official territory is the alternative urged by the southern lines; that is, official territory, costs for all traffic north of the gateways. A comparable basis in the South necessitates the use of southern region costs on traffic south of the gateways.

The northern lines presented evidence to show that the average unit costs for comparable service are higher in the North than in the South. The following summary table illustrates this point. The first six lines are based on the northern lines' application of Rail Form A and the last four lines on our cost section's application in its annual studies. These costs include a terminal service at one end only, reflect short-line miles, and are based on a load of 28.9 tons in boxcars.

Relation of northern to southern freight service costs

	100 miles	*300 miles*	*500 miles*	*1,000 miles*
	Percent	*Percent*	*Percent*	*Percent*
Official territory vs. South:				
1948	119	113	111	109
1956	131	123	120	117
1957	131	122	120	117
Eastern district vs. South:				
1948	125	119	117	116
1956	141	131	128	126
1957	141	132	130	126
Eastern district vs. South (cost section study):				
1948	124	116	115	113
1956	143	133	129	127
1957	143	133	131	128
1959	154	143	139	136

These costs indicate that levels thereof are higher in the North than in the South for like services, that official territory costs are not quite as high as eastern district costs, and that the northern lines' application of Rail Form A as compared to the cost section's study application results in a slightly lower relationship, particularly in more recent years.

The northern lines' application of Rail Form A differs from that of the cost section's annual studies in the following respects: (*a*) the use of a 6-percent rate of re-
21 turn without provision for Federal income tax in place of a 4-percent rate of return with provision for Federal income tax; (*b*) the base for return is book investment in road and equipment plus cash and material and supplies less recorded depreciation and amortization instead of on the basis of original costs except lands and rights, working capital, including material and supplies, less recorded depreciation and normalized amortization, plus the present value of land and rights; (*c*) the less-than-carload and passenger deficits are omitted from the constant costs; and (*d*) none of the costs of switching and terminal companies is included.

The northern lines' evidence as to the trends of relative costs over a period of years can best be summarized in tabular form as follows:

Northern percentage of total Form A costs at average hauls

	Citrus and vegetable traffic, refrigerator car— 16.3 tons	*General traffic, boxcar— 28.9 tons*
Average haul-miles:		
North	358	347
South	860	464

	Official territory	*Eastern district*	*Official territory*	*Eastern district*
	Percent	*Percent*	*Percent*	*Percent*
Northern lines' Form A computation:				
Year 1948	32.3	33.3	46.4	47.8
Year 1950	33.5	34.2	48.8	50.1
Year 1952	33.8	34.7	48.8	50.1
Year 1954	33.1	34.7	49.7	51.0
Year 1956	33.9	35.0	48.8	50.5
Year 1957	34.1	35.5	48.8	50.8

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	Citrus and vegetable traffic, eastern district		*General traffic, eastern district*	
	Fully distributed costs	*Out-of-pocket costs*	*Fully distributed costs*	*Out-of-pocket costs*
	Percent	*Percent*	*Percent*	*Percent*
Form A cost from cost section annual study:				
Year 1947 as of Jan 1, 1949	32.9	33.5	47.0	49.0
Year 1948 as of Jan. 1, 1950	33.3	34.1	47.4	49.7
Year 1949 as of Jan. 1, 1951	31.9	31.8	46.7	47.5
Year 1950 as of Jan. 1, 1952	34.2	34.4	49.7	51.2
Year 1951 as of Jan. 1, 1953	34.5	34.5	49.9	50.8
Year 1952 as of Jan. 1, 1954	34.7	34.8	50.2	51.1
Year 1953 as of Jan. 1, 1955	34.2	34.3	50.0	51.2
Year 1954 as of Jan. 1, 1956	34.7	34.7	50.6	51.8
Year 1955 as of Jan. 1, 1957	34.9	34.9	50.5	51.5
Year 1956 as of Jan. 1, 1958	35.5	35.7	50.7	51.8

In the southern lines' traffic study, 69.3 percent of all car-miles were run by boxcars and 9.7 percent by refrigerator cars. The table above indicates that there was an increase in the northern lines' proportion of costs in the year 1950 but that the trend since that year is not pronounced. As to boxcar costs, the northern lines' computation shows no increase for official territory between 1950 and 1957 and only 0.7 percent for eastern district.

The out-of-pocket boxcar costs, based on our cost section's annual study, showed 0.6-percent increase from January 1, 1952, to January 1, 1958.

The northern lines priced out the traffic at issue as measured by their own traffic study both on the basis of Rail Form A unit costs of their own computation and on the basis of Rail Form A unit costs as computed by our cost section's studies. They also applied the cost section's unit costs to the southern lines' traffic study. The cost section costs used were at the fully distributed level; i.e., they included a ton and ton-mile apportionment of the constant costs. All costs were based on the year 1956 and included an allowance for loss and damage. The table following shows for each traffic study, the percentage of revenues received by the northern lines, and the percentage of costs incurred by them:

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	General traffic (percent)			*Citrus and fresh vegetables (percent)*		
	Revenue	*Cost*	*Difference*	*Revenue*	*Cost*	*Difference*
Northern lines' traffic study:	45.44	——	——	33.38	——	——
Northern costs:						
Eastern district vs. southern region ..	——	49.78	4.34	——	34.62	1.24
Cost section study costs:						
Official territory vs. southern region ..	——	48.19	2.75	——	34.00	0.62
Eastern district vs. southern region ..	——	50.18	4.74	——	35.26	1.88
Southern lines' traffic study:	44.97	——	——	34.63	——	——
Cost section study costs:						
Official territory vs. southern region ..	——	47.34	2.37	——	33.69	(.94)
Eastern district vs. southern region ..	——	49.31	4.34	——	34.97	.34

The difference in the results for citrus and fresh vegetable traffic as between the two traffic studies reflects a revision in the divisions. The more recent southern lines' traffic study shows that the revenues as settled and the costs on this traffic are roughly equal. The following table indicates the dollar amounts involved on the general traffic:

	Traffic study of northern lines			*Traffic study of southern lines*		
	Percent		*Percent*	*Percent*		*Percent*
Total revenue ...	100.00	$450,909,348		100.00	$480,160,317	
Northern lines' share:						
Revenues as settled	45.44	204,889,448	100.00	44.97	215,915,212	100.00
Revenue if based on costs:						
Northern lines' costs ...	49.78	224,462,673				
Increase		19,573,225	9.6			
Cost section study costs:						
Official vs. southern ..	48.19	217,293,215		47.34	227,307,894	
Increase		12,403,767	6.1		11,392,682	5.3
Eastern vs. southern ..	50.18	226,266,311		49.31	236,767,052	
Increase		21,376,863	10.4		20,851,840	9.7

24 The southern lines urge that it is settled law that relative service costs are the decisive measure in determining just and reasonable divisions and that the costs of all roads participating in the official-southern traffic should be so applied and adjusted as to reflect the cost characteristics of the traffic here at issue. In order to develop the relative service costs of this traffic they applied Rail Form A adjusted unit costs at the fully distributed level for the year 1956 to their traffic sample described above. They presented the results of their cost studies in several different forms, but their principal cost evidence can be summarized as shown in the table below. It starts with the application of the costs as computed by the northern lines applied to the southern lines' traffic

study, then the unadjusted Form A costs applied to the same study, and lastly the Form A costs modified to include the effect of 12 adjustments they deem necessary.

	North of gateway	*South of gateway*	*Percent*	
			North	*South*
Total revenues as settled under present divisions	$221,430,000	$274,656,000	44.64	55.36
Northern lines' costs applied to southern traffic study:				
Eastern district and southern region	158,427,000	170,708,000	48.13	51.87
Official territory and southern region	148,424,000	170,708,000	46.51	53.49
Unadjusted Rail Form A costs—official territory and southern region ..	169,618,000	194,306,000	46.61	53.39
Rail Form A costs including 12 adjustments	152,808,000	201,916,000	43.08	56.92

All of these costs are territorial average costs based on the expenses and operations for 1956, all are at the fully distributed level, and all are applied to the southern lines' traffic study.

The unadjusted Rail Form A costs above result from the standard computation applied to each territory. The specific adjustments made by the southern lines in the unadjusted official territory and southern region unit costs developed by cost section annual studies are discussed in appendix B hereto in full detail.

Restatement.—The differences between the parties as to the cost evidence run to the degree to which territorial average costs should be modified to fit the specific traffic at issue, and to the meaning and significance of various data and statistics.

25 Both parties computed the cost of service based on the southern lines' traffic study and the territorial average costs (1956) in statement No. 2-58, Rail Carload Cost Scales by Territories, prepared by the cost finding section. The southern lines computed costs for all traffic for official territory and southern region and the northern lines computed costs for general traffic (all traffic except citrus fruits and fresh or green vegetables, not frozen, northbound) and citrus and vegetable traffic separately for official territory, eastern district, and southern region. The cost computation of each side furnished substantial verification of that of the other side. Further, positive verification was made by applying the unit costs in statement No. 2-58 to the service units by type of car. The assertion made by the northern lines that the southern lines omitted 70 percent of the cars in the traffic sample from their cost studies is not true of the latter's final cost presentation.

Our restatement is based on official territory (eastern district plus Pocahontas region) costs north of the breakpoints, for reasons previously discussed, and is at the fully distributed level,[5] as advocated by both groups, on all traffic. Apart from the adjustments rejected in appendix B, our restatement is based on the southern lines' cost computation, as applied to their traffic studies, which, we find, more reliably and accurately reflect the movement of the traffic in question. Incorporating the five adjustments advocated by the southern lines which we have found appropriate, our restatement is shown in the following table:

	Restated costs	
All traffic	*Official territory*	*Southern region*
Revenue as settled	$221,430,341	$274,656,425
Percent	44.64	55.36
Fully distributed costs— unadjusted	169,617,543	194,306,309
Percent	46.61	53.39

5. As found appropriate in *Louisville & N.R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, 660, sustained in *Carolina & N.W. Ry. Co. v. United States*, 230 F. Supp. 581 (W.D.N.C. 1964).

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All traffic—continued	*Official territory*	*Southern territory*
Adjustments:		
Exclude platform cost	$—2,254,075	$—453,673
Way and thru train separation	—2,283,259	—3,595,230
Switching and terminal companies	—163,473	+1,039,610
Include short line (class II railroads) costs	—37,725	+529,347
Train tonnage—		
Pocahontas region	+867,319	0
Total adjustment (net)	—3,871,213	—2,479,946
Fully distributed costs—adjusted	$165,746,330	$191,826,363
Percent	46.35318	53.64682

As indicated, we have fully reviewed in appendix B and restated above the costs as presented by the parties. In addition, however, the southern lines urge that the evaluation of certain factors bearing upon costs establishes that their cost study overstates the costs of the northern lines relative to the costs in the South, all to the general effect that their showing of the northern lines' costs should be reduced by at least 5 percent. These factors include: (1) overstatement of line-haul costs, (2) costs of interchanges between northern and southern carriers, (3) differences in the timing of modernization programs in each territory, and (4) savings which would result from "necessary" elimination of alleged excess capacity and duplicate facilities. The only item to which they attach a cost figure relates to the equalization of gateway interchanges, amounting to $1.6 million. We have discussed this item in appendix B, pointing out our reasons why such an adjustment is not warranted. As to the remainder, they agree that a precise cost figure cannot be ascertained. We have fully considered these factors, and are of the opinion that the service unit costs as determined by the application of Rail Form A, as adjusted, adequately reflect the costs which are

attributable to the traffic at issue. Our overall appraisal of this evidence is reflected in our conclusions and findings.

Importance to the Public

Section 15(6) of the act also requires that we give due consideration to the importance to the public of the transportation services of the concerned carriers. No real issue exists between the contending railroad groups themselves in this respect. Each group is considered to be of equal importance to the public.

27

The prior phase of this proceeding was viewed primarily as a struggle between the railroads. In this reopened phase, however, certain interests representing public bodies adduced evidence in support of the southern lines. The Southern Governors' Conference[6] and the Southeastern Association of Railroad & Utilities Commissions[7] endeavored to show why the divisions of the northern lines should not be increased. Unlike the request of the southern lines, their requested finding is that equal factor divisions should be maintained. These interveners contend that a shift of divisions from the southern lines would result in higher rates on southern and interterritorial and intraterritorial traffic, and diminution of services, facilities, and equipment. Thus, they foresee the impairment of the ability of southern shippers to compete in distant markets and diversion to other modes of transportation, thereby impeding the economic growth of the South.

In their exceptions, the southern interveners urge that the examiners failed to give effect to the overriding demands of the public interest which, they say, require uniformity in these divisions. We recognize that the public

6. In this proceeding, composed of the Governors of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

7. Composed of State commissions and their members charged with the regulation of common carriers and other public utilities in the States named in footnote 6.

interest must be considered and the importance to the public of the transportation services of the railroads is not a sectional concept. We are required under the act to preserve an adequate national system of transportation, and must therefore consider the public interest of all concerned. Such a consideration, however, does not by any means require a uniformity of divisions, nor can we find an affirmative virtue in it on this record. *Cf. Western Trunklines* case, 225 F. Supp. at page 604. Moreover, as pointed out in *New England Divisions Case,* 261 U.S. 184, 191 (1923), section 15(6) was designed to help the weak "by preventing needed revenue from passing to prosperous connections." Thus, an adherence to uniformity as such, without a careful evaluation of the statutory criteria and the evidence of record, can hardly result in the fixing of just, reasonable, and equitable shares.

Relying on *New York v. United States,* 331 U.S. 284, 315 (1947), the interveners also take the position that natural disadvantages must be found in the North before we may increase the divisions of the northern rail-
28 roads. In essence, however, other factors being equal, cost differences generally are the product of, and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories. *Cf. Louisville & N. R. Co. v. Southern Ry. Co.,* 319 I.C.C. 639 at pages 646-47. Moreover, in the *New York* decision, a discriminatory class rate structure was found not justified by territorial conditions. No similar showing as to existing divisions has been demonstrated here by interveners. Indeed, the continued maintenance of divisions which, all other things being equal, do not reflect the relative costs of service would not suggest justice as between the parties. Such inequities being manifest here, we are of the opinion that divisions correcting them can result in no unlawful injury to the South.

In sum, we find that there are no differences in importance to the public attributable to the two contending groups of railroads.

DIVIDING POINTS AND DIVISIONS ON PARTICULAR MOVEMENTS

Dividing points.—In this reopened phase the northern lines again urge that the construction of divisions over fictional breakpoints rather than over actual points of interior interchange results in unjust inflation of southern revenues. They request a finding that the dividing points to and from which primary divisions shall apply are the points at which the traffic is interchanged between a northern and southern line.

This problem has been a difficult one ever since these general North-South divisions were first considered in docket No. 24160, the northern lines always contending that actual interchange points should govern, while the southern lines strenuously urged that the primary dividing points should be at the territorial border. In the original 1939 report in docket No. 24160 the Commission found for the northern lines, but reversed its initial determination in the report on reconsideration, 238 I.C.C. 149. Subsequent thereto, the interested lines in 1944 entered into what is known as the Roanoke Agreement as a compromise on traffic moving through the Ohio River gateways to points in central and Illinois territories. Details of this agreement, with which the northern lines are dissatisfied, are stated at page 528 of the first 1953 report, and need not be repeated here.

29 In the first 1953 report the Commission again agreed with the northern lines' contentions but upon reargument in the second 1953 report (289 I.C.C. 4) modified the finding, holding that it would not be desirable to require the use of points in Illinois and Indiana north of the Ohio River as primary dividing points.

The southern lines' traffic test, as stated, embraced a total of 967,554 cars. Of these, 86,843 or 9 percent were interchanged at interior Illinois-Indiana junctions, the most important of which were East St. Louis, 28,783 cars, Chicago, 19,441 cars, and Indianapolis, 12,599 cars.

The following tabulation shows the number of cars so handled by individual lines:

Railroad	Cars		
	Northbound	Southbound	Total
Illinois Central	30,838	15,463	46,301
Gulf, M. & O.	14,476	3,680	18,156
St. Louis-San Francisco	8,832	3,129	11,961
Southern	2,880	2,219	5,099
Louisville & Nashville	2,471	2,798	5,269
Missouri Pacific	—	57	57
Totals	59,497	27,346	86,843

A comparison of the total number of cars moving through primary dividing points with those moving through these points but not interchanged follows:

Dividing points	Total cars	Cars not interchanged	
		Number	Percent
Cairo, Metropolis Thebes-Gale	74,504	65,470	87.9
East St. Louis	55,767	11,005	19.7
Evansville	29,342	5,269	18.0
Louisville	90,538	5,099	5.6
	250,151	86,843	34.7

The total revenue on the 86,843 carloads was $49.6 million which was settled 63.9 percent south and 36.1 percent north. If the primary break were made over the actual points of interchange, the southern lines would have received 58.4 percent, and the northern lines 41.6 percent, reflecting a reduction in southern revenue of $2.7 million, averaging $32 per car. Some 28,136 cars, or 32.4
30 percent, were handled via joint routes that would have required new subdivisional arrangements.

The examiners recommended that the border dividing points be retained as at present. They were of the opinion that the record failed to show any changed conditions since 1953 favoring the northern lines as to the dividing point

issue. The northern lines except to this recommendation but are not joined therein by the Monon and the Chicago & Eastern Illinois, two of the carriers intimately concerned with the divisional break issue.

The northern lines contend that section 15(6) of the act requires that divisions be fixed as among the several carriers, which, they contend, means that the Commission may not recognize geographic areas or rate territories in establishing primary divisions. We do not agree with this view. This argument was rejected by the Supreme Court in *New England Divisions Case, supra,* shortly after the enactment of section 15(6) in 1920. We have administered the act accordingly over the years. See, e.g., *Atlantic Coast Line R. Co. v. Arcade & A. R. Corp.,* 194 I.C.C. 729 (1933), *Divisions of Freight Rates,* 253 I.C.C. 673 (1942).

The southern lines take the position that our order of July 28, 1959, reopening this proceeding, did not contemplate any reconsideration of the dividing point issue. The order was not so restricted. If we were to adopt this contention, our consideration of the divisions on Canadian-northern Maine traffic, which these carriers admit is at issue here for the first time, would likewise not be included in this reopened phase.

In the second 1953 report, 289 I.C.C. 4, it was stated at page 8:

> Upon further consideration we are of the opinion that it may be preferable from the standpoint of carrier competition and simplicity of accounting that the divisions for the service south of any given gateway be uniform and that upon all the facts before us it would not be desirable to require the use of points in Illinois and Indiana north of the Ohio River as primary dividing points. The prescribed divisions will therefore be made applicable only to and from existing primary dividing points.

The northern lines contend that circumstances and conditions have changed since 1953, but we find nothing convincing upon which to base a conclusion to reverse that made in the above-quoted portion of the second 1953 report. The examples given in 1953 as to competitive routes and carriers are much the same today as they were then. It
31 appears that these lines simply are endeavoring to have us reconsider the situation. But the positive virtues of the uniform treatment set forth above still obtain.

The northern lines also rely on the *Border Point* case, *Louisville & N. R. Co. v. Akron, C. & Y. R. Co.*, 309 I.C.C. 491 (1960), as an indication that the southern lines have advocated, and that we have accepted, the proposition that railroads assigned to the southern territory to the extent they operate in official territory are to be treated as southern carriers. However, that proceeding concerned traffic moving between primary dividing points or to and from stations on southern territory carriers which are located south of the primary dividing points, which traffic had not been included in the evidence when the Commission's 1953 reports and orders were entered. The *Border Point* decision merely prescribed the docket No. 29885 divisions on the border point traffic of the Louisville & Nashville and the Coast Line consistent with the divisions prescribed for the border point traffic of the northern lines. It did not include traffic of those two carriers north of primary dividing points.

All things considered, we conclude and find that the divisions prescribed herein should continue to be made applicable only to and from existing primary dividing points. *Cf. Official-Southwestern Divisions*, 289 I.C.C. 11, 16 (1953). Thus, railroads assigned to southern territory in their entirety for statistical purposes will continue to be treated as southern lines for that portion of the operations south of the territory border dividing points and to be treated in

accordance with geographical fact to the extent that they operate as northern lines north of the primary dividing points. Giving consideration to the revenues which will accrue to the contending groups as a result of this finding, together with the revenue division which our prescribed general basis of divisions produces, we are of the opinion that no unjust inflation of southern revenues is occasioned thereby. Further, here as in the second 1953 report, we express no opinion as to the fairness of the method of subdividing the northern primary divisions.

Divisions of rates to and from points in official territory on western lines.—Certain western trunklines requested that the divisions on this traffic which is interchanged by them directly with the southern lines, as well as that originating or terminating on southern lines with a northern line or lines participating in the haul, should be the same as are or may be prescribed herein for the northern lines. The examiners concluded that the evidence was inade-
32 quate to support findings with respect to traffic interchanged without northern lines' participation absent a showing of the present divisions on this traffic and the relative service performed by each group. They further concluded, however, that the divisional scale prescribed for the northern lines should also apply to traffic interchanged between the western trunklines and the southern lines in which there is participation by a northern line or lines. Such traffic is presently subject to the general prescribed basis and is embraced within the southern lines' traffic study. No exceptions were filed to the examiners' conclusions. While our findings call for cost based scales rather than the form prescribed by the examiners, we agree with their ultimate conclusions as to the treatment to be accorded in both situations.

Canadian-northern Maine traffic.—The southern lines' traffic study shows 2,955 cars (3 percent of the total) moved to or from Canadian points on combination rates made over

an international boundary point, 2,227 of which were northbound, and 728 southbound. A slight controversy exists as to the divisional basis applicable to this traffic, since two southern territory lines settled divisions on 245 southbound cars on the docket No. 24160 basis. The southern lines are now, in this reopened phase, for the first time asking us to avoid any similar controversy for the future by prescribing divisions on this traffic "that reflect its demonstrated characteristic, i.e., 'overhead' traffic for the official territory part of the haul." They urge that since the northern lines perform no terminal service thereon the northern factor should be adjusted to reflect the situation.

The northern lines oppose any special basis on Canadian traffic. They point out that these joint rates are the same as the domestic rates to and from the border points and, as such, contemplate two terminal services of which southern lines perform but one. Of the 2,955 cars involved, 1,324 cars moved through the Detroit gateway. Of this number, 609 moved in connection with the Chesapeake & Ohio, indicating that that road bears a heavy expense, in addition to that entailed by normal interchange in the Detroit-Windsor area, largely because of the international character of this traffic.

A similar situation exists with respect to traffic moving between the South and destinations in northern Maine on combination rates made over Brunswick or Lewiston, Maine. The joint revenue accruing south of these points is
33 divided on the presently prescribed general basis. Thus, the southern lines contend that the northern lines receive compensation for a terminal service which they do not perform. The southern study embraced 3,158 cars in this category, about 90 percent of which consisted of clay from Georgia origins to papermills in northern Maine, 80 percent thereof going to Maine Central points on combinations over Brunswick. On March 16, 1960, these clay rates were superseded by single-factor joint through rates

over protest of the Maine Central. Clay traffic to Bangor & Aroostook points remained on the combination basis.

The northern lines advance several reasons why the instant Maine traffic should not be excepted from the general basis of divisions. These include characteristics peculiar, in part, to New England territory, such as lower traffic density, higher level of costs, multiline hauls north of the gateways, and lower rates of return. These lines urge that the general basis of divisions is required to compensate them fully for the services they perform.

The Commission is required under section 15(6) of the act to consider "whether any particular participating carrier is an originating, intermediate or delivering line." It has frequently recognized the fact that intermediate carriers having no service to perform in originating or delivering shipments are entitled to a lesser proportion of joint rates for that reason. *Through Routes and Joint Rates,* 174 I.C.C. 477, 485; *Official-Southwestern Divisions,* 287 I.C.C. 553, 580; *Divisions of Rates, Official and Southern Territories,* 278 I.C.C. 89, 94.

The examiners recommended that the divisions on this traffic be determined by making the northern factors thereon 75 percent of the northern general factors recommended by them. The northern lines take exception to this conclusion but recognize that there may be some merit in establishing a special basis to govern these divisions. The facts establish that as to most of this traffic the northern lines perform purely intermediate service with no terminal service involved. These lines state that under the circumstances an equitable basis would result from the use of prorating factors 26 inte[illegible]rs less than the northern general factors. The 75-percent basis prescribed in *Divisions of Rates, Official and Southern Territories, supra,* and continued in our 1953 reports in this proceeding, applied only on grain and grain products moving on proportional and reshipping rates

and were specifically related to the unusual characteristics of that traffic. It was not intended that such divi-
34 sional basis should become a precedent of all overhead traffic. Rather, in light of the foregoing, our general discussion and conclusions, and the scales hereinafter prescribed, we are of the opinion and find that the intermediate scale set forth in our ultimate finding 3, modified so as to contain no allowance for terminal service, will be just, reasonable, and equitable for the future on Canadian-northern Maine traffic. Similar action was taken in *Official-Southwestern Divisions, supra.*

Grain and grain products.—In the 1953 reports we prescribed, as stated previously, a separate specific scale of divisions to apply to the joint proportional rates on grain and grain products from East St. Louis, Louisville and Cincinnati to points in southern territory reflecting northern factors 75 percent of the prescribed northern general factors. The evidence upon which that finding was based was principally that which was adduced at a further hearing in docket No. 24160 and made part of the record in the original phase of the instant proceeding by stipulation (287 I.C.C. 543). The examiners recommended that the northern factors covering this traffic should remain at 75 percent of the recommended northern general factors. The southern lines take exception to this conclusion on the ground that no evidence was here adduced dealing with this divisional situation. Under the circumstances, lacking such evidence, we may make no assumptions as to such traffic. The southern lines' exception must be sustained. Our ultimate findings prescribing lawful divisions will include this traffic so as to embrace all North-South traffic except that specifically excluded, and for convenient reference we will incorporate the prior finding as to grain and grain products.

Proposed Changes

The northern lines favor simple modification rather than complete revision of the present divisional scales, and

ask that we make such modifications therein as shall serve to redistribute the total revenue between the two groups with primary regard for their relative general levels of costs and relative revenue needs. They urge that because of their greater revenue need, the Commission should add 10 percentage points to the 25-percent increase that would be justified on the basis of relative costs alone, and thus prescribe, on general traffic, the present divisional factors for southern lines and the present factors increased by 35 percent for northern lines. On citrus and vegetable traffic their proposition is the same except that they ask
35 that their present factors be increased by only 15 percent. They estimate that the divisions thus proposed would increase their total revenue about $35 million annually, making the adjusted rates of return for 1959 for official territory lines 2.42 percent and for southern region lines 3.19 percent.

The northern lines ask that the divisions of the per-car rates on vegetables to New York be excluded from the general basis and a special provision be applied thereto so that the excess of $57 per car in the New York City rates over and above the rates to Jersey City shall continue to accrue to the delivering lines before prorating. No significant specific evidence was adduced in support of the sought exclusion as to the instant rates and movements. Also, the per-car rates here referred to were found unlawful and the unlawfulness was ordered removed in *Port of New York Authority v. Aberdeen & R. R. Co.*, 321 I.C.C. 738 (1964). The Commission's order therein was restrained, however, and the matter is now the subject of court litigation in the United States District Court for the Eastern District of Pennsylvania. In the circumstances, the sought provision as to such traffic does not appear appropriate. The relief sought is denied.

The northern lines also ask that we exclude the divisions of joint rates on liquid caustic soda and soda ash from Saltville, Va., to Kingsport and Port Rayon, Tenn., as to

which the existing order was vacated in response to mutual petition of the interested carriers. Again, since no evidence was offered dealing specifically with this segment of traffic, we are unable to grant such relief. Similarly, no evidence was adduced as to their request for exclusion of the divisions of joint rates on all trailer-on-flatcar traffic, nor was this request renewed in their exceptions. It is therefore denied.

The southern lines would abandon the present scales of prorating factors and substitute therefor scales constructed directly from the costs developed in their cost study which we have not accepted in its entirety, as shown in our restatement. They oppose the use of divisional scales derived from rate scales because, they contend, partly curvilinear and partly straight line rate of progression favors the short haul in the North. Omitting 50-mile block factors, except for the initial block, the scales proposed by the southern lines are shown below:

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Distance	*Column 1 (South)*	*Column 2 (North)*	*Column 3 (North)*
50 miles	155	137	144
100 miles	214	194	204
200 miles	330	307	323
300 miles	447	421	443
400 miles	563	535	563
500 miles	680	648	682
600 miles	797	762	802
700 miles	913	875	921
800 miles	1030	989	1041
900 miles	1146	1102	1160
1,000 miles	1263	1216	1280
1,100 miles	1380	1330	1400
1,200 miles	1496	1443	1519
1,300 miles	1613	1557	1639
1,400 miles	1730	1670	1758
1,500 miles	1846	1784	1878
1,600 miles	1963	1897	1997

The scales in columns 1 and 3 are those developed directly from the southern cost study for the southern and northern portions of the hauls, respectively. Instead of using column 3 as northern factors, the southern lines would use 95 percent thereof as reflected in column 2. They contend that such an adjustment is required in the northern scale to correct the alleged relative overstatement of the cost for the northern hauls. We have declined to recognize this adjustment as valid in our discussion of the cost evidence. It will be noted that the factors in columns 1 and 3 become equal at 400 miles but that the 5-percent reduction keeps the column 2 northern factors below the column 1 southern factors throughout the proposal. Such computations are to the advantage of the southern lines who have the longer average hauls. On the average hauls of 522 short-line miles South and 372 North the southern proposal would produce divisions of 58 percent South and 42 percent North. Such proposal obviously would be unfair to the northern lines on a cost of service basis as shown in our restatement of costs.

Construction of the divisional scales.—The examiners recommended the prescription of the factor scale we prescribed in the first 1953 report, except that the northern scale should be increased uniformly by 10 percent. They refused to change the construction of the scales on the ground that the Commission in the prior phase of this case considered the southern lines' contention as to the unsoundness of the prescribed scale and declined to modify the scale in the second 1953 report, 289 I.C.C. 4.

37 On brief and again upon exceptions, the southern lines urge that the construction of the existing scale operates unfairly upon them since they have the longer average hauls. They contend that the scale contains certain defects: (1) an unexplained and excessive allowance for short hauls; (2) the progression of the scale unlawfully depresses the revenues of the long-haul carriers; (3) the

value of each 50-mile block reflects services not performed because of the application of the scale to the upper limit of the mileage blocks; and (4) the value of the initial mileage block is excessive to the extent of 37 integers.

The new evidence adduced upon further hearing demonstrates that the foregoing contentions of the southern lines have merit, and we so find. Under the circumstances, and in light of our subsequent conclusion to be guided by the relative costs in our general determination, we have accordingly revised the general divisional factors to reflect warranted adjustments of record. The resulting scales, set forth in columns 1, 2, and 6 of Appendix C, are constructed from factors based on the fully distributed costs and give due and adequate consideration to terminal, way train, through train, and interchange costs, as incurred by the respective lengths of haul, and the factor for each mileage block has been computed at the midpoint, or median, for each block. We have utilized 50-mile blocks as in the past and as again urged by both groups. The basis of these scales is set forth as follows:

	Column 1 Official territory	*Column 2 Southern region*	*Column 6 Official territory*
Terminal and border interchange (mills per hundredweight)	64.17	44.08	——
Interchange for bridge traffic (mills per hundredweight)	——	——	17.07
Way train (mills per hundredweight-mile)	0.78905	0.67720	——
Way train miles	11	27	——
Through train (mills per hundredweight-mile)	0.63584	0.57756	0.63584

The scales are computed in the following manner using the 201-250 mileage block and column 1 as an example.

Terminal			64.17
Way train	0.78905 x	11 miles	8.68
Through train	0.63584 x	214.5 miles	136.39
Midpoint		225.5 miles	209.24
250 mileage block factor on appendix C, column 1			209

38 *The 15-percent minimum.*—The examiners recommended that the 15-percent minimum be retained under the divisional scales suggested by them. On exceptions the southern lines contend that if a proper divisional scale is used to reflect the services performed in handling the traffic at issue, full credit for terminal service, way train service and through train service (including interchange services) is reflected in the scale itself and there is no need for a minimum division. We agree with the southern lines in this respect. The prorating factors which we prescribe herein give full credit for terminal costs, thus appropriately protecting the very-short-haul carriers which, for the most part, perform principally originating or terminating service. Unlike, the existing scale which is weighed in favor of the very short haul, the scale prescribed herein, reflecting as it does the cost and service involved, gives each type of haul its proper share, and, therefore, no special protection for short hauls is warranted. In any event, the aggregate amount of traffic which would not be accorded a division of at least 15 percent of the through revenue appears to be inconsequential.

Divisions of the Norfolk Southern and Certain Other Lines

In the first 1953 report, 287 I.C.C. at page 544, portions of the 1939 report were quoted to explain why in that earlier proceeding the divisions of the Norfolk Southern Railway Company, except on peaches, were not made subject to the prescribed basis in 1939. Principally, reference was made

to the loss occasioned by such basis and to the resulting increase in the financial burden of this railroad.

This line's condition was found considerably improved in the 1953 phase of this case. The carrier then asked for some small relief through increased divisions, in which request it was joined by the Atlantic and East Carolina Railway Company and the Beaufort and Morehead Railroad Company. After consideration of the evidence concerning these carriers, the Commission was unable to find that a special basis of divisions for them would be justified. One of the considerations which led to this conclusion was the improved financial condition of the Norfolk Southern, particularly when compared with rates of return of the northern lines generally and those of the Pennsylvania in particular, with which line it was presumed that the greater portion of traffic through Norfolk was interchanged.

Thereupon, these three respondents filed separate petitions seeking reconsideration. It was observed upon reargument (289 I.C.C. 4, 8) that the basis prescribed in the *original* 1953 report would cause these carriers to incur a proportionately greater reduction in revenue than the southern lines as a whole.

It was there stated:

> Upon further consideration we are in doubt whether the present record contains all the facts which should be currently considered in establishing a proper basis of divisions of joint rates between official territory and points on these lines.

Accordingly, the case was reopened for further hearing and the order as to these respondents was postponed pending the further hearing which was had in this reopened phase. Of the three carriers only the Norfolk Southern introduced evidence. No exception was taken to the examiners' conclusion that the divisions of the Atlantic & East

Carolina and the Beaufort & Morehead should be subject to the general basis prescribed. We affirm that conclusion.

The situation with respect to the Norfolk Southern requires separate detailed consideration. This line has in the past been classed as a weak line, having been awarded arbitraries in various instances. See *Southern Class Rate Investigation*, 100 I.C.C. 513, 128 I.C.C. 567. As noted in the first 1953 report, its condition had improved in years recent to that decision. Its main line extends from Norfolk, in a southwesterly direction, to Charlotte, N. C., 379 miles, with 210 miles of branch lines; 95 percent of its local mileage is in North Carolina, the remainder in Virginia. Its annual constructive year, later described, system freight revenues were $9,712,747, 34 percent, or $3,300,660 of which is involved here. For purpose of this case, the respondent has divided its traffic into three categories:

(1) Traffic in which the Norfolk Southern participates as an intermediate carrier moving between points in the South and points in official territory. The divisions on this overhead traffic are subject to the 1953 prescribed scales. During the constructive year revenue accruing to the Norfolk Southern in this category amounted to $879,069. No special basis of divisions on this traffic is requested, except that if a change is made in favor of the northern lines we are requested that this line's revenues as a whole not be diminished. Under the general basis of divisions prescribed in finding 2 herein we estimate that this revenue would be reduced by the 2.908-percent figure later indicated, or only $25,563. Revenue accruing here to the carrier is a subdivisional question and will not be made subject to a special basis.

(2) Traffic originating or terminating on the Atlantic & East Carolina and the Beaufort & Morehead railroads to and from points in official territory moving over the Norfolk Southern as an overhead or intermediate carrier. During the constructive year this category embraced the movement

of 1,655 cars, interchanged at Norfolk, only 60 cars of which were handled by the Beaufort & Morehead. It is estimated that Norfolk Southern's portion of the revenues would have been about $32,000 less annually if the 1953 prescribed basis had been applicable. The general basis of divisions in finding 2 herein would reduce the revenue by an estimated $47,079. All of the traffic in this category must be handled between New Bern, and Morehead City, N. C., or to and from points between Goldsboro, N. C., and New Bern by the Southern Railway. We find no circumstances which differentiate this traffic from that which originates or terminates on the Atlantic & East Carolina portion of the Southern Railway and is not interchanged with the Norfolk Southern. Revenue accruing to the latter in this category is again a matter of subdivisions and should not be made subject to a special basis.

(3) The third category, characterized as the most important, embraces that traffic which originates and terminates on the line of the Norfolk Southern and moves to or from points on lines of the northern railroads in official territory.

At page 545 of the first 1953 report it was stated:

> The divisions of rates to and from the Norfolk Southern are in an unsatisfactory state. To a large extent they are based on rate prorates running back for many years, as to which there is disagreement. The settlements of revenue apparently are determined by the line which collects the charges. It does not appear that the interested carriers have made any effort to adjust their differences, as we suggested in our 1939 report.

In this reopened phase the record shows that the divisional situation has not changed materially since the 1953 reports. Substantial evidence was adduced by the Norfolk Southern designed to support a finding that a definite

modernized basis of divisions be prescribed. As noted, however, it does not request an increase in its involved divisions, but asks only that the level of its revenue from this interterritorial traffic be preserved.

41 For the purpose of showing the characteristics of this category of traffic, this respondent submitted a traffic study covering all shipments of general traffic originated or terminated by it in the 2 months of November 1958 and March 1959, expanded to an annual basis by multiplying by six, and included separately all shipments of northbound fruits and vegetables for the year 1959. The general study, as expanded, covers what is referred to herein as the constructive year. The interterritorial traffic originated and terminated on the Norfolk Southern accounted for 15.1 percent of its total carloads, 12.6 percent of its total tonnage, and 23.4 percent of its total revenues, thus indicating that traffic in this category is relatively important to it. This general traffic study covers 17,292 cars, 638,394 tons, and total revenue of $5,588,844, of which the Norfolk Southern received $2,271,984 (including $10,284 in arbitraries) or almost 40 percent. The northern lines received about $3 million, almost 54 percent. In addition, there were 432 cars, 8,501 tons, of fruit and vegetables moved in 1959, all of which moved northbound via Norfolk; of the total fruit and vegetable revenue, $130,427, the Norfolk Southern also received about 40 percent. About 54.7 percent of the total cars in the traffic study were northbound, accounting for 50.8 percent of the total revenue. Southbound traffic generally consisted of higher rated commodities. By far the most important gateway on the total traffic was Norfolk through which moved 13,488 cars, 76.1 percent of the total. Second was Richmond, 1,590 cars, and in third place was Lynchburg, Va., 1,422 cars, other gateways sharing in the remaining traffic. Of the total 13,488-car traffic through the Norfolk gateway, the southern lines received about 43.4 percent of the total revenue or

$1,987,902. This latter figure excludes arbitraries of $7,488 accruing to the Norfolk Southern, but includes revenue of $1,326 for southern lines other than the Norfolk Southern, thus leaving for the latter revenues amounting to $1,986,576. However, on the 4,236 cars this respondent originated and terminated through other gateways, the southern lines received about 57.34 percent of the total revenue or $647,034. This latter figure again excludes arbitraries of $2,379 accruing to the Norfolk Southern, but includes revenues of $320,052, or almost half, for southern lines other than the Norfolk Southern, the latter carrier thus receiving $326,982, or only slightly more than half of the total. Generally, intermediate southern lines participate in the movements via gateways other than Norfolk and, therefore, the situation presents a question of subdivisions.

42 The study indicates that if this traffic (including fruits and vegetables) during the constructive year had been subject to the 1953 prescribed basis, the revenue accruing to the Norfolk Southern would have been $450,362 less than that "as settled." Our analysis of the record indicates that the revenue accruing to the Norfolk Southern from this traffic, if it had been determined on the general basis provided in finding 2 herein, would have been $1,517,242, or $796,316 less than that "as settled." As thus computed, the reduction on traffic through the Norfolk gateway would have amounted to $751,548 as contrasted to only $44,768 less than the revenue as settled via the other gateways. The line's net railway operating income in 1958 amounted to $267,700, and in 1959, $434,000. It can readily be seen that substantial deficits would have occurred in connection with the loss of revenue on originating and terminating traffic especially via the Norfolk gateway. The evidence demonstrates that the line is in pressing need of sufficient revenues to improve its physical plant and provide additional rolling equipment. It has paid no dividends since 1957.

Based on short-line ton-mile distances, the weighted average haul on all originated or terminated traffic during the constructive year was 162 miles south and 365 north via all gateways. On traffic moved only through Norfolk (13,488 cars) the averages were 136.6 miles south and 431.3 miles north. On the movement of the 432 cars of fruits and vegetables the averages were 55.2 miles south and 704.2 miles north which tended to reduce Norfolk Southern's average haul shown in the overall figures.

As stated, 76.1 percent of the cars in the traffic test were interchanged at Norfolk. This accounted for 85.9 percent of its total standard line revenue. At Norfolk it interchanges with the Chesapeake & Ohio, Norfolk & Western,[8] and the Pennsylvania. Various statistics of record show that the Pocahontas lines (C. & O. and N. & W.) participate in the traffic to a greater extent than the Pennsylvania. During the constructive year the 13,488 cars were interchanged at Norfolk as follows:

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	Cars	*Percent*
Chesapeake & Ohio	3,412	25.30
Norfolk & Western	6,503	48.21
Total Pocahontas lines	9,915	73.51
Pennsylvania	3,573	26.49
Total	13,488	100.00

Of the cars shown above, 5,281 originated or terminated locally on the lines of the Chesapeake & Ohio and Norfolk & Western, and the remainder on the Pennsylvania. On a revenue basis the Pocahontas lines received 52.71 percent of the total (C. & O. 17.70 percent, N. & W. 34.39 percent, R.F. & P. 0.62 percent), the Pennsylvania 24.75 percent,

8. Data herein with reference to the Norfolk & Western, where applicable, include the Virginian Railway. These railroads merged December 1, 1959.

and all other northern lines 22.54 percent. The traffic moved by the Pennsylvania involves a marine service transfer across Chesapeake Bay at an expense of $35 per car.

Rates of return for the southern region and the eastern district plus the Pocahontas region, 1952 to 1959, are shown earlier in this report. A comparison of average returns 1946-50 of the latter with the Norfolk Southern and the Pennsylvania are shown at page 546 of the first 1953 report. Rates of return, 1952 to 1959, of the eastern district (excluding the Pocahontas region), the Norfolk Southern, and the three connecting lines at Norfolk based on net investment are shown below:

Percent return

Year	*Eastern district excluding Pocahontas region*	*Norfolk Southern*	*Chesapeake & Ohio*	*Norfolk & Western*	*Pennsylvania*
1952 ..	3.43	2.33	6.65	5.43	2.98
1953 ..	3.68	3.39	6.90	5.11	2.98
1954 ..	2.48	1.88	6.16	4.76	1.96
1955 ..	3.64	2.81	7.93	6.94	2.87
1956 ..	3.33	2.81	8.20	7.19	2.76
1957 ..	2.43	2.47	7.88	7.12	1.80
1958 ..	1.13	1.01	6.68	6.63	0.49
1959 ..	1.43	1.50	5.82	7.56	1.26

The northern lines assert that the foregoing comparisons of the eastern district, the Norfolk Southern, and the Pennsylvania are persuasive of the propriety, so far as primary divisions are concerned, of treating the Norfolk Southern in the same manner as other southern lines, leaving it to the respective groups to make any necessary special
44 provisions for the Norfolk Southern through the medium of subdivisional arrangements.

The Norfolk Southern urges that it would be absurd to diminish its revenue when the major beneficiaries would be the Pocahontas lines whose rates of return are rela-

tively high. It proposes that on traffic originated or terminated by it, interchanged at Norfolk, its prorating factors be made 149 percent of the factors presently prescribed for the northern lines, and on traffic moving through other gateways, 125 percent thereof.

The examiners recommended that the divisions on traffic originating or terminating on the Norfolk Southern be determined by the use of the equal-factor basis prescribed for general use on North-South traffic in the first 1953 report. This respondent takes exception to the examiners' report on the principal grounds that the recommended basis would place it in serious financial straits and would be confiscatory. It is supported on oral argument and exceptions by the southern interveners, including the North Carolina Utilities Commission which represents the interests of the State in which the principal operations of this respondent occur.

Respondent originates and terminates traffic of significant importance to itself, other carriers, and the shipping public. Despite its somewhat improved present day status of which we are officially aware, the record demonstrates that it can ill afford the loss of the involved revenue accruing especially on such traffic via the Norfolk gateway. It is apparent that if the Noroflk Southern's divisions on this latter traffic were determined on the general basis prescribed in finding 2 herein, it would be consigned to a deficit position so serious as to impair the rendering of adequate and continuous service to the public. We so find. Moreover, the southern lines' study excluded Norfolk Southern traffic from its scope. It is clear from the record, therefore, that the basis of divisions prescribed in finding 2 herein, derived from the southern study, would have an unjust and unwarranted impact on the Norfolk Southern to a degree not permitted under the *Orient* and *Western Trunklines* holdings. Our finding 4 herein will have the result of retaining for the Norfolk Southern a percentage

of revenue substantially the same as the present 43.4 percent received by it on the traffic through the Norfolk gateway. This will be accomplished by an increase of 108 percent in the factors of column 2 in appendix C. We have, therefore, divided the revenue on shipments originating on the Norfolk Southern moving via the Norfolk gateway on the basis of the cost progression, giving this respondent approximately the same total revenue it now enjoys on the traffic by means of the construction of column 5 in appendix C. We find that the aforementioned scale will result in just and reasonable divisions in the special situation of record with respect to the Norfolk Southern.[9] As noted, this respondent would be deprived of some revenue to the extent that the general basis prescribed would apply to other movements in which it participates with other southern lines. However, no justification for special treatment was presented and relief would involve principally a question of subdivisions, a matter not at issue here. On the whole, the Norfolk Southern, as compared with the other southern lines, would remain in the same relative position as now obtains. All other traffic of the Norfolk Southern will be subject to the general basis of divisions herein prescribed between the northern and southern lines.

One additional matter requires consideration as to the Norfolk Southern. Under a permissive order of the Commission in *Pooling of Refrigeration Earnings,* 258 I.C.C. 24, effective January 1, 1942, the proprietary lines of the Fruit Growers Express Company were allowed to enter into an arrangement whereby the net loss or gain realized in furnishing protective service could be pooled and at the close of the year such net loss or gain be distributed be-

9. As a matter of practicable scale construction, other southern lines will be subject to this same scale on Norfolk gateway traffic originating or terminating on the Norfolk Southern. However, their participation therein is shown to be relatively nil. Thus, any revenues accruing to them thereunder would be negligible.

tween the participating proprietary lines on the basis of loaded car miles handled by such lines. Members of the pooling arrangement were the major carriers in the South and certain eastern carriers that terminated perishable traffic. The Norfolk Southern joined about May 1, 1945. However, on and since April 1, 1959, several of the principal official territory lines, including the Pennsylvania, Chesapeake & Ohio, Norfolk & Western, and Baltimore & Ohio, have withdrawn, so that now only the Richmond, Fredericksburg & Potomac is still a member. As a result, the Norfolk Southern estimates it is losing an average of $49 on each car of originated fruits and vegetables given protective service. It requests that the prorating factor prescribed for it on its originated and terminated traffic interchanged at Norfolk be an additional 4 percentage points higher as a temporary measure until the pooling situation is adjusted. It contends that the Commission clearly recognized the pooling arrangement as an equitable solution of the divisional problem and that the withdrawal of the northern lines from that arrangement places an unjust divisional burden on it.

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To give effect to the Norfolk Southern's position in this regard and on the limited evidence adduced, as pertinent, would penalize the carriers for withdrawing, despite the permissive aspect of the order. In essence, it would appear that the Norfolk Southern challenges the reasonableness of the level of the charges for protective refrigeration service. That issue is beyond the scope of the instant proceeding. In sum, the foregoing relief sought by the Norfolk Southern is not warranted.

At the time of the hearings herein, points on the line of The Atlantic and Danville Railway Company were generally understood to be in southern territory. As stated earlier, the divisions of joint interterritorial rates between points on the lines of this carrier west of Suffolk, Va., and points on the lines of respondents in official territory are

in issue in this reopened phase. The examiners recommended that the divisions from and to such points be those prescribed for other southern lines generally, to which no exception was filed. However, this carrier has been acquired by, and is now known as, the Norfolk, Franklin and Danville Railway Company, which in turn is under the control of the Norfolk & Western. See *Norfolk & W. Ry. Co.—Control—Norfolk. F. & D. Ry. Co.*, 320 I.C.C. 407. It is now classified in the Pocahontas region for statistical purposes. Our prior definition of northern and southern lines will be amended so as to give proper effect to the examiners' conclusion which we affirm.

The Georgia & Florida Railroad (Alfred W. Jones, receiver) made a presentation in its own behalf. We affirm the examiners' conclusion, to which no exception was taken, that this carrier is not entitled to a special basis of divisions. It has since been purchased by the Georgia & Florida Railway Company which in turn is under control of three subsidiaries of the Southern Railway System. See *Georgia & F. Ry. Co.—Acquisition—Georgia & F.R.*, 317 I.C.C. 745.

The New Haven has pointed to a general need of additional revenues in order to provide funds for maintenance, for capital improvements, and to make some return to its stockholders. We can find no basis here for according it any greater relief than that set forth in the general
47 basis of divisions prescribed hereinafter. Unlike the Norfolk Southern, it participates only to a limited extent in the traffic at issue.

General Discussion and Conclusions

Section 15(6) of the act provides in part as follows:

> Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates * * * applicable to the transportation of * * * property, are or will be unjust,

> unreasonable, inequitable, or unduly preferential or prejudicial as between carriers parties thereto * * * the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers * * *.

In its determination of lawful divisions, the Commission is directed by the second sentence of section 15(6) as follows:

> In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

In commenting upon the importance to be given the various factors, the district court in *Boston & Maine R. v. United States,* 208 F. Supp. 661 (D. Mass. 1962), *affirmed per curiam,* 371 U.S. 26, stated at page 675:

> "Due consideration" is not the equivalent of "primary consideration." The importance to be given any of the factors enumerated in the statute must necessarily depend upon the case under consideration. The evaluation of the importance of the various factors in any given case is peculiarly the function of the Commission.

In one of the first decisions involving these provisions, *New England Divisions,* 66 I.C.C. 196, the Commission

stated at page 199 "that the relative amount and cost under economical and efficient management of the service
48 rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive." In the 1939 report the cost element was given weight upon a showing that from 1932 to 1936 the cost per revenue ton-mile in the South was about 16 percent higher than that in the North. At page 525 of the first 1953 report, as previously referred to, it was stated that the record then showed that "for more than a decade the southern railroads have not labored under a disadvantage of operating costs generally higher than those of the northern lines."

As stated earlier, both groups rely heavily upon relative costs of service as a determining factor in this reopened phase. The northern lines say:

> It is beyond dispute that the power of the Commission to prescribe divisions of joint rates rests upon Section 15(6) of the Act as that provision has been construed by the Commission itself and by the Courts. Those interpretations make it abundantly clear that relative service costs are a primary consideration and that the Commission must, in addition, weigh the relative financial needs of the carriers involved in the light of the public interest. It is the position of Eastern lines that the Commission should, first, undertake to fairly assess the relative service cost levels of the two groups of carriers, parties to the involved rates, and should thereafter adjust its determination made upon the basis of such relative costs to reflect any greater financial need on the part of one of the groups.

The southern lines' emphasis on cost-of-service basis is reflected in their proposed integer scales which, as indicated heretofore, are directly related to the showing of their cost study.

Our restatement of the costs, which are reasonably accurate and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis, shows that the cost level in 1956, the year both groups used in the final cost analysis, is somewhat higher in the North than in the South for like services. A consideration of all factors indicates that this situation will most likely continue in the immediate future.

Both groups also rely upon revenue needs in claiming that they should have a greater share of the joint revenue than the present divisions accord them. The northern lines take exception to the examiners' recommendation which would increase the northern divisions, on the ground that the proposed increase is not large enough. On the other hand, the southern lines contend that the examiners erred in failing to find that the needs of the southern railroads
49 for additional revenues are greater than those of the railroads in the North.

In every divisions case evidence relating to revenue need is material because section 15(6) requires that "due consideration" be given, "among other things" to "the amount of revenues required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation." We are thereby authorized "to take into account and give due weight to revenues from all transportation service, the operating expenses and taxes chargeable to the same and the amounts available as compensation for the use of all carrier property," as well as "the revenues, expenses, taxes and returns attributable to the service covered by the divisions under consideration." *Baltimore & O. R. Co. v. United States,* 298 U.S. 349, 360, 370 (1936). We are free to give such evidence the weight which the particular circumstances appear to justify.

In our determination herein we have considered evidence relating to the cost and other factors concerning the

public interest in maintaining all essential parts of the transportation system. Neither the history of these divisions, the general economic trends, nor any other factor presented here offers a concrete basis on which to find that either group is entitled to a share of the joint rates larger than that accruing under the divisions hereinafter prescribed on the basis of relative costs. In essence, the basic position of the northern lines is that their revenue needs are greater since the southern lines' average rates of return are somewhat higher. However, our prescription of divisions based on relative costs includes allowances for overhead and return, and in our judgment reflects a due proportion of the burden of maintaining the financial integrity and credit of the carriers involved. *Cf. New England Divisions*, 66 I.C.C. 196, 199. Accordingly, we see no justification at this time for adding any special increment favoring one group of carriers over the other. We find that no affirmative reasons appear in this record which would warrant any adjustment of the divisions in question over and above the relative costs of service, either on the grounds of greater revenue needs or otherwise.

The question of prescribing equitable divisions involves the making of practical judgments rather than the solving of a problem with mathematical certainty. See *Boston & Maine R. v. United States, supra.* As we have indicated, a careful evaluation of the factors, other than costs,
50 which we must consider under section 15(6) does not disclose that they require that one group be accorded relatively higher divisions of the joint rates than the other; in other words, there is no convincing evidence of record favoring one group over the other. However, weighing the cost evidence of record in the same balance and similarly considering it, without particular solicitude, we are of the opinion and find that it affords a reasonable basis for the exercise of a practical judgment. Stated in another manner, everything else being substantially equal, the relative costs of the parties reflecting their respective opera-

tions as to this traffic can properly serve here as a guide for the determination of just, reasonable, and equitable divisions. *Cf. Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, at pages 657-658.

We have heretofore noted that the revenues in 1956 for the northern lines from the traffic at issue were but 6 percent of their total freight revenues, while for the southern lines the respective percentage was 21.4. In that year the northern lines received 44.64 percent of the revenue while incurring 46.35318 percent of the fully distributed costs. It is clear that an adjustment in the divisions is required to compensate the respective groups according to their expenditures in the joint effort of handling this interterritorial traffic. To the extent that the present divisions do not meet this test, they are unjust, unreasonable, and inequitable. The scales which we have prescribed in columns 1, 2, and 6 of appendix C herein are based on the fully distributed costs and divide the revenue in the same proportion to those costs. Based on the 1956 traffic study this will increase the revenue divisions of the northern lines with a corresponding decrease in those of the southern lines as follows:

Item	*North*	*South*	*Total*
Revenue as settled [1] ...	$221,370,940	$273,350,121	$494,721,061
Percentage of costs	46.35318	53.64682	100.00000
Proposed revenue [1] .... division	$229,318,944	$265,402,117	$494,721,061
Difference	$7,948,004	$7,948,004	—

1. Omits arbitraries of $59,401 in the North and $1,306,304 in the South.

The foregoing reflects a 3.590-percent increase in revenue, as settled in the North, and a 2.908-percent decrease in the South. In our opinion, the results achieved through the application of the divisional mileage scales here prescribed will for the future be just, reasonable, and equitable, and we so find. However, as in *Louisville*

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& N. R. Co. v. Southern Ry. Co., 319 I.C.C. 639, 661, the parties should be permitted to negotiate and agree upon any other modified scales, devised on the same basis, but with different mileage blocks and factors or pursuant to any other method they may deem appropriate. In the event that they fail to reach agreement prior to the effective date of the order herein, the scales set forth in appendix C hereto are prescribed to apply thereafter. The conclusions and subsidiary findings hereinbefore made are reflected in our ultimate findings.

Ultimate Findings

Upon further hearing, we find:

1. That the present primary divisions of joint all-rail class and commodity rates (except those on traffic listed in appendix A) between official and southern territories are unjust, unreasonable, and inequitable.

2. That, except as hereinafter provided, just, reasonable, and equitable primary divisions of the rates referred to in finding 1 (including aggregate of intermediate rates which automatically displace single-factor joint rates), in which northern and southern lines [10] participate, should be determined by use of the prorating factors set forth in appendix C in computing percentages expressed as integers, the factor for the northern line or lines being that shown in column 1 for the short-line distance north of the dividing point and the factor for the southern line or lines being that shown in column 2 for the short-line distance south of the dividing point.

3. That just, reasonable, and equitable divisions of the joint combination rates on Canadian and northern Maine traffic to and from points in southern territory should be determined in the same manner as specified in finding 2, except that the factor for the northern line or lines should be that shown in column 6 of appendix C for the short-line

10. As defined in appendix C.

distance north of the dividing point and the factor for the southern line or lines should be that shown in column 2 of appendix C for the short-line distance south of the dividing point.

4. That just, reasonable, and equitable primary divisions of the rates on traffic originating or terminating on the lines of the Norfolk Southern Railway Company,
52 and moving to or from points in official territory, via Norfolk, should be determined by the use of the prorating factors set forth in appendix C in computing percentages expressed as integers, the factor for the northern line or lines being that shown in column 1 for the short-line distance north of the dividing point and the factor for the southern line or lines being that shown in column 5 for the short-line distance south of the dividing point. All other primary divisions of the Norfolk Southern shall be on the basis set forth in finding 2 herein.

5. That the evidence is not sufficient to support conclusions directed to the unreasonableness of the present divisions of the joint rates published between points on southern lines, on the one hand, and points on western lines in official territory, on the other hand, where a northern line does not participate in the movement north of the dividing point, and we find the present divisions not shown to be unjust, unreasonable, inequitable, or unduly preferential or prejudicial.

We affirm our prior finding (287 I.C.C. 547) that just, reasonable, and equitable divisions of joint proportional or reshipping rates on grain and grain products from East St. Louis, Louisville, and Cincinnati to points in southern territory should be determined in the same manner as specified in finding 2, except that the factor for the northern line or lines should be that shown in column 4 of appendix C for the short-line distance north of the dividing point and the factor for the southern line or lines should be that

shown in column 3 of appendix C for the short-line distance south of the dividing point.

We affirm our prior finding (289 I.C.C. 4, 8) that the dividing points to and from which the primary divisions shall apply are the present dividing points.

The prescribed primary divisions shall not be subject to a specific minimum. In disposing of fractions of 1 percent the odd 1 percent should be added to the percentage which contains the larger decimal, or if the percentages contain equal decimals 1 percent should be added to the smaller percentage.

Before the divisions herein prescribed are applied, differentials or arbitraries which are included in the joint rates so as to cause them to exceed standard rates, for hauls in either official or southern territories, whether for short or weak lines or otherwise, shall be deducted before prorating and added to the share of the carrier or carriers in the territory in which the differentials apply, pro-
53 vided, however, that in respect of rates on citrus fruit from Florida to official territory which include an arbitrary one percentage point shall be deducted from the northern division and added to the southern division in lieu of the specific apportionment of the arbitrary.

Our findings are without prejudice to the substitution of modified scales agreed upon by the parties in accordance with the discussion above.

An appropriate order will be entered.

COMMISSIONER MURPHY, dissenting in part:

In prescribing divisions we are required to divide earnings under joint rates according to what is fair and reasonable as between the parties. One of the main criteria used to make such a determination is the relative amount and cost of service performed by each of the several

carriers participating in the movement of the *specific* traffic involved from which this revenue is derived. The report of the majority purports to use as a basis for adjusting divisions the relative costs of service of the two groups of carriers, but in many instances territorial average costs are used which do not fairly measure the relative costs of handling the Official-Southern traffic here at issue. The record shows that the revenue obtained by the territory railroads from the traffic at issue constitutes only 6 percent of their total freight revenues. However, the average statistics used in arriving at the costs utilized by the majority in the report represent 100 percent of the traffic of the official lines. As a result, many of the cost figures have little or no relation to the movement of the traffic involved.

Although a number of adjustments in the Rail Form A statistics were made in the report, other necessary and important adjustments which would truly reflect the cost of moving the traffic involved were rejected or ignored. Consequently, costs for the service performed by the official lines in handling the traffic at issue are overstated. In *Louisville & N. R. Co. v. Akron, C. & Y. R. Co.*, 309 I.C.C. 491, 509, also known as the *Border Points Division* case, the Commission rejected the use of unadjusted Rail Form A costs, stating: "* * * the only comparable cost data for the complainants and the defendants are on the basis of territorial or systemwide averages, which are not determinative of the costs of these particular movements." The Commission therein did accept, however, specific costs supplied by complainants and complainants' adjust-
54 ments in territorywide average costs submitted by defendants. This finding by the Commission was sustained on judicial review, *Boston & Maine R. v. United States*, 208 F. Supp. 661 (D. Mass. 1962), *affirmed per curiam*, 371 U.S. 26.

Included in the cost computations for the official lines are suburban service deficits which are peculiar only to

the large metropolitan areas found in official territory. These deficits have no relation to intercity passenger deficits which normally are considered as part of the cost of providing freight services in that such passenger deficits are for the most part attributable to the apportioned costs of common facilities which must be incurred in any event to provide freight service. Almost all the expenses incurred in providing suburban passenger service have nothing to do with the costs of handling the Official-Southern traffic at issue in this proceeding. This service is provided over lines especially constructed and maintained for that sole purpose with equipment and facilities that have no other use whatever. It is unreasonable to require the southern lines and their shippers to defray a part of the costs of suburban passenger service in official territory cities so that the residents of the suburbs of those cities can travel at fares that do not even cover costs. This burden should be borne by the commuters who benefit thereby and the communities involved.

The higher than average empty return ratios used for cars moving over the official lines is another instance where true costs have not been used. The official lines handle approximately 800,000 carloads of automobile parts annually which originate in the Detroit, Mich., area and are destined to assembly plants in various parts of the country, including New Jersey, California, and Georgia. Many of these cars are fitted with special devices to protect the automobile parts in transit. Because these cars carrying parts contain special devices and are assigned to particular plants manufacturing such parts in official territory, they normally experience an empty return movement which is, for all practical purposes, 100 percent. No adjustment is made in the cost data to cover the higher empty return costs of this type of equipment. Territorial average boxcar empty return ratios, as used in the report, overstate the costs of the official railroads when applied to Official-Southern traffic.

The improper counting of a car interchanged instead of terminated by the official lines affects the weighting of that car in computing switching costs. The official
55 lines report a large volume of coal and ore terminated at port dumping facilities for loading onto boats as cars interchanged, while the southern lines report a large volume of phosphate rock hauled to ports for loading onto boats as cars terminated. These cars receive analogous services and should be treated as such. In both these instances the lading from the car is removed and the empty car is returned to the delivering carriers. The erroneous counting of cars terminated as cars interchanged on the official lines produces higher unit costs for official territory than for southern territory, both for origin and destination switching and for interchange switching.

If the above valid adjustments were to be made in the restated costs the difference between the relative costs of service of both parties would not be as great. In my judgment the amount of increase in divisions awarded the official lines by the majority is unwarranted.

Appendix A

Divisions of joint interterritorial rates prescribed herein do not apply on the following traffic:

1. Coal and coke made from coal, by common consent of the parties.

2. Trailer-on-flatcar traffic moving entirely over the lines of the A.C.L., B. & O., B. & M., F.E.C., N.Y.C., N.Y.N.H.&H., P.R.R., Reading, R.F. & P., and S.A.L., by stipulation at hearing.

3. Trailer-on-flatcar traffic via Potomac Yard, Va., from and to points on the Southern Railway (including its system lines as specified in the stipulation) and points on B. & O., B. & M., C.R.R.N.J., D. & H., L.I.R.R., N.Y.C.,

N.Y.N.H.&H., P.R.R., and Reading, by stipulation dated November 13, 1961.

4. Border point traffic embraced in docket No. 32055 (309 I.C.C. 491) by stipulation.

APPENDIX B

Southern lines' specific cost adjustments

a. Way and through train separation.—The Form A procedure provides for costing out traffic at either average train costs or a combination of way train and through train costs. Although the northern lines used average train costs in their study on the theory that it was adequate for overall territorial cost comparisons, they have no objection to the more refined procedure of using way and through train costs. This has the effect of giving slightly lower costs at the longer distances and higher costs at the shorter distances, and reduces the proportion of costs of the southern lines by 0.13 percentage point. We approve this adjustment.

b. Platform costs.—The southern lines excluded platform costs from their study of the costs of originating and terminating official-southern traffic. This brought about an increase of their proportion of the costs by 0.28 percentage point or in revenues about $1,389,000. This exclusion was based upon the conclusion that whenever a separate tariff charge was made for carrier loading or unloading, platform costs should be excluded. They examined 19 cars out of a 130,353-car sample of the involved traffic (967,554 cars), and contend that for all practical purposes none of the involved traffic received lighterage or any other service which would include platform handling as a part of the service under the line-haul rates being divided.

56

The northern lines took the same 19-car sample and showed that 11 originated on the eastern lines, 8 of which

were from Manhattan and 2 from Brooklyn, all 10 of which required either float or lighterage service and platform service. One car originated in New Jersey which was not involved in the issue of platform service. Of the eight cars destined to eastern carriers in the New York area, only two were actually delivered to Manhattan, one to Long Island City, and one to Brooklyn, the four likewise requiring harbor service. Three cars were destined and delivered to New Jersey points, and therefore did not require harbor service. The one remaining car was shown for diversion at Potomac Yard, but then no destination was shown, and there was no possibility of knowing what final service was required.

It is evident from the facts that platform service is incurred by some of the shipments of official-southern traffic. However, as noted, the southern lines excluded platform costs in each territory, contending that such costs are no longer part of the service covered by the line-haul rates but are covered by a separate charge collected and retained by the northern lines. The southern lines excluded their own platform costs in the interest of relative equality between the territories.

In prior years platform service was considered a part of the line-haul service covered by the through rate, and, accordingly, platform costs less the incidental revenues were correctly included in computing the cost for the line-haul service. Thereafter, however, the conditions at the unloading facilities changed. Whereas prior conditions necessitated that shippers be denied access to the cars for unloading at piers, the new conditions permitted shippers access to the cars. As a result, unloading was no longer a part of the line-haul service provided by the railroad but became the responsibility of the shippers, as it is at other destinations in all territories. The Commission took cognizance of these changed circumstances in *Increased Freight Rates, 1958*, 304 I.C.C. 289, 375, when it indicated:

The line-haul rates on this traffic are designed to cover only normal delivery and do not include compensation for the loading and unloading services, the line-haul rates on the perishable traffic being generally below out-of-pocket costs.

For the purpose of comparing relative territorial cost levels the inclusion of both the incidental revenue and the costs of platform service are correctly shown in Rail Form A; however, where the purpose is to measure the cost of services performed under the line-haul rates to be divided, it is correct to exclude platform service which is not within the scope of the rates. Our restatement reflects this view.

57 *c. Switching and terminal companies.*—An understanding of the switching charges at Chicago and St. Louis requires a consideration of Rail Form A procedures for switching and terminal companies. The Rail Form A procedures separate the costs for such companies as between the costs and services for intraterminal and other operations not chargeable to the origination or termination of cars for the account of class I roads (25 percent) and the costs and services which are so chargeable to class I roads (75 percent). The latter costs and services are then associated with class I line-haul railroads in whose statistics the cars originated or terminated are reported. This procedure is not questioned, but in dividing the switching and terminal company costs among groups of carriers the following complication arises.

The percentage separation of the (75 percent) costs of switching and terminal companies which are located on territorial borders is illustrated below:

	Eastern district	*Western district*	*Southern region*	*Total*
Chicago, Ill.	50	50	—	100
St. Louis, Mo.; and East St. Louis, Ill.	50	50	—	100
New Orleans, La.	—	50	50	100
Louisville, Ky.	50	—	50	100

The southern lines consider the allocations at New Orleans and Louisville to be reasonable since carriers assigned to other territories do not reach those points. However, two southern region carriers reach Chicago and four reach St. Louis or East St. Louis. The southern lines maintain that since the reported statistics assign to the southern region carriers the cars switched for their accounts by the switching and terminal companies at those points, the portion of the switching and terminal companies' expenses which are associated with switching such cars must be allocated to the southern region carriers in order to determine the actual unit costs. To accomplish this end, the southern lines determined the proportion of the total transportation revenues of each switching and terminal company at the above-mentioned cities that was paid by the southern region carriers. They then assigned the relative proportion of switching and terminal company cost to the southern region.

The northern lines maintain a different viewpoint toward these switching points at the Chicago and St. Louis areas. They contend that Chicago is not now a primary breakpoint on the North-South traffic and that East St. Louis is such a breakpoint only with respect to certain Mississippi Valley traffic. They believe that it is improper to take any portion of the expense of switching and terminal companies in the North and put it into the costs used to price out southern lines' services south of the primary divisional gateways.

Regardless of where the breakpoint for dividing revenues is located, the cost on each side ought to be properly computed and the so-called territorial costs are, in reality, those for groups of carriers operating principally in each territory. We are of the opinion that the southern lines are justified in making this adjustment of the switching and terminal company costs at the Chicago and St. Louis areas; the involved cars are counted in the southern region, and, accordingly, the expenses asso-

ciated with them also should be included in that region. While revenue does not ordinarily afford a precise indication of costs, the southern lines' apportionment for the switching and terminal companies on the basis of total transportation revenue is an appropriate and practical method for estimating here the amount of a refinement justified in principle. This adjustment increased the southern lines' proportion of the costs of official-southern traffic by 0.16 percentage point or in revenues about $794,000.

d. Count of cars interchanged, originated, and terminated.—Rail Form A cost applications are based on the count of cars from the Freight Commodity Statistics which, briefly stated, provide that certain cars carrying shipments which are transferred between rail and water carriers, such as lake cargo coal, tidewater coal, and ex-lake ore, will be classed as cars interchanged and that certain other cars carrying shipments transferred between rail and water carriers will be classed as cars originated and terminated. This creates a situation where a car of coal transferred to a ship at an Atlantic port would be classified as interchanged if the shipment is destined to New England, and as terminated if the coal is destined to Europe. Further, coal in official territory going to Canada and transferred from rail to vessel at a Great Lakes port is interchanged, whereas phosphate transferred from rail to vessel at Tampa, Fla., is terminated.

The southern lines contend that for the purpose of determining relative costs incurred by northern and southern lines, it is necessary that cars receiving comparable service be counted in a consistent manner in both territories. The southern lines urge that all of these cars which receive such port service should be classed as originated or terminated because they all are said to receive similar switching service. That a larger proportion of these cars in the North than in the South was classified as interchanged is said to inflate both terminal and inter-

change unit costs more in the North than in the South to the southern lines' disadvantage. To correct this alleged inflation, they examined the information furnished periodically to the Commission for the purpose of reconciling its study of terminations reflected in its Carload Waybill Statistics publication with the Freight Commodity Statistics. They found that 1,803,499 cars in the North and 129,019 cars in the South should be changed from "interchanged" to "originated plus terminated." The number of cars originated and terminated was thereby increased 5.4 percent for eastern district, 8.7 percent for Pocahontas region, and 1.1 percent for the southern region. This had the effect of reducing the costs $2,003,871 in the North and $555,541 in the South, and of changing the South's proportion of total costs from 53.44 percent to 53.67 percent, an increase of 0.23 percentage point.

The northern lines contend that the switching characteristics of the port service between rail and vessel of this traffic are more akin to interchange than to terminal service, that interchange costs vary greatly, and that the information available is inadequate to correctly compute the adjustment. The switching characteristics of this traffic are described by the northern lines as follows:

> That the service at tidewider ports on coal, and the lake ports on coal and ore, is interchange rather than terminal is apparent from the facts with respect to these services. Taking lake cargo coal as an example,
> 59 the coal trains go to the railroads' lake front yards at the ports. Unlike cars which are to be terminated, the lake cargo coal cars are not then moved to various industries in transfer runs and then switched to effect delivery at the consignee's plant. Rather, they are moved to a dumping machine at the railroad's water front yards and there dumped into the lake vessel. It is obvious that this service is much more akin to a movement to an interchange track than to a transfer and switching movement to effect delivery

to a consignee. The fact that the car is not given over to the boat line along with the lading cannot, in itself, mean that the shipment is not interchanged. The interchange of an l.c.l. shipment between railroads is not accompanied by a delivery of the car which carried the shipment; but, nevertheless, it is an interchange. Also, the fact that the interchange is with a boat rather than with a railroad—that the movement is to a dumping machine rather than to an interchange track with another railroad—cannot detract from the essentials of the operation and their significance from a cost standpoint.

The northern lines contend that interchange costs vary greatly and that lake cargo coal, tidewater coal, and ex-lake ore are not in a class by themselves. They state:

> Of course, interchange service may involve high, low, or average expense, just as terminal service may involve high, low, or average expense. For example, the interchange of cars between railroads in New York Harbor necessitates the expense of floating service. So does the interchange of cars between the Pennsylvania and connecting lines at Norfolk. Another illustration of an expensive interchange service of cars is in the case of traffic which formerly moved between interior points in the East and interior points in the Southwest over the so-called break bulk water routes. This traffic even when moving under joint rates (like some of the lake cargo coal traffic) required transfer from car to vessel at the ports.

They also urge that the information furnished to the Commission for purposes of reconciling the waybill study with the Freight Commodity Statistics is inadequate for the purpose of computing the number of cars to be transferred from interchange service to terminal service and that a substantial portion had to be estimated.

There is a great variation from one point to another in the amount of both terminal switching and interchange switching due to the physical layout of the tracks, volume handled, and other causes. Rail Form A gives an equating factor of 1.0 to origin or destination switching and a factor of 0.5 to interchange switching which reflect the relative amount of switching. The northern lines have referred to the similarity of switching at lake ports to interchange switching. Also, because of the large volume of this traffic, it lends itself to multiple-car block switching which is less costly than terminal switching and would justify an equating factor less than one. The reconciliation between the waybill study and the Freight Commodity Statistics had to do only with terminations, and therefore the originations were estimates only. These included the large blocks of traffic received by boat, transferred to car, terminated on rail, and which were counted as interchanged at the port. This traffic has been counted as interchange traffic for many years. The rates on this traffic are different than the rates on traffic originated or terminated at the same ports. Evidence was introduced to show that the switching characteristics of the port service on this traffic are more akin to interchange than to terminal service. There is great variation from one point to another in the amount and cost of both interchange and terminal service. There is no evidence that the service performed on this traffic is comparable to the average service in originating or terminating traffic in official territory. All things considered, we are of the opinion that the estimate lacks sufficient probative force, that the contentions of northern lines have merit, and that a change in the classification of this traffic for costing purposes in this case is not justified. It has therefore not been included in our restatement of the costs.

e. Car costs.—In the transportation of official-southern traffic, 15 percent moves in refrigerator and tank cars, mainly mileage basis cars, and 85 percent in per diem basis cars. It is the car costs of the per diem cars which

are at issue. The southern respondents contend that the territorial differences in car costs are due to factors unrelated to the traffic in this case. To correct this situation, they urge that average car costs for the United States should be used in both territories. The territorial difference in car costs reflected in Form A for a boxcar with a 28.9-ton load moving 350 miles with one terminal is—

		Percent
Official territory	$16.20	132
Southern region	12.27	100
Difference	3.93 [1]	32

[1] Assuming equal empty return ratios.

The relative size of this difference may be judged by comparison with the total out-of-pocket cost of the same service in the southern region of about $85.

In urging United States average car costs, the southern lines list three reasons in explanation of the variation in car costs between territories, and contend that none of these reasons has any bearing on the relative costs incurred in handling official-southern traffic. As the first reason, they state that the territorial average car cost reflects the composite cost of the car fleet owned by each group of roads and there is a different car fleet in each territory very different from the consist of the cars handling official-southern traffic. It is stated that differences in the car costs produced by Rail Form A as between territories do not measure the differences in the cost of repairing boxcars but rather the difference in the composition of the car fleet. About 82 percent of the car-miles of study traffic (per diem cars) in each territory are handled in boxcars.

Information is adduced as to the percentages of ownership of each type of car in each territory and the percentage of car-miles made by each type of car. We view the per-

centages of ownership as more meaningful since the owning road bears the cost of repairs, depreciation, and return. As to boxcars, the proportion in the North is 36.9 percent and in the South it is 37.9 percent; this difference is too small to be significant. The major differences in ownership are that the North has 7.6 percent points more open hopper cars and the South has 7.0 percentage points more rack cars.

These percentages may be said to equalize each other,
61 and, in any event, such cars are used only on a limited basis in the instant traffic movements.

Costs per day or per year for repairs, depreciation, and return are shown to be insignificant as between types of cars. However, utilization is the main differentiating factor in costs between individual types of cars.

The effect of the composition of the car fleet on costs developed in Rail Form A can be measured by its effect on car utilization, as follows:

		Percentage of ownership		*Miles per year of composite car*	
Type of car (1)	*Miles per year* (2)	*Official territory* (3)	*Southern region* (4)	*Official territory* (2) x (3) (5)	*Southern region* (2) x (4) (6)
		Percent	*Percent*		
Box	19,635	36.9	37.9	7,245	7,442
Flat, including rack	12,456	1.8	9.7	224	1,208
Stock	16,953	.7	.6	119	102
Gondola	9,503	17.5	15.2	1,663	1,444
Open hopper	11,827	40.4	32.8	4,778	3,879
Covered hopper	13,816	2.5	3.8	345	525
Other (average)	15,178	.2	0	30	0
		100.0	100.0	14,404	14,600

As indicated above, however, the effect of the composition of the car fleet in each territory, as reflected by the overall utilization, is only slight, 14,404 in official territory as against 14,600 in the South. Any explanation for the dif-

ference of 32 percent in the car costs between the two territories would lie elsewhere.

The second reason advanced by the southern lines on this point is that the territorial average car cost developed in Rail Form A is strongly affected by per diem debits or credits. This, they assert, has a distorting effect because the basis used in computing Rail Form A costs differs from that used in determining per diem rates. The third reason is that in determining the unit car costs by dividing the cost of cars owned by the car-miles operated, the numerator and the denominator do not represent the same cars in any given territory. These two reasons are related and will be discussed together. Under Rail Form A, the cost to the railroads of furnishing freight train cars includes the following items:

(a) owner costs (repairs, depreciation, and return on investment) for all cars owned, including both those serving on line and those serving off line, offset by per diem received for those cars serving off line;

(b) user costs (repairs and inspection) of all cars on line, both owned and foreign;

(c) per diem paid for foreign cars on line;

62 (d) repairs (responsibility of owner) to foreign cars offset by amounts billed; and

(e) overhead costs.

The sum of these costs is divided by the car-miles run on line by both foreign and domestic cars to give a cost per car-mile. Thus, the numerator and denominator are consistent; both represent cars serving on the railroad.

The repairs and maintenance represent actual payments for materials and wages; per diem is a cash payment; depreciation is a portion of money paid in the past to purchase cars and allocated to the present period; and even return on investment, a cost of capital, can be considered as analogous to interest payments on money borrowed to pur-

chase cars. Thus, all these items represent actual outlays of moneys and must be recovered by the railroads if they are to remain financially solvent. The determination and fixing of a rate of per diem which is fair as between all railroads and sections of the country is a difficult and complicated problem into which many considerations enter. However, after the rate is determined it becomes an actual disbursement settled in dollars and cents and properly a part of the costs for each road and territory in the year incurred.

The per diem collected by a road for the use of its cars by others should be used to offset its car costs incurred on the lines of the foreign carriers, for it is assumed that, allowing for exceptions in special situations, the per diem charge generally reimburses owning roads for expenditures in owning and maintaining cars in working order.

All of the items entering into the Rail Form A car costs represent actual expenses, and therefore, any difference in the car costs between the two territories, whether caused by per diem or other items, is not a discrepancy but is a reflection of the actual situation, and this difference (because it is actual) should be considered in the comparison of the relative costs of the two territories.

The southern lines contend that the higher average car cost in the North is a reflection of the average car which is largely hopper and gondola cars, but that the cost per car-mile for box cars is no higher in the North than in the South. This arithmetic is illustrated as follows:

Car costs (car repairs, depreciation, and return)

	Cost per car-mile (cents)		
	Official	*South*	*U.S. average*
Box	3.0	3.0	3.0
Gondola and hopper	6.0	3.0	4.5
Other	4.0	4.0	4.0
Average car	4.3	3.3	3.8

The southern lines explain that open top car costs are higher in the North because of the effect on car costs of per diem debits and credits and the mechanics of Rail
63 Form A wherein the per diem computed on reproduction costs is added to or subtracted from a cost based on original cost. The Clinchfield is cited as an extreme case in which the per diem credits are so great that they create a negative figure for the return on investment portion of the car cost. The southern lines conclude that it is wrong to charge, in effect, to boxcars a higher cost caused by the per diem on open top cars through the aggregation of car costs on all types of cars, and, therefore, they use for both territories the United States average car cost.

In rebuttal the northern lines make the following points: First: Open top cars are not more costly than boxcars. They quote the testimony in another proceeding of a southern lines' witness to the effect that, in his opinion, the cost of maintaining a boxcar is considerably higher than the cost or maintaining an open top car. Contending that the purchase price of a car influences both the return and depreciation elements of car cost, northern lines show that in 1959 the average cost of general service boxcars in the United States was $9,851; that of open hoppers, $8,715; and gondolas, $8,409.

Second: In regard to the effect of utilization on the comparative car-mile costs of open hopper cars, the official territory ownership was 40.4 percent and utilization in car-miles was 40 percent whereas the southern region had an ownership of 32.8 percent and utilization of 23.6 percent.

Third: As to the Clinchfield, the northern lines cite the Pittsburgh & Lake Erie in their group as being in the same situation.

The southern line's arithmetical illustration depends entirely on the assumptions that the car-mile cost of gondola and hopper cars is twice as great in the North as in

the South and twice as great as the boxcar costs. There is no sound evidence to support these assumptions. Indeed, the uncontroverted cost and utilization figures furnished by the northern lines render them highly improbable.

We recognize that per diem charges have been based upon car costs computed on a reproduction basis insofar as depreciation and return on investment of the cars are concerned. This differs from the original cost basis used in Form A car cost computations for owned cars. As explained above, the Form A method necessarily includes per diem in the car costs, and is appropriate in situations where, as here, the issues involve divisions of rates on almost all commodities handled in different types of cars, although mainly boxcars, and between numerous carriers throughout both territories. We distinguish the situation here from that presented in *Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, sustained in *Carolina & N. W. Ry. Co. v. United States*, 230 F. Supp. 581 (W.D.N.C. 1964), wherein an adjustment for reproduction costs was made. There the sole commodity at issue was coal (not involved here), only a certain kind of car was used and such equipment was owned exclusively by the originating carrier, the traffic moved intraterritorially over only specified segments of each carrier's lines, and the car costs of the destination carrier consisted solely of the per diem charge. As to the Clinchfield, that carrier is also largely a coal road. Such traffic is not at issue here, and, in any event, that carrier's situation is offset by that of the Pittsburgh & Lake Erie.

There are very real differences in the car costs in each territory and the causes are known. Among these causes are: a difference in utilization of 39.4 car-miles per
64 day in the North and 49.5 car-miles per day in the South; differences in tax and wage rates; and a difference in the relative amount of off-line use of owned cars in all territories. Moreover, there is a greater relative

use in connection with the traffic here at issue of cars owned by official territory railroads than of cars of southern ownership. Eliminating cars of other ownership for purposes of comparison, cars owned by official territory railroads made 54 percent of all car-miles although only 41 percent of those car-miles were run in official territory.

The use of a national average car cost conceals territorial differences in cost which are important in the consideration of divisions between the two involved territories. Accordingly, separate territorial freight train car costs will be used in our restatement.

f. Freight car empty return ratios.—The southern lines take the general position that the history of costs reflects a refinement away from system average costs. Form A departs from overall system average costs by separating line-haul and terminal services, assigning costs on the basis of load per car, and separating tare weight and empty return ratios by type of car. Territorial empty return ratios for all types of cars were broken down into empty return ratios for each of six types of cars in the first 7-day study (August 15, 1948, to July 11, 1949) and for each of 10 types of cars in the second 7-day study[1] (October 22, 1956, to August 18, 1957). Dividing "gondola and hopper" into three types and "flat" into two types of cars is said by the southern lines to be a necessary refinement of the empty return ratios. Further refinement of empty return ratios among the kinds of boxcars and refrigerator cars is, according to the southern lines, consistent with cost finding development and necessary to measure more accurately the costs of the traffic at issue.

The southern traffic study shows that 69.3 percent of the car-miles are incurred by boxcars and 9.7 percent by refrigerator cars. The southern lines changed the empty

1. Cost section statement No. 6-57, "Percent of Empty to Loaded Freight Car-Miles by Class of Equipment and Performance Factors for Way, Through and All Trains Combined."

return ratios from 39 percent in official territory and 33 percent in southern region for all boxcars to 100 percent for auto parts traffic and 30 percent for the remainder of the boxcar traffic in both territories, and the empty return ratios for refrigerator cars in official territory from 90 percent to 75 percent and in southern region from 76 percent to 84 percent. The effect of these adjustments increases the proportion of costs in the South by 0.51 percentage point.

(*1*) *Boxcars.*—The northern lines in applying Rail Form A used empty return ratios based on the second 7-day study of loaded and empty car-miles which produced for each group a single ratio covering all types of boxcars and another ratio covering all ownerships of refrigerator cars. In this category of boxcars are general purpose cars which can be utilized by and are available to all shippers for loading all types of commodities not requiring special type equipment, and boxcars suitable for loading special commodities which, though they may be suited for some type of return load, are in assigned service and thus returned empty, with some exceptions, to the point of loading. Included therein are cars used for transporting auto parts, which are specifically designed to handle such commodities. This 100-percent empty return ratio for specially equipped cars is contrasted by the southern lines with average ratios of less than 40 percent for all boxcars including the assigned cars.

65 The southern lines present the following in support of their adjustment:

(a) A computation showing that if special boxcars have an empty return ratio of 100 percent and general boxcars one of 30 percent, or if special boxcars account for 13 percent of loaded boxcar-miles in the North and 4 percent in the South, the result will be an overall empty ratio of 39 percent in the North and 33 percent in the South, which is what the 7-day study produced.

(b) A showing of the Commission's Transport Statistics of the United States for 1956 as follows:

Boxcars owned

Territory	*Total*	*Special device*	*Percent special device is of total*
Eastern district	267,266	26,779	10.03
Pocahontas region	32,834	1,501	4.57
Eastern plus Pocahontas	300,100	28,280	9.42
Southern region	100,191	4,122	4.11

The southern lines contend that the above indicates that the southern carriers own substantially fewer special device cars than do the eastern or official carriers involved in this proceeding.

(c) The following showing of the relationship in each territory between the amount of traffic commodity class No. 623, Vehicle Parts, N.O.S., and Total Manufactures and Miscellaneous based on carloads originated and terminated and on freight revenue:

VEHICLE PARTS 623—1956

	Eastern district plus Pocahontas region (1)	*South* (2)	*Total (column 1 plus column 2)* (3)	*Percent South of total (column 2 and column 3)* (4)	*Percent eastern district plus Pocahontas region of total (column 1 and column 3)* (5)
	Carloads originated and terminated				
Vehicle parts, N.O.S.	829,934	62,033	891,967	6.95	93.05
Manufactures and miscellaneous	12,669,348	3,787,287	16,486,635	23.01	76.99
Percent vehicle parts	6.55	1.64			
	Freight revenue				
Vehicle parts, N.O.S.	$130,212,468	$19,329,691	$149,542,159	12.93	87.07
Manufactures and miscellaneous	$1,827,508,648	$625,523,731	$2,453,032,379	25.50	74.50
Percent vehicle parts	7.13	3.09			

	Traffic originated or terminated on other than class I line-haul roads participating in official-southern divisions	
	Number of cars	*Percent of cars*
In official territory	16,697	1.73
In southern territory	55,826	5.77

The northern lines do not question the count of car data regarding short lines on the abstracts underlying the southern lines' traffic study, but observe that there are many class II railroads in official territory which perform only switching or terminal service, whose charges for such service are paid entirely out of eastern line-haul carriers' revenue, and whose participation is not ordinarily shown on the abstracts. The southern lines introduced the following table to illustrate the imputation of class I railroads' costs to the services of these:

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Costs of short lines in year 1956 imputation of class I roads' costs compared with application of the actual costs of the short lines

Source	*North*	*Percent*	*South*	*Percent*
Territorial average Form A costs	$537,359	100.0	$1,594,486	100.0
Southern lines' study of short-lines cost	509,943	94.9	1,963,632	123.2
Difference	−27,416	−5.1	+369,143	−23.2
Northern lines' study of short-lines' cost	496,545	92.4	1,878,029	117.8
Difference	−40,814	−7.6	+283,543	+17.8
Difference between northern lines' and southern lines' studies	13,398	2.5	85,603	5.4

The above table shows that the imputation of class I road cost to the service of these short lines overstates the costs in the North by $27,416 (southern lines' method) or $40,814 (northern lines' method) and understates the costs in the South by $369,146 (southern lines' method) or $283,543 (northern lines' method).

The southern lines' method reflects the cost level of each short line while retaining the separation between line-haul services (car-miles and ton-miles) and terminal services (cars and tons), whereas the northern lines start with the identical actual carload freight cost for each short line as used by the southern lines but, instead, spread the entire costs of each short line over revenue ton-miles, producing an average cost per revenue ton-mile with no separation of line-haul and terminal services.

In our opinion, and we so find, the southern lines' cost study for short lines is the more acceptable procedure in that it conforms to the principle of separating line-haul and terminal costs set forth in Rail Form A. The southern lines' traffic study more closely reflects the actual level of costs of each participating short line, whereas the northern lines imputes to each short line the cost level of class I railroads. Basically, the class II and the class I railroads should reflect their own respective costs. This adjustment is shown in our restatement of the costs.

h. Adjustment of switching costs to eliminate the effect of volume switching at origin and destination.—The territorial average switching minutes per car at origin or destination, 1956, are as follows:

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	Official territory		*Southern region*	
	Boxcars	*Other cars*	*Boxcars*	*Other cars*
Cost section study application of Form A	25.9	28.8	17.3	19.2
After the effect of southern respondents' adjustments for "Switching and Terminal Cost" and "Corrected Car Count"	25.4	28.2	17.8	19.8
After adjustment for volume switching	27.65	30.72	26.03	26.03
Volume switching adjustment	2.25	2.52	8.23	6.23
Total amount added to costs by this volume switching adjustment	$1,310,743		$3,648,130	
Change in percentage of costs	44.71–44.45=0.26		55.29–55.55=+0.26	

66 The southern carriers contend that the foregoing demonstrates that they participate to a much more limited extent in vehicle parts traffic than to the official carriers.

(d) The following showing of the empty return ratio of boxcars and the proportion of vehicle parts traffic to all traffic in boxcars for each of the three groups of railroads:

	Boxcars empty return ratio [1]	*Percent vehicle parts 623 to total boxcar traffic* [2]
	Percent	*Percent*
Roads serving Detroit having heavy proportion of vehicle parts to total boxcar traffic [3]	49	14.5
Other official	34	4.2
Total official	39	6.8
Southern region	33	2.6

[1] Second 7-day study.

[2] Percent carloads of vehicle parts 623 handled in boxcars and percent carloads of all traffic handled in boxcars from statement No. TC-3,1956, applied to total carloads handled, vehicle parts and total carloads all traffic, respectively, from Freight Commodity Statistics, Year 1956.

[3] NYC, Wabash, C&O, DTI, and GTW.

(e) A statistical showing of the effect on the empty return ratio from the elimination of vehicle parts traffic. The waybill study does not show for interterritorial traffic the number of car-miles in each territory. Therefore, this missing element was approximated by combining certain items and proportions in the waybill study with originations and terminations and revenues from the Freight Commodity Statistics. The final result after eliminating vehicle parts traffic shows an empty ratio which is 4 percentage points higher in official territory than in southern region.

These five items will be analyzed below:

(a) This is merely a computation showing what the effect would be if certain assumptions are made. By itself,

it does not prove that those conditions actually exist, nor is there other sufficient evidence to this effect.

(b) This shows the percentage ownership of boxcars by railroads in these territorial groups. Cars are interchanged among territories and it is quite probable that cars of eastern ownership travel many car-miles in the western district. It is the car-miles in each territory which affect the empty ratio, and the relative ownership does not necessarily coincide with the relative number of car-miles.

(c) The use of the relationship between the numbers of carloads and the revenues of vehicle parts to total manufactures and miscellaneous group of commodities does not measure the relationship of special boxcars to total boxcars for the reason that many boxcars carried commodities other than manufactures and miscellaneous, and vehicle parts do not all move in special boxcars.

(d) The comparison is based on only three observations and is therefore too limited to be representative. At best, it may be a coincidence or caused by some unknown factor, and is not otherwise supported.

67 (e) The statistical determination of the effect of special cars on the empty return ratio for all boxcars is based on certain assumptions, such as that commodity class No. 623, Vehicle Parts, N.O.S., moves in special cars only and that all special cars have a 100-percent empty return. These assumptions have not been proven. In fact, 12 percent of the vehicle parts move in other than boxcars. This statistical determination is an attempt to show an effect on the empty ratio with mathematical exactness. However, such a degree of accuracy is inappropriate in this particular computation because the individual steps taken to arrive at the answer contain estimates or approximations with a wide margin of error. For example, the percentage distribution of intraterritorial car-miles includes different amounts of car-miles by other than boxcars in each terri-

tory. The equating factors for revenue are also only very rough approximations.

There are undoubtedly instances where specially equipped or directly assigned boxcars have a 100-percent empty return. The record does not indicate, however, whether this is generally prevalent or whether it approaches 50 percent or 100 percent for this class of cars. The five items above tend to show that these cars may have some effect on the empty return ratio, but they do not support a conclusion that any adjustment is warranted here as to the amount of the effect other than that reflected in the averages used.

The southern lines cite the Commission's decision in *Louisville & N. R. Co. v. Akron, C. & Y. R. Co.*, 309 I.C.C. 491, the *Border Point* case, as a precedent for adjusting the empty return ratios because of specially equipped cars. The circumstances were different in that case. Most of the line-haul costs were on only one side of the border. In addition to territorial average costs, 1956 systemwide operating costs were computed separately for the Pennsylvania, the Detroit, Toledo & Ironton, the Louisville & Nashville, and the New York Central. In addition, the Detroit, Toledo & Ironton had 2,596 specially equipped cars for use in transporting automobile parts which generally moved loaded from Detroit to Louisville, and returned empty. This type of car constituted more than half of its owned cars in this area. Moreover, the Louisville & Nashville border point traffic was largely composed of vehicle parts and electric appliances moving to or from Louisville. It was necessary to develop specific data for this dominant traffic. In contrast, the instant proceedings embrace a large and varied body of traffic, incurring line-haul costs on both sides of the border, and the 33,983 cars carrying vehicle parts, commodity No. 623, are not at all dominant but, rather, constitute only 3.5 percent of the total number of cars.

It is claimed that the unbalanced flow of traffic to and from Canada contributes to the high empty return ratio in official territory. A study based on Canadian commodity statistics shows that, excluding automobiles and parts, 468,456 carloads were delivered to Canadian connections and 691,316 were received. If every carload going to Canada could be placed in a car coming therefrom which was unloaded here it would produce the following result:

691,316 southbound loads		
468,456 northbound loads		
222,860 empties	19	percent
1,159,772 total loads	100	percent

68 Thus, under ideal conditions, which rarely obtain, an empty ratio on Canadian traffic of 19 percent might be possible. The figures given as to the imbalance in traffic flow do not indicate that Canadian traffic has a greater empty return ratio than other traffic.

The detail of the southern lines' empty return ratio adjustments follow:

	Official territory	*Southern region*
	Percent	*Percent*
All boxcars	38.93	32.50
Less effect of special device cars	4.27	1.62
General purpose boxcars	34.66	30.88
Less effect of Canadian traffic	2.13	0
Less judgment factor	32.53	30.88
	2.53	0.88
	30.00	30.00

The witness for the southern lines summarized this evidence in the following words:

Bearing in mind that the special device adjustment is merely illustrative and that the use of special device cars for other commodities is of relatively greater importance in the highly industrialized east than in the south it is my conclusion that, as far as North-South traffic is concerned, the empty ratio for box cars is no greater in official territory than in the south. In my judgment a fair ratio for either territory would be 30 percent.

In light of the foregoing, we find that: (1) the adjustment for special device cars of 4.27 percentage points is not adequately supported; at best, it is merely illustrative; (2) that the adjustment for Canadian traffic is in error; and (3) that the last adjustment of 2.53 percentage points is purely an unsupported assumption.

(2) Refrigerator cars.—The second 7-day study developed empty return ratios for eastern district of 90 percent, Pocahontas of 86 percent, and southern region of 76 percent. The southern lines urge that these are not representative of North-South traffic because they include meat traffic, of which very little moves between the North and the South and which has a 98-percent empty return. The southern traffic study shows 80,379 refrigerator cars of which only 1,642 or 2 percent are meat. The waybill study shows that based on originations and terminations (not car-miles, which are not available) fresh meats constitute 19.1 percent of refrigerator car traffic in official territory and 7.2 percent in southern region.

The above percentages are based on a single commodity group, No. 215, Meats, fresh, n.o.s. Generally, a group average is not invalidated because one of the items included in the group is above or below the average. It is normal to have items above offset by those below. For example, the Illinois Central Railroad handles a substantial movement of bananas from New Orleans to destina-
69 tions in official territory. Bananas are transported in refrigerator cars owned or leased by the Illinois

Central and assigned to the movement of bananas. These assigned cars have an empty ratio of 100 percent. In considering whether the cars with 100-percent empty return affect one territory more than another, all such cars must be recognized, not just meat cars. The significance of the banana cars, commodity class No. 51, Bananas, fresh, is that whereas there are proportionately more meat cars in official territory, there are proportionately more banana cars in the southern region. Further, banana cars comprise a much greater proportion of North-South traffic. If all refrigerator cars with a 98- or 100-percent empty return had been considered, the showing would have been entirely different than that for meat cars alone.

The southern lines show that the second 7-day study produced varying results for individual days ranging from 96 percent to 66 percent as the empty return ratio for refrigerator cars in the southern region. The empty and loaded refrigerator car-miles of the principal car owning companies in the southern region obtained from replies to questionnaires sent to the southern roads indicate an empty ratio of 84 percent for all traffic (but not all ownerships) in 1956. This coincides with ratio reported by the Association of American Railroads' Car Service Division on Form CS-57A. This empty ratio of 84 percent is considered more accurate by the southern lines than the results of the 7-day study because it is based on records for the full year and is therefore used in their cost study. However, the southern lines are unwilling to accept the empty return ratios for refrigerator cars in official territory developed in either the 7-day study or the CS-57A reports, and use instead an empty ratio of 75 percent which is the experience of Fruit Growers Express in official territory. Fruit Growers Express handles only 43.3 percent of the North-South refrigerator traffic but the loaded and empty refrigerator car-miles of the other companies were not available to the southern lines. In other words, in determining the ratio of empty return to use in official territory,

the southern lines did not consider the empty return experience of all refrigerator cars of ownerships which handle 56.7 percent of the North-South traffic.

The studies of refrigerator car traffic relied on by the southern lines, like the cost section's 7-day study, cover intraterritorial traffic and traffic from and to other territories and are not confined to North-South traffic. However, unlike the 7-day study, they do not include all traffic and they are not on a comparable basis in both territories.

Although neither party utilized the statistics in the computation of their costs, the southern lines in their exceptions to the recommended report and at oral argument urge that we should use these ratios in our restated costs. The CS-57A statistics cover only private line freight cars and omit railroad owned cars. Thus, it is a complete count of loaded and empty miles for only part of the refrigerator cars. We find that the 7-day study, which is a sample of all of the cars, is more reliable.

For the reasons discussed above, we find that the empty return ratios for both boxcars and refrigerator cars developed by the special studies of the southern lines are not as sound an estimate of the empty return incurred by the official-southern traffic as are the 7-day study territorial empty return ratios. The latter reflect the compilation of actual data reported by the railroads on a
70 comparable basis in each territory under an order of this Commission.

g. Short lines (class II railroads).—The southern lines allege the impropriety of pricing out the services of the short lines (class II railroads) on the basis of territorial average class I railroad costs. They measured in their traffic study the amount of service rendered by short line roads, and, in doing so, adjusted their Form A territorial average costs, which were based on class I railroads, to reflect the level of cost of the short lines. They then ap-

plied these adjusted unit costs to the service units of the short lines. The resulting increase of the southern lines' proportion of the costs by 0.09 percentage point amounted to approximately $446,000 in revenue. They employed the following procedure in their cost study in order to reflect the level of short-line costs:

1. The total costs of each short line that participated in the official-southern traffic were determined from the 1956 annual reports of each carrier.

2. The costs which were imputed to the operations of each short line by the Rail Form A costs of the class I roads were then aggregated.

3. The ratio of the actual costs in 1. above to the cost imputed by the Rail Form A costs of class I roads in 2. above was computed for each short line.

4. And finally, the ratios thus developed were applied to the territorial Form A costs of official-southern traffic on each class II road.

The actual expenses and traffic volume for the year 1956 as reported by the class II carriers in their annual reports were used in computing these costs.

The northern lines objected to the assumption that compilation of 1956 cars originated and terminated were on the basis of 1955 operations, and that the traffic consist, operating characteristics, and the resulting expenses would be the same for 1956 as for 1955. These assumptions were made because the typical short line report in the year 1956 did not contain as much detailed data as the report for the year 1955.

The southern lines' traffic study showed the number of cars originated or terminated on short lines for the official territory and southern region to be:

Some volume commodities frequently move in multiple-car blocks at origin and/or destination with a consequently lower switching cost than for commodities usually handled in one car at a time. The following table indicates the significance of certain volume commodities:

	Number of cars originated or terminated (year 1959)—		*Number of cars official-southern traffic involved in this proceeding*
	On official territory roads	*On southern region roads*	*(as shown in southern lines' traffic study)*
Pulpwood	162,572	1,102,741	564
Sand and gravel	340,072	653,972	2,229
Wet phosphate rock	——	287,892	None
Crushed stone and rock	407,630	813,734	8,372
Iron ore	789,188	113,452	661
Coal	6,186,315	1,915,566	None
Coke	558,823	79,984	2,811
Fluxing stone and dolomite	395,811	3,558	51
Total cars of volume commodities	8,840,511	4,970,899	14,758
Total cars	23,771,003	10,840,187	967,554
Percent cars of volume commodities to total cars of all commodities	*Percent* 37.19	*Percent* 45.86	*Percent* 1.52

The southern lines urge that their territorial average switching costs are depressed by the large proportion of volume commodities in their region to the point that these costs are not representative of the official-southern traffic which includes only a small amount of these commodities. For this reason, they used in their cost study origin or destination switching costs based on a special study in the South and on an adjustment in the territorial costs in the North.

As stated, there were 967,554 cars of official-southern traffic in the year studied. From this figure, pursuant to a

scientific sampling plan, a preliminary sample containing 497 cars in 8 batches was drawn. From this, a
73 sample of 83 cars was taken. A further (and controverted) subsample of 41 cars was then produced. Of these 41 cars, 16 were terminated and 25 were originated; 26 were handled by yard engines and 15 by train engines.

The southern lines made switching studies pursuant to Rail Form F of all cars at each of the points in southern region where a car in the sample had originated or terminated. The switch engine minutes per car for origin or destination switching varied from 3.39 at Huber, Ga., to 72.54 at Gadsden, Ala., with an average of 26.03 minutes for all 41 cars.

The 41-car subsample was itself further divided into 10 subsamples and a "standard error" of 2.2 minutes was computed. It is virtually conceded by all concerned that error due to sampling cannot exceed three standard errors or 6.6 minutes. Thus, if all 967,554 cars had been studied, the average thereof would have been within the range of 26.03 minutes plus or minus 6.6 minutes, or between 19.43 minutes and 32.63 minutes per car. The terminal switching cost for the southern region in the South's cost study of all 967,554 cars is based on the 26.03 minutes so developed.

The southern lines adjusted the official territory costs by applying Pocahontas region switching minutes to bituminous coal for the entire official territory and using special minute per car factors for iron ore and anthracite-to-washers in accordance with a method used by the cost finding section in its periodic publication "Distribution of The Rail Revenue Contribution by Commodity Groups." The minutes per car were thereby reduced for these commodities with a corresponding increase for all other commodities.

This adjustment, which increases the costs in official territory, was approved by the examiners because: (1) it

is based on a method found useful in certain situations involving coal and ore operations; (2) its purpose was to exclude the effect of those operations; (3) the traffic at issue does not include coal; and (4) the adjustment was proposed by the southern lines. However, upon consideration of the exceptions and oral argument, and especially the fact that the adjustment applied to official territory only whereas the southern region also has a large volume of coal traffic, we conclude and find that a fairer basis of cost comparison between the two groups of parties will be attained by deleting this adjustment.

Evidence was introduced to show that volume commodities comprise over 37 percent of the total traffic in official territory. The northern lines point out that if volume commodities exert a depressing effect upon system average switching minutes in the southern region, the presence of volume traffic in the North produces, at the very least, a corresponding influence on the northern lines. They also urge that 13 study points used by the southern lines to illustrate the difference between system average and volume commodity switching minutes were handpicked for the sole purpose of showing that volume commodities do depress the territorial average. Thus, it is asserted that they are extreme instances, not typical or representative. Moreover, 2 of these 13 points are also among those studied for the 41-car sample. Thus, with the two points being common to both studies, the northern lines contend that it is necessarily erroneous to conclude that the principal volume commodity movements affect territorial switching costs to the extent claimed by the southern lines. They also point out that respondents' principal witness in a prior case studied 582 loaded and 591 empty cars of pulpwood, a major volume commodity, and found 14.62 minutes for origin switching and 17.81 minutes for destination switching, which is not far from the system average figures.

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See *Reduced Rates on Pulpwood in Southern Territory*, 297 I.C.C. 735, 745.

These three contentions, (1) that volume commodities exist in both territories, (2) that the 13 points were hand-picked and that 2 were common to the points sampled as representative of official-southern traffic, and (3) that pulpwood, a volume commodity, has average switching minutes, are cited by northern lines to show that there is no necessity to make an adjustment for volume commodities. They also urge that a sample of 41 cars is too small to be relied on as representative of almost a million cars of study traffic. They show further that the sample included no cars from Boston, Philadelphia, Detroit, St. Louis, or Buffalo, among other large northern cities, and not a single car of citrus or fresh vegetable traffic.

Of the 967,554 cars of official-southern traffic, 46 percent were southbound and 54 percent were northbound, whereas the 41-car sample showed 39 percent southbound and 61 percent northbound. Thus, the 41-car sample showed 7 percent too many origin studies and 7 percent too few destination studies as compared to the total figure. The 25 cars originated had 24.08 minutes per car and the 16 cars terminated had 29.07 minutes per car. The northern lines point out that although southern lines' operating witnesses have almost uniformly taken the position that it is more burdensome to originate a car in the South than to terminate it, the switching studies of the 41 cars show the opposite.

The 26 cars given yard switching averaged 30.75 minutes and the 15 cars given train switching averaged 17.84 minutes. The original sample of 497 cars contained 59.8 percent given yard switching and 40.2 percent given train switching, whereas of the 41 cars, 63.4 percent were given yard switching and 36.6 percent were given train switching. The northern lines point out that to restore in the same sample the 60-40 relationship of yard to train

switching shown in the more comprehensive sample it is necessary to drop four cars of yard switching from the small sample. If the 4 cars dropped were those with the largest number of switch engine minutes, the average per car for the remaining 37 cars would be 22.30 minutes. If the four cars with the lowest number of switching minutes were dropped the average would be 27.48 minutes.

The northern lines assert that the 41 cars were not selected by subsampling but were later assigned to subsamples. They contend that a distortion of the use of subsamples thereby results throwing doubt on the value of the standard error computed therefrom. They point out that the Form A factors are 17.8 minutes for boxcars and 19.8 minutes for other cars, which is an average of about 19 minutes, and that the principal witness on sampling for southern respondents did not claim any greater reliability for the switching study factor of 26.03 minutes than a range of about 7 minutes, the difference being 19 minutes. Thus, they state that even if the studies were to be taken at face value, there is no justification for the conclusion that the involved traffic, assuming it could be found to be fairly typified by the 41-car sample, "an assumption which offends common sense," is significantly different from average traffic in the South in respect of switching service rendered, since the claimed excess over average minutes and the conceded range of reliability of the study are almost exactly the same.

75 As to the 41 switching studies, 40 were conducted in 1960 and 1 in 1957 whereas the 41 cars were handled during the latter half of 1958 or first half of 1959. Switching minutes were developed for each category of service at all industries in the terminal area. Inasmuch as all cars were included in the divisor in each instance, the minutes attributed to each reflect the average traffic and not necessarily the characteristics of official-southern traffic. No investigation was made to determine whether operations were con-

ducted in 1960 in a manner similar to the time the sample cars moved, and no comparison was made of the volume of traffic at the study points between the two periods. For example, at least one car in the sample was picked from an "A" abstract containing 82 similar movements during the period of 1 month, and there necessarily must have been at least 3 or 4 cars per day, which suggests multiple-car block switching. However, no determination was made of this latter aspect which would have required a reduction of the switching minutes claimed on a single-car basis. The northern lines made an examination of the switching studies and found six alleged errors amounting to an overstatement of 63.87 minutes out of 1,067.20 minutes. Four of the errors were disputed by the southern lines and two amounting to 21.73 minutes were conceded.

The northern lines point out that the switching minute adjustment was made on an entirely different basis in the North than in the South and that although the increase in switching minutes in the South was 46 percent for boxcars and 31 percent for other cars it was only about 9 percent for both kinds of cars in the North. Since the justification for, and intent of, the adjustments were to offset the effect of volume commodities on the average, the amount of the adjustments would suggest four or five times as much volume commodity traffic in the South; but such is not the case.

Northern lines also take the position that assuming that comparable methods had been followed in furtherance of the sought purpose of the switching adjustments the net effect of such an adjustment upon relative costs would have been virtually nil. They assert that this would appear to be so because of the similar, and hence at the very least offsetting, consist of the general traffic of northern and southern lines in terms of the respective proportions of volume commodities handled by each.

This offsetting effect can be approximated for official territory by the following computations, the first of which

assumes that volume switching minutes are the same as in the southern region, and the second that volume switching minutes are greater in the same proportion as the territorial average:

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	Proportion of cars originated or terminated	*Switching minutes per car*	
	Percent		
Southern region:			
All commodities (regional average)	100.00	× 19.2 =	19.2
Other than volume commodities	54.14	× 26.03 =	14.1
Volume commodities (remainder)	45.86		5.1
Volume commodities (5.1 ÷ 45.86 percent)		11.1	
Official territory:			
All commodities (territorial average)	100.00	× 27.3 =	27.3
Volume commodities	37.19	× 11.1 =	4.1
Other than volume commodities (remainder)	62.81		23.2
Other than volume commodities (23.2 ÷ 62.81 percent)		36.9	
Official territory:			
All commodities	100.00	× 27.3 =	27.3
27.3			
Volume commodities (19.2 × 11.1 = 15.8)	37.19	× 15.8 =	5.9
Other than volume commodities	62.81		21.4
Other than volume commodities (21.4 ÷ 62.81 per cent)		34.1	

Assuming the same difference between boxcars and other cars, the switching minutes per car for other than volume commodities in official territory should be:

	All cars	Boxcars	Other cars
First computation	36.9	34.3	38.1
Second computation	34.1	31.7	35.2
Used in southern lines' cost study		27.65	30.72

The above computations indicate that the adjustment of switching minutes for official territory made by the southern lines is inadequate by from 4 to 7 minutes in comparison with the adjustment they made for their own region, and are therefore rejected.

Territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic moving to and coming from terminals in all parts of both territories. In our opinion, and we so find, the depressing effect, if any, of volume switching commodities on the average would affect both territories and, for purposes of comparison, would be largely offsetting.

The switching studies in the South have weaknesses, both in the sample and in the studies themselves. The adjustment in the North was not made on a basis comparable to that in the South, and here, where the relationship of North and South is of prime importance, this is a major defect.

77 For these reasons, we conclude that the contentions of the northern lines are of merit and that Rail Form A territorial average switching costs more accurately measure the relative switching costs on each side of the border of the official-southern traffic than the switching costs computed by the southern lines.

i. Train tonnage adjustment.—The large volume of coal traffic on the Chesapeake & Ohio and Norfolk & Western railroads has a depressing effect on the costs of other traffic because it moves in heavier than average trains. Based on merchandise traffic movements on the Chesapeake & Ohio in trains of 3,200 tons and on the Norfolk & Western in trains of 5,128 tons, the southern lines adjusted the

through train weights used in their cost computations as follows:

	Official territory	*Eastern district*	*Pocahontas region*
Territorial average before adjustment (tons)	3,840	3,434	5,426
After adjustment	3,611	3,434	4,121

This adjustment had the effect of increasing the costs in the North by $867,319 without any change in the costs of the South and resulted in a decrease of the South's proportion of the costs of 0.14 percentage point. This adjustment was necessitated by the proper inclusion of Pocahontas region costs in those of the northern lines and is therefore warranted.

j. Adjustment of constant costs.—The southern lines made two adjustments to constant costs: one, the exclusion of passenger suburban service deficits, and the other, the inclusion in the southern lines' costs of the fully distributed cost deficits on pulpwood and wet phosphate rock which they consider to be related (in transit) to the outbound movement of paper products and dry phosphate rock.

(1) Suburban passenger service deficits.—The southern lines contend that the basic reason justifying the inclusion of passenger service deficits as a part of the cost of providing freight services is that such passenger deficits are almost entirely attributable to the apportioned costs of common facilities which must be incurred in any event to provide freight service. They would include the passenger deficits from intercity service in the constant costs assigned to freight service, but they would exclude the deficits from suburban passenger service for the reason that the suburban service facilities are separate and not used in common with the freight service.

They excluded from the cost of official-southern traffic north of the gateways the amount of $2,830,575, based on

data presented on behalf of eastern territory suburban railroads before the Senate Committee on Interstate and Foreign Commerce in April of 1960 regarding the suburban service of the Boston & Maine, New Haven, New York Central, Delaware, Lackawanna & Western, Central of New Jersey, Erie, Pennsylvania, and Reading railroads. The amount ($377,070) excluded south of the gateways is based on the suburban service deficit of the Illinois Central Railroad.

The northern lines point out that, putting aside entirely the common expenses that are apportioned between freight and passenger service and considering only expenses that are solely related to passenger service, there is a
78 deficit in the southern region whereas in both the eastern district and in official territory the passenger revenues exceed the solely related expenses. Further, in relation to the cost of handling official-southern freight traffic, they contend that there is no difference between that part of the passenger deficit which results from suburban operations and that part which results from through or local passenger trains. They also assert that if the southern lines should not properly be charged with any part of the deficit in handling commuters from "A" to "B" in the East, it would logically follow that the northern lines should not be charged with any part of the deficit in handling passengers from "X" to "Y" in the South.

The southern lines state that the suburban service deficits of the northern roads could be eliminated by the discontinuance of commutation service since the separate facilities maintained solely for suburban service are not used for freight or intercity passenger service. They give the following example: "—Reference to Exhibit J exemplifies the situation which actually exists. It shows track occupancy by various types of trains in the twenty-four hours of a typical week-day of October 1958 on the line of the Pennsylvania Railroad between Overbrook and Bryn Mawr, Penn-

sylvania, which is a portion of one of that company's principal Philadelphia suburban lines. It will be noted that there are four main tracks in this territory. The outside track—No. 1, Eastbound and No. 4, Westbound—are used primarily by suburban trains: while the middle tracks (Nos. 2 and 3) are used primarily for through passenger and freight trains."

It is true that, in the example given, certain track expenses for tracks Nos. 1 and 4 could be saved by abandoning the suburban service and those tracks; however, other costs related to the roadway would continue, such items as land taxes, grading, ditching, culverts, bridges, and signaling systems. Many large passenger terminals are used by both suburban and intercity passengers. In other words, although many individual items of suburban service can be considered solely related, the facilities and service as a whole cannot be considered solely related to suburban service and treated entirely apart from the freight service and intercity passenger service. Because the suburban service deficit includes common costs which must be incurred to provide freight service or intercity passenger service, such costs are properly chargeable to those services to the extent they cannot be recovered from suburban operations, and the deficit from suburban operations should not be excluded from the constant costs. We so find.

(2) Constant cost of transit commodities.—The southern lines included the following amounts in their costs:

Pulpwood	$7,221,986
Wet phosphate rock	615,883
Total	7,887,869

These amounts represent the constant costs not covered by the revenue and deficits sustained by the southern lines in handling, within the South, these commodities into mills which originate South-to-North outbound traffic of paper and paper products and dry phosphate rock.

Both groups have included in their traffic and cost studies the service from point of origin to destination of traffic identified on the interline abstracts as transit traffic.

79 The pulpwood and wet phosphate rock movements are not so identified, and the tariffs for them do not provide for through rates from the points of origin of the raw materials. However, the southern lines claim that a situation, essentially of a transit nature, exists because they maintain rates on the inbound wet phosphate rock and pulpwood which are conditioned upon the outbound movement by rail of the dry phosphate rock and paper products.

The revenue on pulpwood contributes approximately $5 million per year in excess of out-of-pocket costs, whereas the ton and ton-mile method of distribution assigns about $21 million of constant costs to pulpwood. Therefore, say the southern lines, the constant costs in excess of the contribution of pulpwood ($21 million minus $5 million) must be recovered from the high-rated paper and paper products, including southern-official paper traffic. Approximately 54 percent of the paper and paper products originated by the southern lines moves to destinations in official territory, and this traffic produces revenues 36 percent greater than fully distributed costs.

The southern lines urge that they maintain the low rates on the inbound raw materials in order to hold the outbound high-rated paper and dry phosphate rock traffic to rail movement for the benefit of all carriers participating in the haul, and since the northern lines participate in the movement of this high-rated traffic they cannot deny the southern lines divisions which reflect the services performed as an integral part of the joint enterprise.

The northern lines made three principal points in rebuttal:

First: The northern lines can make an even better cost showing on the basis of out-of-pocket costs:

Eastern percentages of total costs on general traffic at average hauls.

Year 1956	Fully distributed	50.7 percent
	Out-of-pocket	51.7 percent
Year 1957	Fully distributed	50.9 percent
	Out-of-pocket	52.0 percent

Even if fully distributed costs should be completely disregarded the northern lines' case would not suffer, yet the whole basis of the suggested adjustment depends on the use of fully distributed costs which assign the constant expenses on a ton and ton-mile basis.

Second: The wet phosphate rock and pulpwood move wholly within the South, and the northern lines have no participation in their rates, no control over them, and no voice as to their level. These rates on pulpwood "were made on a low basis to attract plants from the North, and now the southern lines want the Commission to require eastern lines to help make up the deficit under constant costs which they incur." The northern lines also point out that another reason for the low level of rates on pulpwood and wet phosphate rock is competition from other modes of transportation, and that any commodity which earns $5 million above out-of-pocket costs is very worthwhile.

Third: The northern lines urge that this adjustment cannot be made by the southern lines in their territory alone but, to be fair, must also be made in the territory of the northern lines with respect to the movement of such raw materials as iron ore and coal and fluxing stone, for example, which go into the manufacture of iron and steel which move from North to South, and as to which there could be no movement without the prior movement of the raw material.

The southern lines justify their adjustment on the basis of an essentially transit relationship on pulpwood and wet phosphate rock. On this point, the northern lines contend that a transit relationship is one that is readily identifiable from the tariff and either exists or does not exist. If an actual transit relationship exists, they assert that the through rates from the initial origin of the raw material via the transit point to the ultimate destination of the finished product would here be in issue if that movement were between the territories involved. In that situation, the through cost would likewise appropriately be considered in fixing divisions. But, they note, no transit is here provided by the appropriate tariffs.

They further point out that the only joint interterritorial rates here before the Commission are those applying on paper and paper products and on dry phosphate rock. They characterize the so-called transit arrangement as, at best, a recognition of the obvious physical fact that the production of finished and semifinished products necessitates an inbound flow of basic materials.

The southern lines' position that losses on pulpwood and wet phosphate rock are incurred in behalf of a joint enterprise (paper and dry phosphate rock traffic), in which the northern lines share, is largely refuted by the evidence that these rates yield revenues profitable to the extent of $5 million a year above out-of-pocket costs.

The transfer to paper products and dry phosphate rock of that portion of the constant costs allocated to pulpwood and wet phosphate rock which the revenue fails to cover is based on a misunderstanding of the nature, significance, and use of constant costs. Each shipment must pay its out-of-pocket costs since they are incurred by and because of that shipment. However, the constant costs, because they are incurred on behalf of the operation as a whole, should

be shared by all traffic. In our judgment, the ton and ton-mile apportionment of constant costs made in the same way in each territory on this large and varied body of traffic is fair to both territories, and the transfer to interterritorial traffic of a part of the constant costs which had been assigned to intraterritorial traffic is not well founded. Stated in another way, we cannot find that for purposes of interterritorial divisions the pulpwood and wet phosphate rates within the South are so specifically and intrinsically related to the rates under consideration that there is a sound basis here for the adjustment made by the southern lines. *Cf. American Sugar Refining Co. v. Ahnapee & W. Ry. Co.*, 322 I.C.C. 717, 720; *Sugar from the West to Central Territory*, 319 I.C.C. 686, 705.

k. Equalization of gateway interchanges.—The cost study submitted by the southern lines does not include an adjustment for equalization of interchange costs at gateway points although their operating witnesses testified that at many of the important gateways the amount of service and the joint yard cost are equalized. However, they did equalize the amount of service performed by each railroad through the equalization of engine-hours operating on each other's rails. It was estimated that if all the cars of North-South traffic, except those interchanged at interior Illinois and Indiana points, were interchanged at equalized gateways, the cost in official territory would be reduced $797,043, and the costs in southern region would be increased a like amount.

81 There are several weaknesses in this estimate. Initially, equalizing the number of engine-hours performed on the other lines' rails does not equalize interchange service because each carrier performs a major part thereof on its own rails. Secondly, although many important gateways are cited, not all are included, and the proportion of cars passing through unequalized gateways is

not shown. Thirdly, the cost of engine time is not equal in the two territories. There is another, and major, criticism of this proposed adjustment. Rail Form A territorial costs produce a cost which is an average for all the service units in the territory, such as interchange handlings. When greater or lesser costs than Form A costs are assigned to particular items, then lesser or greater costs of corresponding amounts must be assigned to the remaining units. Unless this is done, a situation exists where either more dollars are assigned to all the service units than were actually expended, or only part of the dollars incurred are assigned and some are left over and not assigned to anything. It would create a distortion to assign a cost different than average to 880,711 interchange handlings without a corresponding adjustment in the cost of those remaining. As the northern lines explain:

Another substantial objection to the suggested adjustment is that it would be incomplete. If southern lines are assumed to have incurred interchange costs at the gateways at the rate of $4.045 per interchange as compared with their 1956 Form A average of $3.14, that would necessarily mean that their costs for other interchanges would be reduced by $797,043. Conversely, the corresponding adjustment of northern gateway interchange costs would require an *increase* of the same sum in the costs of other interchanges in official territory. But in proposing the making of such adjustment in respect to this item the southern lines did not attempt to show to what extent their costs of the other interchanges on the traffic involved would be *decreased* or to what extent the northern costs of other interchanges would be *increased*. Further, they presented no such data as would permit the completion of such an adjustment.

For the reasons indicated above, we do not accept the proposed adjustment.

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APPENDIX C

Scales of prorating factors prescribed

Distance	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
50 miles ..	82	61	65	49	127	33
100 miles ..	114	90	77	58	187	65
150 miles ..	146	119	89	67	247	97
200 miles ..	177	148	101	76	307	129
250 miles ..	209	177	113	85	367	160
300 miles ..	241	206	125	94	427	192
350 miles ..	273	235	137	103	487	224
400 miles ..	305	264	149	112	547	256
450 miles ..	336	293	161	121	607	288
500 miles ..	368	321	174	131	—	319
550 miles ..	400	350	186	140	—	351
600 miles ..	432	379	198	149	—	383
650 miles ..	464	408	210	158	—	415
700 miles ..	495	437	222	167	—	447
750 miles ..	527	466	234	176	—	478
800 miles ..	559	495	246	185	—	510
850 miles ..	591	524	258	194	—	542
900 miles ..	623	552	270	203	—	574
950 miles ..	654	581	282	212	—	606
1,000 miles ..	686	610	294	221	—	637
1,050 miles ..	718	639	306	230	—	669
1,100 miles ..	750	668	318	239	—	701
1,150 miles ..	781	697	330	248	—	733
1,200 miles ..	813	726	342	257	—	764
1,250 miles ..	845	755	354	—	—	796
1,300 miles ..	877	783	367	—	—	828
1,350 miles ..	909	812	379	—	—	860
1,400 miles ..	940	841	391	—	—	892
1,450 miles ..	972	870	403	—	—	923
1,500 miles ..	1,004	899	415	—	—	955
1,550 miles ..	1,036	928	427	—	—	987
1,600 miles ..	1,068	957	439	—	—	1,019

Definitions

Northern lines are defined as those assigned to the eastern district and Pocahontas region, except the Norfolk, Franklin and Danville Railway Company, and include the Toledo, Peoria & Western Railroad Company.

Southern lines are defined as those assigned to the southern region, and, in addition, the lines of the St. Louis-San Francisco Railway Company in southern territory and the line of the Norfolk, Franklin and Danville Railway Company west of Suffolk, Va.

EXHIBIT B

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 3d day of February A. D. 1965.

No. 29885

OFFICIAL-SOUTHERN DIVISIONS
IN THE MATTER OF DIVISIONS OF JOINT RATES BETWEEN OFFICIAL AND SOUTHERN TERRITORIES

No. 29799

AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, ET AL.

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY, ET AL.

It appearing, That a full investigation of the matters and things involved in these proceedings has been made, and that the Commission, on the date hereof, has made and filed a report on further hearing containing its findings of fact and conclusions thereon, which said report on further hearing is hereby referred to and made a part hereof:

It is ordered, That the Georgia & Florida Railway Company and the Norfolk, Franklin and Danville Railway Company, be, and they are hereby, made respondents in Docket No. 29885.

It is further ordered, That the complainants, cross-complainants, defendants, and respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before April 20, 1965, and thereafter to apply, divisions of joint all-rail interstate rates for the transportation of property between points in official territory, on the one hand, and, on the

other, points in southern territory, determined as provided in said report on further hearing.

It is further ordered, That the said complainants, cross-complainants, defendants, and respondents be, and they are hereby, notified and required to cease and desist, on or before April 20, 1965, and thereafter to abstain from asking, demanding, collecting, or receiving divisions of said joint rates upon bases other than those prescribed in said report on further hearing.

It is further ordered, That the order entered herein on January 12, 1953, as amended by order dated May 26, 1953, and the subsequent orders entered herein to the extent such said subsequent orders vacated or modified said order of January 12, 1953, as amended, be, and they are hereby, vacated and set aside as of the date the divisions prescribed in said report on further hearing become effective.

And it is further ordered, That this order shall continue in force until further order of the Commission.

By the Commission.

BERTHA F. ARMES,
Acting Secretary.

(SEAL)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Application for Interlocutory Injunction and, If Needed, Temporary Restraining Order.

Come now plaintiffs, by their attorneys, with this, their Application for Interlocutory Injunction, and, if Needed, Temporary Restraining Order, and, in support of said application, respectfully state:

1. Under date of February 3, 1965, the Interstate Commerce Commission entered an order prescribing changes in the present divisions of railroad freight rates between the North and the South. The changes would result from the Commission's resolution of two separate issues determined in its report. The order first corrects an error in the formula currently applicable in dividing those rates by removing an excessive terminal allowance which operates to the detriment of the predominantly long-haul Southern railroads. But the order also prescribes an inflation in the divisional factors of the Northern railroads under which the railroads in the North would be accorded 45 percent greater compensation for each terminal service performed, and 10 percent greater compensation for each mile of line-haul service performed than would be accorded railroads in the South (325 I.C.C. at 37). The inflation prescribed for the Northern railroads would accord them $16 million more in revenues per year than they would be entitled to under the uniform divisional scale which results from removal of the terminal allowance found by the Commission to be excessive. The net effect of the Commission's order would be to

impose upon the Southern railroads a revenue loss in an amount found by the Commission to be $7,948,004 per year (325 I.C.C. at 50).

2. The Commission's order dated February 3, 1965, will become effective on April 20, 1965, unless this Application for Interlocutory Injunction and, if needed, Temporary Restraining Order is granted by this Court.

3. The verified complaint filed in this Court by the Southern railroads raises substantial questions with respect to the lawfulness of that part of the Commission's order of February 3, 1965, which prescribes an inflation in the divisional factors of the Northern railroads.

4. This Application seeks: (1) to protect plaintiffs' right to the revenues which would accrue to the Northern railroads as a result of the inflated divisional factors prescribed by the Commission in the event this Court upholds plaintiffs' claim that the Commission acted unlawfully in prescribing such inflation; and, (2) to protect all parties to the litigation from unnecessary and irreparable injury.

5. As shown by the verified complaint, plaintiff Southern railroads will suffer irreparable injury in being subjected to the necessity of a multiplicity of suits and the possibility of a substantial loss in revenues rightfully belonging to them, if the unlawful part of the Commission's order of February 3, 1965, is allowed to go into effect without an express obligation upon the Northern railroads to resettle all revenues received in excess of those which would accrue to them under the divisional scale found by the Commission to be the lawful equal scale in the event this Court should hold that the Commission acted unlawfully in prescribing an inflation for the North.

6. As shown by the verified complaint and by the affidavits of F. A. Luckett, E. Mech, and L. A. Van Nest, marked Affidavits A, B and C, annexed to this Application and made a part hereof, the Southern railroads will suffer

irreparable injury in the form of costly disruptions of their accounting forces even if an express obligation to resettle is imposed upon all the Northern lines, unless the interlocutory injunction order herein prayed for is granted and the *status quo* maintained pending final determination of the prayer of the complaint for a permanent injunction.

7. In order both to protect plaintiffs' right to the revenues represented by the Northern railroads' inflation and to prevent irreparable injury, the *status quo* should be preserved during the pendency of this action and an obligation should be imposed upon both the Northern and the Southern railroads to resettle the revenues in accordance with the ultimate outcome of this action. Under such an arrangement, the Northern railroads would be under an obligation to resettle the revenues to the uniform divisional basis found by the Commission to be proper should the Court uphold plaintiffs' claim that the Commission's order is invalid in part because the prescribed inflation is unlawful. The Southern railroads would be under an obligation to resettle the revenues to the inflated Northern basis prescribed by the Commission should the Court uphold that inflation. If such mutual resettlement obligations are agreed upon or established by the Court, plaintiff Southern railroads ask that the Court maintain the *status quo* by enjoining and suspending in whole the Commission's order of February 3, 1965, pending final determination of this action, subject to appropriate protective conditions applicable to all participating railroads.

8. In the event the Northern railroads do not agree to, or are not subjected to, an obligation to resettle to the uniform divisional basis found by the Commission to be proper, the Southern railroads, to preserve the *status quo* with respect to the contested issue, ask that the order of February 3, 1965, be enjoined in part so that all the railroads will settle the revenues during the pendency of the action under the uniform divisional scale, eliminating the

terminal allowance which the Commission found to be excessive. This injunction would include conditions appropriate to protect the right of the Northern railroads to the revenues represented by the inflation in the event the Commission's order ultimately is upheld.

9. Neither defendants nor the Northern railroads would be harmed in any way by the issuance of either of the interlocutory injunctions prayed for in the alternative above, since, under each alternative, the Southern railroads agree to protective conditions which would guarantee the Northern railroads all revenues to which they would be entitled in the event the Commission's order is upheld.

10. Plaintiffs' principal request here is for an interlocutory injunction. Because only a statutory court of three judges has jurisdiction to issue such an injunction (28 U.S.C. § 2284), plaintiffs also request a temporary restraining order pending hearing and determination of their application for an interlocutory injunction in the event that such hearing and determination cannot be completed by April 20, 1965, when the Commission's order would otherwise become effective.

WHEREFORE, plaintiffs pray:

(1) That an Interlocutory Injunction be granted by a statutory three-judge court appointed pursuant to the provisions of 28 United States Code, Section 2284: (a) maintaining the *status quo*, subject to appropriate protective conditions directed to both the Northern and the Southern railroads, by enjoining defendant United States of America and its agency, the Interstate Commerce Commission, from enforcing or attempting to enforce the order of the Interstate Commerce Commission dated February 3, 1965, in the proceedings before the Commission in I.C.C. Docket Nos. 29799 and 29885, as described in the verified complaint, until hearing and determination of plaintiffs' claim that the part of the Commission's order which would

establish an inflation in the divisional factors of the Northern railroads be set aside; or, in the alternative, (b) enjoining defendant United States of America and its agency, the Interstate Commerce Commission, subject to appropriate conditions imposed upon the Southern railroads, from enforcing or attempting to enforce that part of the order of the Interstate Commerce Commission dated February 3, 1965, prescribing an inflation for the North until hearing and determination of the prayer for permanent relief, thus requiring all parties to settle divisions during the pendency of this action on the basis of the scale found by the Commission to be the lawful uniform divisional scale.

(2) In the event a court of three judges is not convened to hear and act upon the Application for an Interlocutory Injunction prior to April 20, 1965, that a Temporary Restraining Order be granted by a Judge of this Court restraining defendant United States of America and its agency, the Interstate Commerce Commission, from enforcing or attempting to enforce said order of the Interstate Commerce Commission dated February 3, 1965, pending a hearing and determination by the three-judge court of plaintiffs' Application for Interlocutory Injunction.

DATED: March 31, 1965.

(Subscription and Certificate of Service omitted in printing)

(Annexed Affidavits A, B and C omitted in printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing)

Intervening Complaint of the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners to Set Aside in Part the Order of the Interstate Commerce Commission.

Intervening plaintiffs, the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners (hereinafter sometimes referred to as intervening plaintiffs), for statement of their claim against defendants allege:

I.

This is an action to set aside in part an order entered by the Interstate Commerce Commission in administrative proceedings identified as I.C.C. Docket No. 29885, *In the Matter of Divisions of Joint Rates Between Official and Southern Territories,* and I.C.C. Docket No. 29799, *Akron, Canton & Youngstown R. Co., et al. v. Aberdeen and Rockfish R. Co., et al.* The report of the Commission in these proceedings is printed at 325 I.C.C. 1.

II.

The intervening plaintiff Southern Governors' Conference, insofar as their interest in this proceeding is concerned, is composed of the Governors of the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee, formed into an association for the principal purpose of furthering the economic development of the South. The intervening

plaintiff Southeastern Association of Railroad and Utilities Commissioners, insofar as their interest in this proceeding is concerned, is composed of the members and member commissions charged with the regulation of common carriers and other public utilities in the same States. The Association regularly appears before the Interstate Commerce Commission and participates in proceedings wherein the interests of the citizens of their States may be affected.

III.

The proceedings before the Interstate Commerce Commission out of which this action arises involved a dispute as to the proper division between the Southern and Northern railroads of the revenues accruing from the movement on joint rates of freight traffic between the North and the South. The existing basis for dividing these rates is an equal-factor scale—that is, a scale which accords the same divisional factor for similar terminal, interchange and line-haul services to both Northern and Southern railroads. This scale was prescribed by the Commission itself in 1953. In prescribing this currently effective equal-factor scale, the Commission expressly relied upon and patterned the scale after the uniform class rate scale which it previously prescribed for application throughout both these territories (287 I.C.C. at 497, 523; see also *Official-Southwestern Divisions,* 287 I.C.C. 553, 578). This uniform class rate scale is still in effect.

IV.

The present proceedings arose when the Northern railroads became dissatisfied with this equal-factor basis of dividing rates and petitioned the Commission to reopen the investigation that resulted in its 1953 order and to prescribe a new basis of divisions which would accord them greater compensation than the Southern lines for the same rail services and thus afford the Northern railroads a simple source of additional revenues.

V.

The Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners intervened in the proceedings before the Commission to oppose the Northern railroads' efforts to destroy the existing equality in divisions between the North and the South. Because both the rail rates to be absorbed by the Southern economy and the rail services available to Southern shippers inevitably depend upon the revenues received by the Southern railroads, this attempt to divert to Northern railroads a disproportionate part of the revenues received from North-South traffic represented a clear threat to the economy of the South. Accordingly, these intervening plaintiffs took the position that the Commission should not abandon the established equal-factor basis of making divisions unless and until it was shown: (1) that the Northern railroads suffer from inherent disadvantages which make it inevitable that transportation costs in that territory will be higher than the costs for similar service in the South; and (2) that the economy of the North is in a poorer position to absorb the burden of such inherently higher costs than the economy of the South.

VI.

In its Report and Order dated February 3, 1965, the Commission unlawfully abandoned the principle of equality in divisions and prescribed a new basis therefor which would force the Southern railroads, Southern shippers and the Southern people to subsidize the transportation system of the North by the payment of inflated divisions for Northern rail service. The basis of divisions prescribed by the Commission represents an inflation in the divisional factors of the Northern railroads to the extent of 45 percent for terminal and border interchange service, and 10 percent for line-haul service (325 I.C.C. at 37).

VII.

The sole basis set forth in the Report of February 3, 1965, to justify these inflations in the divisional factors of the Northern railroads is a finding that the costs of rail service are higher in the North than in the South. This finding is unlawful under the Interstate Commerce Act, the Administrative Procedure Act and the Due Process Clause of the Federal Constitution in at least eight separate respects:

(1) It is not supported by substantial evidence;

(2) It results from an imposition of the burden of proof upon the Southern railroads and these intervening plaintiffs directly contrary to the mandate of the Administrative Procedure Act;

(3) It ignores the established principle of law which requires the party in possession of evidence to come forward with that evidence whenever a material issue is raised requiring such evidence for its resolution;

(4) It is not supported by an adequate statement of "findings and conclusions, as well as the reasons or basis therefor" upon all the material issues necessarily resolved by the ultimate cost finding;

(5) It is in part demonstrably erroneous and contrary to undisputed evidence of record;

(6) It rests in part upon factual data not of record as to which official notice could not be and was not taken in the manner permitted by the Administrative Procedure Act and the Due Process Clause of the Federal Constitution;

(7) It is the product of an unlawful use of the Commission's Cost Section; and,

(8) It fails to give due consideration to the evidence of record with respect to the relative efficiency

of the carriers and the relative importance to the public of maintaining them in their existing form, both of which are factors to which the Commission's attention is expressly directed by Section 15(6) of the Interstate Commerce Act.

VIII.

In placing its reliance upon alleged differences in the relative costs of rail service in the North and in the South, the Commission purported to accept and give effect to the principle that "natural disadvantages must be found in the North before we may increase the divisions of the Northern railroads" (325 I.C.C. at 27-28). But it then proceeded to render this principle meaningless by concluding that "other factors being equal, cost differences generally are the product of, and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories" (325 I.C.C. at 28). This conclusion is unlawful under the Interstate Commerce Act and the Administrative Procedure Act in at least five separate respects:

(1) The Commission's report contains no findings to support such a conclusion;

(2) The record contains no evidence to support such a conclusion;

(3) The undisputed evidence and the Commission's own findings in other parts of its Report are flatly inconsistent with such a conclusion;

(4) The conclusion is expressly based in part upon an unlawful imposition of the burden of proof on these intervening plaintiffs; and,

(5) The Commission's conclusion is not reconciled with, but is flatly contrary to, the National Transportation Policy.

IX.

In prescribing inflated Northern divisional factors to offset allegedly higher costs incurred by the Northern railroads, the Commission simply ignored the question of whether the burden of such costs could more appropriately be placed upon the North, although these intervening plaintiffs had presented an express exception dealing with this question and the question was plainly material under the theory relied upon by the Commission to decide this case. This failure to make any findings at all on this material issue violates Section 8(b) of the Administrative Procedure Act. In the circumstances presented here, the Commission's action was also arbitrary and capricious within the meaning of Section 10(e) of the Administrative Procedure Act, for the record contains no evidence at all to support an imposition of the burden of such higher Northern costs on the South, and, indeed, such action is inconsistent with the Commission's own findings made elsewhere in its Report.

X.

By its terms, the Commission's order of February 3, 1965, is to become effective on and after April 20, 1965. In order to prevent irreparable injury to the parties to this action and an undue waste of money which, from the standpoint of the public, would be better devoted to the improvement of rail service, this Court should enjoin the Commission's order pending the determination of this action, subject to protective conditions sufficient to protect all the parties against the loss of any rights the Court ultimately may uphold.

WHEREFORE, the intervening plaintiffs pray:

1. That the operation, enforcement and execution of the order of February 3, 1965 be enjoined pending the final hearing and determination of this action.

2. That the part of the Order of February 3, 1965 prescribing an inflation for the Northern railroads be permanently set aside.

3. That intervening plaintiffs recover their proper costs.

4. That intervening plaintiffs have such other and further relief in the premises as in equity may be deemed meet and just by this Honorable Court.

Respectfully submitted,

DATED: April 1, 1965. WALTER R. MCDONALD, HURT, HILL & RICHARDSON, and JOSEPH H. KAVANAUGH—By: Robert R. Richardson, Counsel for the Southern Governors' Conference and Southeastern Association of Railroad Utilities Commissioners.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing)

Order Granting Motion for Leave to Intervene as Defendants.

Upon consideration of the motion of The Baltimore and Ohio Railroad Company, Boston and Maine Railroad, The Akron, Canton & Youngstown Railroad Company, The Ann Arbor Railroad Company, Bangor and Aroostook Railroad Company, Belfast and Moosehead Lake Railroad Company, Bessemer and Lake Erie Railroad Company, The Central Railroad Company of New Jersey, Central Vermont Railway, Inc., The Chesapeake and Ohio Railway Company, Chesapeake Western Railway, Chicago & Illinois Midland Railway Company, Chicago South Shore and South Bend Railroad, The Delaware and Hudson Railroad Corporation, The Erie-Lackawanna Railroad Company, Detroit and Mackinac Railway Company, The Detroit and Toledo Shore Line Railroad Company, Detroit, Toledo and Ironton Railroad Company, Elgin, Joliet and Eastern Railway Company, Grand Trunk Western Railroad Company, Illinois Terminal Railroad Company, Indiana Harbor Belt Railroad Company, The Lehigh and Hudson River Railway Company, Lehigh and New England Railroad Company, Lehigh Valley Railroad Company, Maine Central Railroad Company (Richard Joyce Smith, William J. Kirk, Harry W. Dorigan, Trustees), New York, Susquehanna and Western Railroad Company, Norfolk and Western Railway Company, The New York Central Railroad Company, The Pennsylvania Railroad Company, Pennsylvania-Reading Seashore Lines, The Pittsburgh and Lake Erie Railroad Company, The Pittsburgh & West Virginia Railway Company (Norfolk and Western Railway Company, Lessee), Reading Company, Richmond, Fredericksburg and Potomac

Railroad Company, The Staten Island Rapid Transit Railway Company, Toledo, Peoria & Western Railroad Company, Wabash Railroad Company (Norfolk and Western Railway Company, Lessee), Western Maryland Railway Company, Boyne City Railroad Company, Canadian Pacific Railway Company, Central Indiana Railway Company, Chestnut Ridge Railway Company, Chicago & Eastern Illinois Railroad Company, Coudersport and Port Allegany Railroad Company, Canadian National Railways, The Long Island Rail Road Company, The Lorain & West Virginia Railway Company, Maryland and Pennsylvania Railroad Company, The Monongahela Railway Company, Morristown & Erie Railroad Company, Pittsburgh, Chartiers & Youghiogheny Railway Company, The Pittsburgh & Shawmut Railroad Company, Raritan River Rail Road Company, St. Johnsbury & Lamoille County Railroad Company and The Winfield Railroad Company for leave to intervene as parties defendant in the above entitled and numbered civil action, and, in consideration of the fact that movants were parties in interest to the proceedings before the Interstate Commerce Commission, as shown by the report of the Interstate Commerce Commission annexed to and made part of plaintiffs' complaint herein, in which proceedings the order herein complained of was rendered; and that the present action involves the validity of such order and the interest of movants; and that they are, therefore, entitled to intervention as of right under Title 28, United States Code, Section 2323, and Rule 24(a) of the Rules of Civil Procedure for the District Courts of the United States;

It Is Hereby Ordered that the motion for leave to intervene is granted, and that the intervening answer to the complaint and the intervening answer to the Motion for Interlocutory Injunction, and If Needed, Temporary Restraining Order, are accepted for filing and are hereby ordered filed.

New Orleans, Louisiana, this 6th day of April, 1965.

(sgd.) E. Gordon West,
United States District Judge.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing)

Answer of the Intervening Defendants.

Now into Court come the intervening defendants as herein named in the motion for leave to intervene as defendants, and, in answer to the complaint of Aberdeen and Rockfish Railroad Company et al., allege.

I.

The allegations of Article I do not require answer.

II.

Intervening defendants admit the allegations of Article II.

III.

Intervening defendants admit the allegations of Article III.

IV.

Intervening defendants admit the allegations of Article IV.

V.

Intervening defendants admit the allegations of Article V.

VI.

Answering Article VI, intervening defendants deny the allegations of the first sentence. They aver that this proceeding is solely an action to set aside, enjoin, annul and suspend an order of the Interstate Commerce Commission. Intervening defendants admit the remaining allegations of

Article VI, but aver that a more accurate description of Official and Southern territories is contained in the order of the Interstate Commerce Commission of December 4, 1947, instituting the investigation in its Docket No. 29885 wherein the order here under review was made, and in its report in its Docket No. 28300, Class Rate Investigation, 1939, 262 I.C.C. 447, 457 to which its said order of December 4, 1947 refers.

VII.

Intervening defendants, in answer to the allegations of Article VII, admit that the northern and southern railroads have jointly established many rates and charges with respect to movements of freight between the South and the North, whether pursuant to the mandate of Section 1(4) of the Interstate Commerce Act or otherwise. Intervening defendants do not answer the balance of the allegations of Article VII because the sections of the United States Code pleaded herein speak for themselves.

VIII.

Intervening defendants admit that in 1947, the Commission instituted a general investigation into the lawfulness of the divisions of rates on railroad traffic moving between the North and the South, and further admit as a result of the investigation a uniform scale was prescribed and that this uniform scale is the present basis for dividing joint rates on substantially all freight traffic (excepting coal and coke made from coal) moving between the North and the South. Intervening defendants deny all the balance of the allegations of Article VIII.

IX.

Intervening defendants admit the allegations of Article IX, except that they aver, with respect to the allegation that northern lines did not activate their petition until 1959, that this resulted from the joint request of plaintiffs and intervening defendants upon the Interstate Commerce Com-

mission for an indefinite postponement of the date for reply by southern lines to the northern lines' petition.

X.

Intervening defendants are not called upon to answer the allegation of Article X as the petition and the proceedings pleaded by the plaintiffs are the best evidence of their contents.

XI.

Answering the averments of Article XI, intervening defendants allege that the southern lines, plaintiff herein, asked the Commission to deny the intervening defendants' petition to reopen the proceedings referred to but, after reopening, the said plaintiffs, as a tactical matter, asked for affirmative relief. Intervening defendants admit that the plaintiffs claimed that the initial mileage block of the scale mentioned in Article XI was too high and prejudicial to the southern lines which had longer hauls than northern lines. Otherwise, intervening defendants deny the averments of Article XI.

XII.

Intervening defendants aver, in answer to the allegations of Article XII, that the report and order described in the said article and annexed to the Complaint as Exhibits A and B respectively, are the best evidence of their contents and of the findings of the Commission.

XIII.

Intervening defendants do not feel called upon to answer the allegations of Article XIII for the report of the Commission is the best evidence of the basis of its order and of the facts found therein.

XIV.

Intervening defendants deny the allegations contained in Article XIV.

XV.

Intervening defendants deny the allegations contained in Article XV.

XVI.

Intervening defendants are not called upon to answer Article XVI.

XVII.

Intervening defendants deny all of the allegations of Article XVII.

XVIII.

Intervening defendants deny the allegations of Article XVIII.

Wherefore, intervening defendants pray that, after due proceedings had, the Complaint of Aberdeen and Rockfish Railroad Company et al. be dismissed at plaintiffs' costs.

Richard B. Montgomery, Jr., Edward A. Kaier, Joseph F. Eshelman and Kenneth H. Lundmark, Attorneys for Defendants.

Duly sworn to by George C. LaBree (jurat omitted in printing).

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Answer of Intervening Defendants to Application of Plaintiffs for Interlocutory Injunction and, If Needed, Temporary Restraining Order.

Now into Court come the intervening defendants, through their undersigned attorneys, and, in answer to plaintiffs' Application for Interlocutory Injunction, and If Needed, Temporary Restraining Order, respectfully aver:

1. That the report and order of the Commission are the best evidence of their contents and requirements and otherwise intervening defendants deny the allegation of Article I.

2. Intervening defendants admit the allegations of Article 2.

3. Intervening defendants deny the averments of Article 3.

4. In answer to the averment of Article 4, intervening defendants deny that the plaintiffs are entitled to the relief which it is alleged that they seek by their Application for Interlocutory Injunction and, If Needed, Temporary Restraining Order.

5. Intervening defendants deny the averments of Article 5.

6. Intervening defendants deny the averments of Article 6.

7. Intervening defendants deny the averments of Article 7.

8. Intervening defendants deny that the southern railroads are entitled under any circumstances to the request made in Article 8.

9. Intervening defendants deny the averments of Article 9.

10. The Application for Interlocutory Injunction fails to state any claim upon which such relief can be granted for the reason that the plaintiffs have neither alleged nor proven the requirements for an injunction; namely: (1) the likelihood that the petitioner will prevail on the merits of the appeal; (2) irreparable injury to the petitioner: (3) no substantial harm to other interested parties; (4) no harm to the public interest.

11. The question of staying the effect of the Commission's order presents four different aspects from an accounting standpoint:

(a) If the Commission's order were not stayed and were thereafter sustained, no extra accounting work would be occasioned.

(b) If the order were stayed and thereafter invalidated, no extra accounting work would be necessary.

(c) If there were no stay and the order were later held invalid, northern lines would have to resettle accounts on the basis of the present divisions.

(d) If the order were stayed but were later found valid by the Court, the carriers would have to resettle accounts to the basis of divisions prescribed in the Commission's order.

(The facts with respect to the foregoing four points will be further established in affidavits to be filed before hearing).

The possibility of additional accounting expense, therefore, is present whether the order is stayed or not. Moreover, it is the delivering line which is required to make settlement and to assume the burden of the accounting in connection therewith. This burden falls more heavily upon northern lines than upon southern lines, since 53.9% of the traffic moving between the North and the South is northbound as against 46.1% southbound, these figures having been taken from the plaintiffs' traffic study.

Again, in this connection it should be remembered that a strong presumption of validity attaches to the order. *Carolina Scenic Coach Lines v. United States,* 326 U. S. 680, 66 Sup. Ct. 37. In view of this presumption, it is clear that the avoidance of additional accounting work would most likely be realized by not staying the Commission's order.

The elements required to be established as a condition to the issuance of an interlocutory injunction or temporary restraining order staying the effectiveness of an order of an administrative body are well established. They are:

(i) A likelihood that the Petition will prevail on the merits of the appeal.

(ii) Irreparable injury to the mover unless the stay is granted.

(iii) No substantial harm to other interested parties,

(iv) No harm to the public interest. *Covington v. Schwartz,* 230 Fed. Supp. 249, at page 52; *Associated Securities Corporation v. S. E. C.,* (10th Circuit) 283 Fed. 2d 773; *Eastern Air Lines v. C. A. B.,* (2nd Circuit) 261 Fed. 830; *Acme Fast Freight, Inc., et al. v. United States of America,* 135 Fed. Supp. 823; *Virginia Petroleum Job Association v. Federal Power Commission,* 259 Fed. 2d 921.

a) Plaintiffs do not allege or otherwise seek to establish that issuance of an interlocutory injunction will not be harmful to the public.

b) Plaintiffs do not allege or endeavor to establish that these intervening defendants will not be subject to irreparable injury if an interlocutory injunction is issued. In fact, plaintiffs' proffer of protective conditions seeks to *protect plaintiffs* by imposing upon intervening defendants additional burdens and obligations in the event an interlocutory injunction were to issue. Moreover, the nature and extent of injury threatened to intervening defendants will be set forth in affidavits to be filed before hearing.

c) It is incumbent upon the plaintiffs to show, as a condition of the granting of a temporary restraining order or interlocutory injunction, that they probably would prevail on the merits on final determination of this case by the Court. This they have failed to do or even to attempt.

d) It is likewise incumbent upon plaintiffs to show that they would be irreparably injured unless the said order is granted. This requirement is not satisfied by a mere claim of added cost for establishing a different accounting system, particularly where intervening defendants will suffer a detriment in that they will be denied, for an indefinite period, substantial funds otherwise due them.

A recent case involving the application of these principles to the question of whether or not a stay should be issued against an order of the Interstate Commerce Commission fixing divisions is *Carolina and Northwestern Railway Company v. United States,* 230 Fed. Supp. 581. There, the plaintiff, in moving for a temporary restraining order, relied upon additional accounting costs to establish irreparable injury. With respect to this, the Court stated:

> "If this be deemed irreparable injury, it is counterbalanced by the detriment to L & N which will result from delaying payments otherwise due L & N at the estimated rate of approximately $49,000.00 per month. Interest on such amount is not disclosed but would appear to be substantial. Whether interest could or would be allowed by the three-judge court to be convened is a matter of conjecture."

Again, the Court stated:

> "Plaintiff has shown no probability of ultimately prevailing and no likelihood of irreparable injury that outweighs the detriment that may result to the party who would be denied relief by the entry of a restraining order. Comparison of injuries to the parties is a sounder approach than trying to weigh the likelihood of success. But neither criterion operates in this case to make the issuance of a restraining order equitable."

The Court denied the motion for a temporary restraining order, but provided "that the denial of the foregoing motion, with the consent of the L & N, is conditioned upon the following:

> "1. That in the event plaintiffs are successful in perpetually enjoining and permanently setting aside the Order of the Interstate Commerce Commission of September 11, 1963, as modified by its Order of March 4, 1964, intervening defendant, the Louisville and Nashville Railroad Company, will resettle its accounts with the Southern Railway Company, et al., defendants in the proceedings before the Commission, on the traffic covered by the orders of the Commission on the basis of the present divisions on all shipments made on and after April 27, 1964, with interest at the rate of six per cent per annum on the monthly differences between the two divisional bases from the customary accounting monthly settlement dates.
>
> "2. The question whether and to what extent the intervening defendant may be required to bear the accounting change-over expense of the plaintiffs in the event plaintiffs are successful in perpetually enjoining and permanently setting aside the Interstate Commerce Commission's orders aforesaid is reserved by the court for further consideration when and if appropriate.
>
> "See: Barron & Holtzoff, Federal Practice and Procedure, Sections 1432 and 1433; Acme Fast Freight, Inc.

v. United States, 135 F. Supp. 823 (D. C. Del. 1955); Cincinnati, New Orleans & Texas Pacific Railway Co. v. United States, 220 F. Supp. 46 (S. D. Ohio 1963)."

Defendants, therefore, aver that there can be no doubt but that in the *Carolina and Northwestern Railway* case, the order changing divisions was permitted to go into effect subject to an obligation upon the intervening defendant to protect the plaintiffs.

A like course was followed by the District Court for the District of Colorado in *Atchison, Topeka and Santa Fe Railway Company, et al. v. U. S.*, wherein, in an action brought to set aside an order of the Interstate Commerce Commission prescribing new divisions, the Court denied an application for an interlocutory injunction, but imposed conditions on the eastern intervening defendants which are shown by its unreported order, a copy of which is appended hereto.

It is respectfully submitted that, under all the facts and authorities cited above, the course pursued in the *Carolina and Northwestern* case and by the Colorado District Court in *Atchison, Topeka and Santé Fe* is the course which should be followed here.

Defendants aver that the case of *Transcontinental Divisions, Atchison, T. & S. F. Ry. Co. v. U. S.* (No. 63-745 EC), S. D. Calif., is a case which will be relied upon by the plaintiffs. The Court, in that case, entered a temporary restraining order and thereafter a judgment of interlocutory injunction with conditions to protect the intervening defendants. In that instance, however, the eastern intervening defendants were in a position to make offer of resettlement only with respect to the divisions covered by their own complaint, and the mid-western intervening defendants, which were likewise parties to the joint rates involved, did not make any similar offer to the Court.

In the present controversy, however, all the eastern (northern) lines which make interline settlements are before the Court and are willing to accept conditions similar

to the ones imposed in the Colorado case or those imposed in the *Carolina & Northwestern* case.

Accordingly, the motion for an interlocutory injunction or, in the alternative, a temporary restraining order, should be denied.

WHEREFORE, intervening defendants pray that the application for a temporary restraining order and interlocutory injunction be denied, that the remainder of the prayer of plaintiffs be denied, and that this proceeding be dismissed at plaintiffs' cost.

(Subscriptions and Affidavit omitted in printing.)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLORADO

CIVIL ACTION No. 7826

THE ATCHISON, TOPEKA AND SANTE FE RAILROAD COMPANY, ET AL.,
Plaintiffs,

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY AND THE COLORADO AND SOUTHERN RAILWAY COMPANY,
Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants,

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,
Intervening Defendents,

CHICAGO AND NORTHWESTERN RAILWAY COMPANY, ET AL.,
Intervening Defendants.

ORDER DENYING MOTION OF PLAINTIFFS AND INTERVENING PLAINTIFFS FOR INTERLOCUTORY INJUNCTION.

(Attached to preceding Answer.)

THIS CAUSE, coming on to be heard this 19th day of December, 1962, before the full court of three Judges, sitting as a District Court, all parties appearing by their counsel of record, the Court having heard counsel, having considered the evidence presented and being fully advised in the premises,

DOTH HEREBY ORDER:

(1) That the Motion of Plaintiffs and Intervening Plaintiffs for an Interlocutory Injunction suspending and restraining the operation enforcement and execution of the order of the Interstate Commerce Commission dated May 7, 1962, as modified by its order of November 19, 1962, be and it hereby is denied.

(2) Such denial of the foregoing motion is conditioned upon the following conditions, to which Intervening Defendants, Eastern Lines, agreed in open court:

In the event Plaintiffs are successful in perpetually enjoining and permanently setting aside the order of the Interstate Commerce Commission of May 7, 1962, as modified by its order of November 19, 1962:

1. Intervening Defendants The Baltimore and Ohio Railroad Company, et al., for themselves and other Eastern railroads making interline settlements, will resettle their accounts with Western Railroads Defendants in the proceedings before the Commission (whether or not parties to this action) on the traffic covered by the order of the Commission (including traffic as to which they are intermediate carriers) on the basis of the present divisions on all shipments made on and after December 23, 1962, with interest at the rate of 6% per annum on the ~~monthly~~ differences between the two divisional bases from the customary monthly settlement dates. In such event resettlement shall be made within sixty days of the final determination of this case.

2. Intervening Defendants The Baltimore and Ohio Railroad Company, et al., shall be required to reimburse Plaintiffs, Intervening Plaintiffs and all other Western railroads for their reasonable expenses incurred in their accounting change-overs.

DONE in open Court this 21st day of December, 1962.

(Approval for form by counsel for all parties omitted in printing.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Order Designating Three-Judge Court.

The Honorable E. Gordon West, United States District Judge for the Eastern District of Louisiana, to whom an application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate the Honorable John Minor Wisdom, United States Circuit Judge, and the Honorable Edwin F. Hunter, Jr., United States District Judge for the Western District of Louisiana, to serve with Judge West as members of, and with him to constitute the said court to hear and determine the action.

This 7th day of April, 1965.

ELBERT P. TUTTLE,
Elbert P. Tuttle,
Chief Judge, Fifth Circuit.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Answer of Intervening Defendants to Intervening Complaint of the Southern Governors' Conference et al.

Intervening defendants The Baltimore and Ohio Railroad Company et al., for their answer to the intervening complaint of the Southern Governors' Conference et al., allege:

I.

The allegations of Article I do not require answer.

II.

Intervening defendants admit the allegations of Article II.

III.

Answering Article III, intervening defendants deny the allegations of the first sentence. They aver that this proceeding is solely an action to set aside, enjoin, annul, and suspend an order of the Interstate Commerce Commission. Intervening defendants admit that in its Docket No. 29885 et al. it made its initial report on January 12, 1953 (287 I. C. C. 497) and its order of the same date, wherein it prescribed certain scales of divisional prorating factors, including a so-called equal-factor scale for use by both northern and southern carriers on the traffic specified in said report and order, which report and order are the best evidence of their contents and of the findings of the Commission. For answer to the last sentence of Article III, inter-

vening defendants crave leave to refer to tariffs on file with the Interstate Commerce Commission for a more accurate statement of what class rates are presently in effect. Otherwise, the allegations of Article III are denied.

IV.

Intervening defendants deny the allegations contained in Article IV.

V.

Answering the averments of Article V, intervening defendants admit that intervening plaintiffs the Southern Governors' Conference and the Southeastern Association of Railroads and Utility Commissioners intervened in the proceedings before the Commission which resulted in its order here under review. The position of these intervening plaintiffs as interveners in the proceeding before the Commission is a matter of record therein. Otherwise, intervening defendants deny the averments of Article V.

VI.

Intervening defendants deny the allegations contained in Article VI.

VII.

Intervening defendants deny all the allegations of Article VII.

VIII.

Intervening defendants aver, in answer to the allegations of Article VIII, that the report and order annexed to the complaint as Exhibit A and B, respectively, are the best evidence of their contents, of the findings of the Commission, and of the basis for its action. Otherwise, intervening defendants deny the averments of Article VIII.

IX.

Intervening defendants deny the allegations contained in Article IX.

X.

Answering the averments of Article X, intervening defendants admit that by its terms the Commission's order of February 3, 1965, is to become effective on and after April 20, 1965. Intervening defendants otherwise deny the averments of Article X, and aver that enjoining or staying the Commission's order pending the determination of this action, even subject to protective conditions, would work irreparable injury to themselves.

Wherefore, intervening defendants pray that after due proceedings had, the intervening complaint of Southern Governors' Conference, et al. be dismissed at intervening plaintiffs' costs.

RICHARD B. MONTGOMERY, JR., EDWARD A. KAIER, JOSEPH F. ESHELMAN, and KENNETH H. LUNDMARK, Attorneys for Intervening Defendants.

(Duly sworn to by George C. LaBree, jurat omitted in printing.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Temporary Restraining Order.

This cause came on to be heard on plaintiffs' application for a Temporary Restraining Order pending the hearing of plaintiffs' application for an Interlocutory Injunction by a three-judge court to be convened pursuant to Section 2284 of Title 28 of the United States Code. This Court specifically finds, based upon plaintiffs' verified complaint, and the affidavits of F. A. LUCKETT, E. MECH and L. A. VAN NEST, that defendants are threatening to enforce the order of the Interstate Commerce Commission dated February 3, 1965, as of its effective date of April 20, 1965, and will continue to do so unless restrained by order of this Court, and that if a Temporary Restraining Order is not granted, immediate and irreparable damage will result in the form of costly disruptions of plaintiffs' accounting staffs.

NOW, THEREFORE, IT IS HEREBY ORDERED that pending the hearing and determination of plaintiffs' application for an Interlocutory Injunction by a three-judge statutory court, the United States of America and its agency, the Interstate Commerce Commission, are restrained from enforcing or attempting to enforce the order of the Commission dated February 3, 1965, in the proceedings before the Commission in its Docket Nos. 29885 and 29799, as described in plaintiffs' verified complaint, which order would become effective by its terms on April 20, 1965.

Nothing in this Temporary Restraining Order shall preclude the three-judge statutory court, in granting or

denying plaintiffs' Application for an Interlocutory Injunction, from specifying terms and conditions to be applicable to the division of rates on Official-Southern freight shipments effective on and after April 20, 1965.

This Temporary Restraining Order is on condition that a bond be filed by plaintiffs herein in the sum of $50,000.00 as security for the payment of such costs and damages as may be incurred or suffered by any party.

DATED this 12th day of April, 1965.

E. GORDON WEST,
United States District Judge.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Joint Answer of the United States of America and the Interstate Commerce Commission.

The United States of America and the Interstate Commerce Commission, defendants herein, answer the complaint as follows:

I.

Admit the allegations contained in paragraphs I, II, III, IV, and V.

II.

Admit the allegations contained in paragraph VI but aver that this is a judicial review action seeking to set aside, enjoin, annul and suspend an order of the Interstate Commerce Commission prescribing just, reasonable and equitable divisions on freight traffic moving by rail between Official and Southern territories.

III.

Admit the allegations contained in paragraph VII but refer to 49 U. S. C. 1(4) and 15(6) for a complete, true, and accurate statement of their content.

IV.

With respect to the allegations contained in paragraph VIII, admit only that as a result of an investigation instituted in 1947, the Commission entered an order in 1953 prescribing a uniform scale of divisional factors which is the present basis for dividing the joint rates in question on all freight traffic except coal and coke made from coal.

V.

Admit the allegations contained in paragraph IX but aver that the delay in activating the petition to reopen the proceedings resulted from a joint request of the parties to indefinitely postpone the date for reply thereto by the Southern lines.

VI.

With respect to the allegations contained in paragraph X, admit only that the Northern lines generally sought increases in their divisions, but refer to their petition and the administrative record for a true, complete, and accurate statement of such request.

VII.

With respect to the allegations contained in paragraph XI, admit only that plaintiffs opposed reopening of the proceedings and thereafter sought affirmative relief claiming the existing scale of divisions to be in violation of the provisions of Section 15(6) of the Interstate Commerce Act for numerous reasons, including the claim that the initial mileage block was too high and prejudicial to the Southern lines.

VIII.

With respect to the allegations contained in paragraph XII, admit only that on February 3, 1965, the Commission made and entered its report and order and served the same on March 2, 1965, which set an effective date of April 20, 1965, but refer to said report and order for a true, complete, and accurate account of their content.

IX.

With respect to the allegations contained in paragraph XIII, aver that the characterizations of the Commission's report and order referred to do not require answer since said report and order are the best evidence of the basis for the Commission's action and refer thereto for a true, complete, and accurate account of the basis of said order and the findings made therein.

X.

Deny the allegations contained in paragraph XIV.

XI.

With respect to the allegations contained in paragraph XV, deny that in furnishing advice to the Commission the Cost Finding Section resorted to factual data, and assumptions with respect to factual data, not contained in the record.

XII.

Admit the allegations contained in paragraph XVI.

XIII.

Deny the allegations contained in paragraphs XVII and XVIII.

WHEREFORE, defendants pray that the relief sought in the complaint be denied and that the complaint be dismissed with costs.

WILLIAM H. ORRICK, JR., Assistant Attorney General; JOHN H. D. WIGGER, Attorney, Department of Justice, Washington, D. C.; LOUIS C. LACOUR, United States Attorney, United States Court House, New Orleans, La., Attorneys for the United States of America.

ROBERT W. GINNANE, General Counsel, ARTHUR J. CERRA, Assistant General Counsel, Interstate Commerce Commission, Washington, D. C., Attorneys for the Interstate Commerce Commission.

(Certificate of service omitted in printing.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Order Denying Application of Plaintiffs and Intervening Plaintiffs for an Interlocutory Injunction and Dissolving the Temporary Restraining Order.

This cause, coming on to be heard this 27th day of May, 1965, before the full court of three judges, sitting as a district court, all parties appearing by their counsel of record, and the Court, having heard counsel and having considered the evidence presented and being fully advised in the premises, hereby orders,

1. That the application of plaintiffs and intervening plaintiffs for an interlocutory injunction suspending and restraining the operation, enforcement, and execution of the order of the Interstate Commerce Commission dated February 3, 1965, be and it is hereby denied.

2. The temporary restraining order granted by Judge West on April 12, 1965, be and it is hereby dissolved; and the order of the Interstate Commerce Commission dated February 3, 1965 is deemed to be effective for all purposes as of and from April 20, 1965.

3. The foregoing denial of the application for interlocutory injunction and dissolution of the temporary restraining order is subject to the following conditions, to which the intervening defendants, The Baltimore and Ohio Railroad Company et al., have agreed by filing written consent with the Clerk of this Court:

A. In the event the plaintiffs are successful in permanently setting aside the order of the Interstate Commerce Commission of February 3, 1965, intervening defendants, The Baltimore and Ohio Railroad Company et al., will resettle their accounts with plaintiffs, on traffic covered by the order of the Commission, on the basis of the present divisions, on all shipments made on and after April 20, 1965, with interest at the rate of 5% per annum on the monthly differences between revenues based upon the divisions prescribed by the Commission and revenues based upon the divisions now in effect, the said interest to be calculated from the customary accounting monthly settlement dates.

B. In the event the plaintiffs are successful in permanently setting aside the order of the Interstate Commerce Commission of February 3, 1965, insofar as it prescribes the scale bases of divisions set forth in columns 1 through 4 and in column 6 of Appendix C of its report of that date on further hearing (325 I. C. C. 1, 51-53, 82), and in addition are successful in securing an ultimate judicial determination that there then remains, as a severable part of the Commission's order, a decision by the Commission that the present divisional scale as reduced by 37 integers constitutes the divisional scale found by the Commission to be the lawful equal scale in the event this Court should hold that the Commission acted unlawfully in prescribing the aforesaid scales set forth in said Appendix C, intervening defendants, The Baltimore and Ohio Railroad Company et al., will readjust their accounts with plaintiffs to the said basis of the present scale minus 37 integers as to all shipments made on and after April 20, 1965, with interest at 5 per cent per annum on the monthly differences between revenues based upon the aforesaid scales set forth in said Appendix C and revenues based upon such present scale less 37 integers in each instance, the said interest to be calculated from the customary accounting monthly settlement dates.

C. Upon the happening of the event specified in paragraph A or that specified in paragraph B hereof, intervening defendants, The Baltimore and Ohio Railroad Company et al., shall be required to reimburse plaintiffs for their reasonable expenses for accounting change-overs incurred as a result of this denial of the application for interlocutory injunction.

D. In making the undertaking set forth in paragraph B above, the intervening defendants do not concede that the Court has jurisdiction, upon determining that the Commission's order prescribing the scales set forth in said Appendix C is unlawful, to establish divisions on any basis not prescribed by the Commission.

Dated June 3rd, 1965, at New Orleans, Louisiana.

/s/ JOHN MINOR WISDOM,
United States Circuit Judge.

/s/ EDWIN F. HUNTER,
United States District Judge.

/s/ E. GORDON WEST,
United States District Judge.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Supplemental Complaint to Set Aside in Part Supplemental Report and Order of the Commission on Further Consideration.

Plaintiffs in the above-entitled action, through their attorneys, for further statement of their claim against defendants, respectfully allege:

I.

On March 2, 1965, the Commission issued its report and order dated February 3, 1965, in an administrative proceeding identified as I.C.C. Docket No. 29799, *Akron, Canton & Youngstown Railroad Co., et al. v. Aberdeen and Rockfish Railroad Co., et al.* and I.C.C. Docket No. 29885, *In the Matter of Divisions of Joint Rates Between Official and Southern Territories.*

II.

On March 31, 1965, plaintiff Southern railroads filed this action to set aside in part this order of the Interstate Commerce Commission.

III.

On April 1, 1965, plaintiff Norfolk Southern Railway filed a petition for reconsideration with the Commission limited to the divisions prescribed for certain portions of its traffic which were not brought in issue in this action; no Southern railroad nor any other party to the proceeding before the Commission filed a petition for reconsideration with respect to the part of the Commission's order which is involved in this action.

IV.

On May 21, 1965, the Commission issued its Supplemental Report and Order of the Commission on Further Consideration (reported at 325 I.C.C. 449), which report and order have been marked as Exhibit A and annexed to this Supplemental Complaint and made a part hereof. In its Supplemental Report, the Commission first disposed of the problems raised by the Norfolk Southern's petition for reconsideration. It then proceeded, on its own motion, to deal with certain matters involved in this court action, which, the Commission said, had "been brought to our attention" (325 I.C.C. at 453):

(1) The Commission quoted an allegation made in Paragraph XIV of the Complaint here with respect to its failure to make findings relating the evidence of record to the cost factors used in the divisional scales it prescribed, and it then attempted to cure this defect by setting forth such findings in an Appendix to the Supplemental Report.

(2) The Commission also took note of plaintiffs' allegation in Paragraph XIV of the Complaint here that the divisions prescribed would reduce their revenues by $8,745,000 a year instead of the $7,948,004 reduction found by the Commission in the original report, but found that even assuming such a mistake of fact to have been made in its original report, it "does not warrant a change in our findings" (325 I.C.C. at 454). Further check of the record shows that the $8,745,000 figure should read $8,838,467.

(3) The Commission concluded its supplemental report with a vague paragraph apparently directed at plaintiffs' contention in this Court that the prescription of an inflation for the Northern railroads in its original order is separable from its determination that the present equal-factor basis has defects which unlawfully depress the revenues of the long-haul carrier (Complaint, Paragraphs XI

and XII); the Commission's supplemental report reiterates the fact that these two aspects of its decision involved essentially different considerations connected only by the fact that they arose in the same proceeding, and the report contains no finding that the two aspects are inseparable.

V.

The Commission's supplemental report was accompanied by an order in which it disposed of the Norfolk-Southern problems and then went on to provide (325 I.C.C. at 455):

> "*It is further ordered,* That our prior report and order herein, dated February 3, 1965, and served March 2, 1965, except as modified and amplified in said supplemental report on further consideration be, and it is hereby, affirmed in all respects and together with this order, subject to the above-mentioned restraining order of the court, shall continue in force until further order of the Commission."

VI.

The quoted portion of the Commission's order is unlawful on all of the grounds specified in the original complaint in this action, and on the additional grounds:

(1) That the supplemental report and order constitute an effort by the Commission to cure the defects in its original order and thus to thwart judicial review of that order in violation of the Due Process Clause of Amendment V of the Federal Constitution, the principle of separation of powers of the Federal Constitution, and the principle of separation of functions of the Administrative Procedure Act.

(2) That the supplemental report and order fail to cure the defects toward which they were directed.

(3) That there is neither substantial evidence nor rational findings to support the conclusion that the mistake

of fact made in the original report with respect to the impact of the new divisions could make no difference in the outcome of the case.

VII.

The record shows that the revenues of the Northern railroads under the prescribed divisions would be $230,209,407 a year, as compared to their revenues under the previously existing basis of divisions of $221,370,940 a year. The revenues of the Northern railroads under the equal-factor scale prescribed by the Commission in 1953, deducting the 37 integers found by the Commission to be excessive, would be $213,945,163 a year.

WHEREFORE, plaintiffs pray:

(1) That the part of the Commission's supplemental report and order of May 18, 1965, which purports to deal with matters at issue in this action, be set aside and held for naught;

(2) That plaintiffs recover their proper costs;

(3) That plaintiffs have such other and further relief in the premises as in equity may be deemed meet and just by this Honorable Court.

PHELPS, DUNBAR, MARKS, CLAVERIE & SON, ASHTON PHELPS, JACK M. GORDON, SIDLEY, AUSTIN, BURGESS & SMITH, DOUGLAS F. SMITH, HOWARD J. TRIENENS, GEORGE L. SAUNDERS, JR.—signed by ASHTON PHELPS.

Of Counsel: JOHN W. ADAMS, PHIL C. BEVERLY, JAMES A. BISTLINE, H. T. COOK, R. WRAY HENRIOTT, HOWARD D. KOONTZ, JOHN E. MCCULLOUGH, DONAL L. TURKAL, ARTHUR J. WINDER.

Exhibit A to Supplemental Complaint—Supplemental Report and Order of the Commission on Further Consideration, May 18, 1965.

INTERSTATE COMMERCE COMMISSION

No. 29885 [1]

OFFICIAL-SOUTHERN DIVISIONS

IN THE MATTER OF DIVISIONS OF JOINT RATES BETWEEN OFFICIAL AND SOUTHERN TERRITORIES

Decided May 18, 1965

Upon petition of Norfolk Southern Railway Company, proceedings as they relate to specified traffic of that carrier reopened for reconsideration and findings modified accordingly. In all other respects, upon further consideration and amplification, findings in prior report, 325 I.C.C. 1, prescribing new just, reasonable, and equitable divisions of joint interterritorial rates between official and southern territories affirmed.

Appearances as shown in prior report.

SUPPLEMENTAL REPORT AND ORDER OF THE COMMISSION ON FURTHER CONSIDERATION

FREAS, *Commissioner:*

In the prior report herein [2] at 325 I.C.C. 1, we found, upon further hearing, that the existing divisions of joint interterritorial rates between official and southern territories were unjust, unreasonable, and inequitable. Just, reasonable, and equitable divisions were prescribed. Subsequently, on April 12, 1965, in civil action No. 15454, Aberdeen and Rockfish Railroad Company, et al. v. United

1. This report also embraces No. 29799, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen & Rockfish Railroad Company, et al.

2. Referred to and made a part hereof.

States, the United States District Court for the Eastern District of Louisiana, New Orleans Division, the Honorable E. Gordon West, entered an order temporarily restraining our order prescribing the aforesaid divisions from taking effect on April 20, 1965. Such action had the effect of temporarily mooting the request in the petition of the Norfolk Southern Railway Company, filed April 1, 1965, for
450 postponement of the said effective date pending determination of its request for reconsideration of the report and order insofar as it affects "traffic moving between points on Norfolk Southern and points in official territory via the gateway of Norfolk, Virginia."

Since the enactment of section 15(6) as part of the Transportation Act of 1920, it has been our policy in interterritorial divisions cases to employ a group method or system of determining just, reasonable, and equitable divisions. Because of the number of carriers and the numerous rates and divisions involved, the actual necessities of procedure and administration have required the adoption of such a method in order to accomplish the task imposed upon the Commission by Congress. *New England Divisions Case*, 261 U. S. 184, 196-9 (1923). To avoid serious injustice to any carrier, our procedures permit any railroad to be excepted from a group order, in whole or in part, on a proper showing of differing circumstances. Where it is demonstrated by competent and reliable evidence that a carrier's financial or revenue needs situation requires the preservation of its share of the joint rates on the same level as presently existing or at a level different than that to be maintained for the group as a whole, we may provide special individual treatment in order to maintain such carrier as part of the Nation's transportation system without regard to its costs of rendering the service.

On the basis of such a special showing by the Norfolk Southern, we conclude in our prior report that to prescribe divisions for Norfolk Southern's originated and terminated traffic moving through the Norfolk gateway on the same basis as prescribed for other southern carriers in finding 2

would place that carrier in a deficit position so serious as to impair the rendering of adequate and continuous service to the public. Accordingly, our findings in the prior report, 325 I.C.C. 1 at pages 44, 51-52, sought to retain for the Norfolk Southern a percentage of revenue substantially the same as it presently receives on such traffic. A special scale was prescribed in column 5 of appendix C which increased the column 2 factors applicable to other southern carriers by 108 percent in order to give the Norfolk Southern approximately the same total revenue it now enjoys on shipments originating or terminating on its line and moving via the Norfolk gateway. We constructed column 5 on the basis of the only available evidence of record concerning an average haul formula which the Norfolk Southern urged would produce reasonably reliable results and achieve the end sought.

451 In its petition for reconsideration, however, the Norfolk Southern now asserts that the prorating factors of column 5 fail to preserve its revenue from the traffic in question by a substantial margin estimated to be $106,000 annually ($89,160 from general traffic and $17,699 from perishable traffic). This total amount is computed by expanding to an annual basis the application of the prescribed column 5 factors to waybills of all individual shipments of general traffic moving during the months of March 1958 and November 1959, and for perishable traffic moving during the 1959 season, the latter being admittedly incomplete and preliminary. Although these waybills covering individual shipments constitute the underlying data for the Norfolk Southern's traffic study, they are not of record in these proceedings. Petitioner makes no request to reopen the proceedings for further hearing for the purpose of introducing this evidence in the form of a more detailed study which would provide a more accurate means of constructing a special scale of prorating factors to preserve its *status quo*. It merely requests reconsideration and revision of the column 5 scale by the addition of 15 integers to each prorating factor in each mileage block of that scale.

Under the circumstances, it would ordinarily be improper for the Commission to base any supplemental order increasing the prorating factors in column 5 of appendix C on extra record facts. Moreover, the facts now relied upon by the Norfolk Southern are not based upon newly discovered evidence and, as such, fail to meet the appropriate test as specified in *Yourga v. United States,* 191 F. Supp. 373, 376-7 (W. D. Pa. 1961). The Norfolk Southern's petition merely represents a change in theory from that originally urged as a reliable method of constructing a scale of divisional factors which would preserve its *status quo.* Generally, all carriers subject to regulation under the provisions of the Interstate Commerce Act should be admonished against piecemeal trials. *Cf. Mechling Barge Line, Inc. v. United States,* 376 U. S. 375, 383-386 (1964). Ordinarily, any attempt to have the Commission revise its findings in response to a theory different from that originally urged by a party and adopted by the Commission tends to frustrate the administrative process and should not be countenanced in the absence of unusual circumstances. There is, however, such a circumstance present here which requires consideration.

In reply to the Norfolk Southern's petition, the northern lines assert:

> 452 Notwithstanding the insufficiency of the facts alleged in the petition to support the reconsideration or order sought, the Eastern railroads respondent herein, in order to simplify the issues in the said Court action, and to secure the prompt establishment of a uniform, simple, and readily applicable basis of divisions on the Norfolk gateway traffic originated or terminated by the Norfolk Southern, without prejudice to their position otherwise, and fully reserving their rights to apply for modification thereof as conditions may warrant, hereby consent to modification of the Commission's report and order of February 3, 1965, so as to increase, by 15 integers, each of the

factors contained in Column 5 of Appendix C of the Commission's said report (325 I.C.C. 82).

We consider this consent of the northern lines to be, in effect, an agreement with the Norfolk Southern concerning divisions on the Norfolk gateway traffic under discussion. The question is whether we should modify our findings and the column 5 scale to include an additional 15 integers in each factor thereof in view of the incomplete state of the record. Divisions cases are in the nature of contractual disputes between carriers. Here, as elsewhere in the law, settlements should be encouraged. *Cf.* Administrative Procedure Act, section 5(b). Since the parties themselves are in agreement,[3] we see no reason to object to this course of action. From all that appears, the basis agreed to reflects a reasonable accord. We therefore approve the agreement as just, reasonable, and otherwise equitable. We further find that the northern lines' consent to an increase of each of the prorating factors in column 5 of appendix C by 15 integers warrants modification of that scale at this time to reflect the agreement of the parties concerned. The ends of justice would be better served by incorporating such agreement in our findings which, all parties agree, place the Norfolk Southern's divisions on a systematic basis for the first time by prescribing a modernized scale of divisional factors. As usual, the parties will be permitted to apply for modification thereof as conditions may warrant.

It should be noted, however, that the restraining order issued on April 12, 1965, in the pending court action enjoins our prior order from taking effect on April 20, 1965, with respect to all divisional scales prescribed, pending hearing and determination of an application for interlocutory injunction by the three-judge statutory court. Various protective conditions concerning repayment on the prescribed bases back to April 20, 1965, are offered in the

3. A circumstance rather unusual, unfortunately, in interterritorial divisional proceedings.

event of either a grant or a denial of the interlocu-
453 tory injunction. Under the circumstances, our order herein prescribing an increase in the prorating factors of the column 5 scale for the Norfolk Southern will be effective from the date therein specified. However, actual settlement on the basis of the new divisions shall be postponed pending decision of the court on the application for interlocutory injunction and, thereafter, shall be governed by the court's order granting or denying said injunction and any protective payback conditions which may be imposed therein.

Insofar as the complaint in the pending court action is concerned, it has been brought to our attention that it alleges, *inter alia*, the following:

> The Commission's report contains no findings which relate to evidence of record the specific cost factors used in the construction of the divisional scales which it prescribed. Plaintiffs are unable to trace these cost factors to evidence in this record. From the record, it can be calculated that the application of the divisional scales prescribed by the Commission would reduce the revenues of the Southern railroads by $8,745,000.

Had this allegation been made by the filing with us of an appropriate petition as is plaintiffs' right, it would have been given full and proper consideration. In any event, we deem it to be in the public interest, and indeed our duty, to make our position and findings as clear and specific as possible insofar as the aforesaid matters are concerned.

Turning first to the allegation that the prior report contains no findings which relate to evidence of record the specific cost factors used in the construction of the divisional scales prescribed, we will amplify our prior discussion at 325 I.C.C. at pages 24-26 and 34-38. Specifically, the appendix hereto demonstrates, in detail, with appropriate references to the record, the manner of the construction of the scales. The fully distributed cost factors

used are clearly shown as are the mathematics of their utilization. Reading the aforesaid discussion in light of this appendix, it is clear that the cost scales are based solely on evidence of record and are directly related to the specific cost factors involved. In so finding, we affirm our prior conclusions.

With regard to the asserted reduction in the revenue of the southern railroads by $8,745,000, the prior report indicated a difference of $7,948,004 as a reduction for the southern lines and as a gain for the northern lines. 325 I.C.C. at page 50. Our prior figure represented an overall estimate relating and applying the percentage of costs to the total revenue involved. To the extent that the
454 higher figure now urged by southern lines may reflect a more detailed picture when related to past individual movements, it does not warrant a change in our findings. The scales prescribed still reflect the restated costs of record and, for the reasons indicated in the prior report, can properly serve here as a guide for the determination of just, reasonable, and equitable divisions. *Cf. Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, 657-658, sustained in *Carolina & N. W. Ry. Co. v. United States*, 230 F. Supp. 581 (W.D. N.C. 1964), affirmed *per curiam* by the Supreme Court on April 26, 1965, 33 L.W. 3349.

In rejecting the old scale of divisional factors, we found numerous deficiencies therein.[4] Those deficiencies were viewed in light of our conclusion that an adjustment is required to compensate the respective groups of carriers according to their expenditures in the joint effort of handling the interterritorial traffic in question. No one deficiency was found controlling. In so holding, we also rejected arguments that equal factor divisions should be maintained. 325 I.C.C. at page 27. To the extent the present divisions did not meet the foregoing test, they were found unjust, unreasonable, and inequitable. 325

4. See, e.g., 325 I.C.C. at page 37.

I.C.C. at page 50. In our judgment, all other factors of section 15(6) being substantially equal, the divisional scales prescribed on the basis of restated cost proportions will produce divisions which we consider fair and equitable as between the parties. No other basis has been shown to be appropriate here. In any event, except for the Norfolk Southern, no carrier at any time has satisfactorily demonstrated a special situation which required special and separate treatment. Accordingly, considering the scales prescribed in light of the traffic and cost studies referred to in our prior report, and the record as a whole, we find nothing revenue-wise or in any other respect which would warrant a change in our findings as to railroads in either territory, individually or as groups. We affirm our prior findings and conclusions as warranted by the record.

COMMISSIONER MURPHY, dissenting in part:

I am in accord with the majority's findings that the basis agreed to between the official lines and the Norfolk Southern is reasonable and may be approved. I do not agree, however, that the record contains evidence of specific cost factors which would support the construction of the divisional scales prescribed in the prior report. In this regard, I adhere to my separate dissenting-in-part expression in that report.

455

COMMISSIONER TUGGLE did not participate.

It is ordered, That insofar as the prior report, 325 I.C.C. 1, involved traffic moving between points on the Norfolk Southern and points in official territory via the gateway of Norfolk, Va., the instant proceedings be, and they are hereby, reopened for reconsideration on the present record, and the effective date of the order herein, dated February 3, 1965, and served March 2, 1965, having been temporarily restrained by the United States District Court for the East-

ern District of Louisiana, New Orleans Division, on April 12, 1965, in civil action No. 15454, Aberdeen and Rockfish R.R. Co., et al. *v.* United States, et al., be, and it is hereby, vacated and set aside insofar as said order requires prescription of scales of prorating factors applicable to said traffic.

It is further ordered, That the complainants, cross-complainants, defendants, and respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before July 30, 1965, and thereafter to apply, divisions of joint all-rail interstate rates for the transportation of property on traffic originating or terminating on the lines of the Norfolk Southern Railway Company, and moving to or from points in official territory, via Norfolk, Va., determined as provided in the supplemental report on further consideration issued contemporaneously herewith and made a part hereof. Actual settlement on the basis of the new divisions shall be, and it is hereby, postponed pending decision of the three-judge statutory court on the pending application for interlocutory injunction, and thereafter shall be governed by and subject to the court's order granting or denying said injunction and any protective payback conditions which may be imposed therein.

It is further ordered, That our prior report and order herein, dated February 3, 1965, and served March 2, 1965, except as modified and amplified in said supplemental report on further consideration be, and it is hereby, affirmed in all respects and together with this order, subject to the above-mentioned restraining order of the court, shall continue in force until further order of the Commission.

By the Commission.

BERTHA F. ARMES,
Acting Secretary.

(SEAL)

Development of the unit costs underlying the divisional factor scales in columns 1, 2, and 6 of appendix C in

Line No.	Item	Source	North				
			Terminal	Way train	Thru train	Total line haul	Total nor
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	F.D. costs—unadj. (on 325 I.C.C. at 25).	V.S. 40, table 6, p. 13 and exh. B corrected, p. 3.	$33,564,609	—	—	$136,052,934	$169,617,
	Platform adj. and way & thru train adj.						
2	Cost before adjustment	V.S. 40A, exh. G corrected, page 1 for terminal, page 2 for line haul.	33,564,609	—	—	135,397,990	
3	Cost after adjustment	V.S. 40A, exh. G corrected, page 2 for terminal, page 1 for line haul.	31,310,534	5,211,818	127,902,913	133,114,731	
4	Adjustments	Line 2 minus line 3	$—2,254,075	—	—	$—2,283,259	
5	Cost after adj. for switching and terminal companies.	V.S. 40A, exh. G, page 3 corrected	33,501,339	—	—	135,297,787	
6	Switching and terminal co. adjustment.	Line 2 minus line 5	—63,270	—	—	—100,203	—163
7	Short line railroads (class II) adjustment.	See attachment hereto	—30,446	—	—	—7,279	—37
8	F.D. costs with four adjustments	Line 1 plus or minus lines 4, 6, and 7.	$31,216,818	—	—	$133,662,193	
9	Interchange, avg. per handling	Southern brief, page 146	$4.95	—	—	—	
10	Cars handled	V.S. 11, exh. 1, page 1	967,554	—	—	—	
11	Cost of interchange at gateways	Line 9 x line 10	+4,789,392	—	—	—4,789,392	
12	Subtotal	Line 8 plus or minus line 11	$36,006,210	—	—	$128,872,801	
13	Way and thru train percentage	Line 3 above	xxx	3.915%	96.085%	100.000%	
14	Way and thru train costs	Line 12, cols. 6 & 11, x line 13	xxx	$5,045,370	$123,827,431	—	
15	Costs, after train tonnage adustment.	V.S. 40A, exh. G, p. 7, corrected	—	—	120,614,461	—	
16	Costs, before train tonnage adjustment.	V.S. 40, exh. D, p. 1, corrected (table 10)	—	—	119,747,142	—	
17	Train tonnage, Pocahontas region	Line 15 minus line 16	—	—	$+867,319	—	
18	F.D. costs—adjusted (on 325 I.C.C. at 26).	Lines 12 and 14 plus 17	$36,006,210	$5,045,370	$124,694,750	—	$165,74
	Service units						
19	Route of movement ton-miles	Way train: V.S. 40, exh. D corrected, p. 4—total: V.S. 11, exh. 1, tab. B.	xxx	363,179,565	—	11,501,773,060	
20	Tons and short line ton-miles	V.S. 11, exh. 1, tab. B	28,055,720.7	—	—	10,125,161,202	
21	Circuity	Line 19 ÷ line 20	xxx	—	—	1.13596	
22	Short line ton-miles	Way: line 19 cols. 4 & 9 ÷ line 21—thru: line 20 minus way.	xxx	319,711,579	9,805,449,623	—	
23	Cwt. and short line cwt.-miles	Times 20	561,114,414	6,394,231,580	196,108,992,460	—	
24	Two interchanges for bridge traffic	Line 11, col. 3 times 2	$9,578,784	—	—	—	
	Unit costs (325 I.C.C. at 37)						
25	Interchange unrelated to distance	Line 24 ÷ line 23 (mills)	17.07	xxx	xxx	xxx	xx
26	Terminal, way train, and thru train	Line 18 ÷ line 23 (mills)	64.17	0.78905	0.63584	xxx	xx
27	Way train miles	On line 23: col. 4 ÷ col. 3 and col. 9 ÷ col. 8.	xxx	11	xxx	xxx	xx

APPENDIX

costs underlying the divisional factor scales in columns 1, 2, and 6 of appendix C in prior report, 325 I.C.C. 1, 82

North					South				
Terminal	*Way train*	*Thru train*	*Total line haul*	*Total north*	*Terminal*	*Way train*	*Thru train*	*line haul*	*Total south*
(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
$33,564,609	—	—	$136,052,934	$169,617,543	$21,520,444	—	—	$172,785,865	$194,306,309
33,564,609	—	—	135,397,990	—	21,520,444	—	—	172,423,048	—
31,310,534	5,211,818	127,902,913	133,114,731	—	21,066,771	10,548,593	158,279,225	168,827,818	—
$—2,254,075	—	—	$—2,283,259	—	$—453,673	—	—	$—3,595,230	—
33,501,339	—	—	135,297,787	—	21,847,448	—	—	173,135,654	—
—63,270	—	—	—100,203	—163,473	+327,004	—	—	+712,606	+1,039,610
—30,446	—	—	—7,279	—37,725	+302,795	—	—	+226,552	+529,347
$31,216,818	—	—	$133,662,193	—	$21,696,570	—	—	$170,129,793	—
$4.95	—	—	—	—	$3.14	—	—	—	—
967,554	—	—	—	—	967,554	—	—	—	—
+4,789,392	—	—	—4,789,392	—	+3,038,120	—	—	—3,038,120	—
$36,006,210	—	—	$128,872,801	—	$24,734,690	—	—	$167,091,673	—
xxx	3.915%	96.085%	100.000%	—	xxx	6.248%	93.752%	100.000%	—
xxx	$5,045,370	$123,827,431	—	—	xxx	$10,439,888	$156,651,785	—	—
—	—	120,614,461	—	—	—	—	—	—	—
—	—	119,747,142	—	—	—	—	—	—	—
—	—	$+867,319	—	—	xxx	xxx	xxx	xxx	xxx
$36,006,210	$5,045,370	$124,694,750	—	$165,746,330	$24,734,690	$10,439,888	$156,651,785	—	$191,826,363
xxx	363,179,565	—	11,501,773,060	—	xxx	840,353,018	—	15,625,355,583	—
28,055,720.7	—	—	10,125,161,202	—	28,055,720.7	—	—	14,332,240,646	—
xxx	—	—	1.13596	—	xxx	—	—	1.09022	—
xxx	319,711,579	9,805,449,623	—	—	xxx	770,810,495	13,561,430,151	—	—
561,114,414	6,394,231,580	196,108,992,460	—	—	561,114,414	15,416,209,900	271,228,603,020	—	—
$9,578,784	—	—	—	—	—	—	—	—	—
17.07	xxx	xxx	xxx	xxx	xxx	—	—	xxx	xxx
64.17	0.78905	0.63584	xxx	xxx	44.08	0.67720	0.57756	xxx	xxx
xxx	11	xxx	xxx	xxx	xxx	27	xxx	xxx	xxx

APPENDIX ATTACHMENT

Adjustment for class II (short line) costs

Line No.	Item (1)	Participation in Off.-Sou. traffic: 15 class II's exh. R-30 (2)	Participation in Off.-Sou. traffic: All class II's V.S. 36, exh. 4 (3)	Participation in Off.-Sou. traffic: Ratio col. (3) ÷ col. (2) (4)	Form A costs: 15 roads exh. R-30 (5)	Form A costs: All class II's col. (5) × col. (4) (6)	Witness Wooden* basic costs: 15 class II's V.S. 80, sec. D, exh. A (7)	Witness Wooden* basic costs: Ratio col. (7) ÷ col. (5) (8)	Witness Wooden* basic costs: All class II's col. (6) × col. (8) (9)	Adj. included in costs of Sou. lines col. (9) less col. (6) (10)
1	North of gateway:									
2	Cars	11,561	16,697	1.444252	$306,856	$443,177	—	—	—	—
3	Tons	342,197	490,926	1.434630	107,045	153,570	—	—	—	—
4	Terminal	—	—	—	—	596,747	—	—	$566,301	—$30,446
5	Car-miles	358,312	417,948	1.166436	35,178	41,033	—	—	—	—
6	Ton-miles	11,019,486	12,686,071	1.151240	88,280	101,631	—	—	—	—
7	Line-haul	—	—	—	—	142,664	—	—	135,385	—7,279
8	Total	—	—	—	537,359	739,411	$509,943	0.948980	701,686	—37,725
9	South of gateway:									
10	Cars	31,725	55,829	1.759779	538,056	946,860	—	—	—	—
11	Tons	1,027,923	1,839,072	1.789115	201,792	361,029	—	—	—	—
12	Terminal	—	—	—	—	1,307,889	—	—	1,610,684	+302,795
13	Car-miles	2,820,106	3,228,070	1.144663	163,320	186,946	—	—	—	—
14	Ton-miles	89,300,055	102,256,571	1.145090	691,318	791,621	—	—	—	—
15	Line-haul	—	—	—	—	978,567	—	—	1,205,119	+226,552
16	Total	—	—	—	1,594,486	2,286,456	1,963,632	1.231514	2,815,803	+529,347

* V.S. 37, pages 3-4 and appendix B therein.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Answer of the Intervening Defendants to Supplemental Complaint.

Now into Court come the intervening defendants, The Baltimore and Ohio Railroad Company et al., and, in answer to the Supplemental Complaint of Aberdeen and Rockfish Railroad Company et al., plaintiffs herein, allege:

I.

Intervening defendants admit the allegations of Article I.

II.

Answering the allegations of Article II, intervening defendants admit that the complaint of the plaintiff Southern railroads filed herein on or about March 31, 1965, was denominated as a complaint to set aside in part an order of the Interstate Commerce Commission, but deny that it was in fact such a complaint in that the said order was not severable in the respect alleged in such complaint.

III.

Answering the allegations of Article III, intervening defendants admit that no Southern railroad nor any other party to the proceeding before the Commission filed a petition for reconsideration of its order of February 3, 1965, and that plaintiff Norfolk Southern Railway Company on April 1, 1965, filed a petition with the Commission for fur-

ther consideration limited to the divisions prescribed on that portion of its traffic described in Finding 4 of the Commission's report of February 3, 1965 (325 I. C. C. 1, 51-52); and otherwise deny the allegations of said Article.

IV.

For answer to so much of the allegations of Article IV as relate to the content of the Supplemental Report and Order of the Commission on Further Consideration, decided May 18, 1965, served May 21, 1965, and reported at 325 I. C. C. 449, a copy of which is annexed to the Supplemental Complaint as Exhibit A, intervening defendants respectfully refer thereto for a more exact statement; otherwise intervening defendants deny the allegations of Article IV, and particularly deny that the Commission failed to make any necessary findings in its reports, that there were any defects or mistakes of fact therein, or that either or both of the reports and orders of the Commission were unlawful in any respect.

V.

For answer to the allegations of Article V, intervening defendants refer to the report and order of the Commission of May 18, 1965, served May 21, 1965, and reported at 325 I. C. C. 449, a copy of which is attached to the Supplemental Complaint herein, for a more exact statement of its contents.

VI.

Answering Article VI, intervening defendants deny that the last paragraph of the Commission's Supplemental Order of May 18, 1965, reported at 325 I. C. C. 455 and quoted in Article V of the Supplemental Complaint, is unlawful on all or any of the grounds specified in the original Complaint in this action; deny that the original order contained defects or was based upon any mistake of fact; and further deny that the Supplemental Report and Order are unlawful in any respect whatsoever.

VII.

Intervening defendants deny the allegations of Article VII.

WHEREFORE, intervening defendants pray that, after due proceedings had, the Supplemental Complaint of Aberdeen and Rockfish Railroad Company et al., be dismissed at plaintiffs' costs.

(Subscriptions of counsel omitted in printing.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Joint Answer of the United States of America and the Interstate Commerce Commission to the Supplemental Complaint.

The United States of America and the Interstate Commerce Commission, defendants herein, answer the supplemental complaint as follows:

I.

Admit the allegations contained in paragraphs I, II, and III.

II.

With respect to the allegations contained in paragraph IV, admit that the Commission's Supplemental Report and Order of May 18, 1965, disposed of problems raised by the Norfolk Southern's petition for reconsideration and, in addition, affirmed and clarified its prior findings and conclusions. Further, defendants deny the existence of any defect in the Commission's prior report and order and aver that the Commission has continuing jurisdiction over its orders and may at any time correct, change, modify, amplify, or clarify any of its prior findings or conclusions in order to completely and adequately reflect the reasons or bases in law or in fact for its decision so that review by the court may be accomplished with an accurate understanding of the Commission's action.

III.

Admit the allegations made in paragraph V, but refer to the Commission's Supplemental Report and Order for a true, complete, and accurate statement of the matters contained therein.

IV.

Deny each and every allegation contained in paragraphs VI and VII.

V.

In further answer to the allegations contained in the Supplemental Complaint, deny that the Supplemental Report and Order of the Commission is invalid or unlawful for the reasons claimed or for any other reasons whatsoever, and aver that said Supplemental Report and Order is fully supported by the record and is valid in all respects. Except as expressly admitted herein or in answer to the allegations contained in the original complaint, deny each and every other allegation made by plaintiffs.

WHEREFORE, defendants pray that the relief sought in the Supplemental Complaint be denied and that the complaint be dismissed with costs.

(Subscription of Counsel and Certificate of Service omitted in printing.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Supplemental Intervening Complaint of the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners.

Intervening plaintiffs, the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners, for futher statement of their claim against defendants allege:

I.

On May 21, 1965, the Interstate Commerce Commission *sua sponte* served a Supplemental Report and Order purporting to modify, amplify and reaffirm that part of its previous order dated February 3, 1965, which is the subject of this Court action.

II.

To the extent that the Commission has modified or amplified its previous report and order in this manner, such modification or amplification is unlawful as a violation of those constitutional provisions guaranteeing a separation of powers and due process of law guaranteed by the Federal Constitution and a violation of the requirements of the Administrative Procedure Act that there be a separation of executive and judicial functions.

III.

To the extent that the Supplemental Report and Order reaffirm the action taken by the Commission in its original

report and order, such reaffirmation is unlawful for all the reasons set forth in the original complaint filed by these intervening plaintiffs; even if the modification and amplification attempted in the Supplemental Report and Order were otherwise valid, they would not cure any of the defects in the original Report and Order.

WHEREFORE, intervening plaintiffs pray:

(1) That the part of the Commissioner's order dated May 18, 1965, purporting to modify, amplify and affirm the Order of February 3, 1965, be permanently set aside.

(2) That this Court declare the unlawfulness of, and set aside, the Order of February 3, 1965, regardless of the validity of the Order of May 18, 1965.

(3) That intervening plaintiffs recover their proper costs.

(4) That intervening plaintiffs have such other and further relief in the premises as in equity may be deemed meet and just by this Honorable Court.

(Subscription of counsel, Certificate of acquiescence and Certificate of Service omitted in printing.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Answer of Intervening Defendants to Supplemental Intervening Complaint of the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners.

Now into Court come the intervening defendants, The Baltimore and Ohio Railroad Company et al., and, in answer to the Supplemental Intervening Complaint of the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners, intervening plaintiffs herein, allege:

I.

For answer to the allegations of Article I, intervening defendants refer to the Supplemental Report and Order of the Commission on Further Consideration, decided May 18, 1965, served May 21, 1965, and reported at 325 I. C. C. 449, a copy of which is annexed to the Supplemental Complaint as Exhibit A, for a more exact statement of its contents and purport; and otherwise deny the allegations of said Article.

II.

For answer to the allegations of Article II, intervening defendants refer to the Supplemental Report and Order of the Commission on Further Consideration, decided May 18, 1965, served May 21, 1965, and reported at 325 I. C. C. 449, a copy of which is annexed to the Supplemental Complaint as Exhibit A, for a more exact statement of its contents,

purport and effect; and otherwise deny that said Report and Order are unlawful in any of the respects alleged in said Article.

III.

Answering Article III, intervening defendants refer to said Supplemental Report and Order for a more exact statement of its contents, purport and effect; and deny that said Report and Order are unlawful for any or all of the reasons set forth in the original Complaint filed by intervening plaintiffs; deny that there were any defects in the original Report and Order of the Commission; and further deny that the Supplemental Report and Order are unlawful in any respect whatsoever.

WHEREFORE, intervening defendants pray that, after due proceedings had, the Supplemental Intervening Complaint of the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners be dismissed at intervening plaintiffs' costs.

(Subscription of Counsel and Certificate of Service omitted in printing.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Joint Answer of the United States of America and the Interstate Commerce Commission to the Supplemental Intervening Complaint of the Southern Governors' Conference et al.

The United States of America and the Interstate Commerce Commission, defendants herein, answer the supplemental intervening complaint as follows:

I.

With respect to the allegations contained in paragraph I, admit that a Supplemental Report and Order of the Commission on Further Consideration, 325 I.C.C. 449, decided May 18, 1965, was served on May 21, 1965, and refer to same for a true, complete and accurate statement of its contents and purport; and otherwise deny the remaining allegations.

II.

Deny the allegations contained in paragraphs II and III.

III.

In further answer to the allegations contained in the Supplemental Complaint, deny that the Supplemental Report and Order of the Commission is invalid or unlawful for the reasons claimed or for any other reasons whatsoever, and aver that said Supplemental Report and Order is fully supported by the record and is valid in all respects.

Except as expressly admitted herein or in answer to the allegations contained in the original complaint, deny each and every other allegation made by plaintiffs.

WHEREFORE, defendants pray that the relief sought in the Supplemental Complaint be denied and that the complaint be dismissed with costs.

(Subscription of Counsel and Certificate of Service omitted in printing.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Pretrial Order.

Pursuant to the Order of the Court dated January 25, 1966, as modified by the Order of the Court dated February 14, 1966, the plaintiffs, intervening plaintiffs, defendants and intervening defendants submit the following pretrial order, prepared in accordance with the Court's order, for entry in this proceeding:

1. This is an action in which plaintiffs and intervening plaintiffs seek to set aside in part the orders of the Interstate Commerce Commission in an administrative proceeding identified as I.C.C. Docket No. 29799, *Akron, Canton & Youngstown Railroad Co., et al. v. Aberdeen and Rockfish Railroad Co., et al.*, and I.C.C. Docket No. 29885, *In the Matter of Divisions of Joint Rates Between Official and Southern Territories.* The principal Report of the Commission in these proceedings is published at 325 I.C.C. 1. A supplemental Report and Order of the Commission on Further Consideration is published at 325 I.C.C. 449. Plaintiffs are forty-two principal Southern railroads. Intervening plaintiffs are the Southeastern Association of Railroad and Utilities Commissioners and the Southern Governors Conference, representing the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Defendants are the United States of America (the statutory defendant by virtue of 28 U.S.C. § 2322) and the Interstate Commerce Commission. Intervening defendants are virtually all of the railroads serving the Northeastern part of the United

States. This case is required to be heard by a federal district court composed of three judges pursuant to 28 U.S.C. §§ 2284 and 2325. There are no jurisdictional questions other than that set forth in defendants issue of law No. 11 (Paragraph 5B(13), *infra*).

2. There are no pending motions.

3. The facts listed below are established by the pleadings or by stipulations or admissions of counsel. However, the parties reserve the right to challenge the relevance, materiality or weight to be accorded to these facts or any of them at the hearing of this cause.

(1) The administrative orders sought to be set aside in part by the Southern railroads and the Southern interveners in this action arose out of a proceeding before the Interstate Commerce Commission involving a controversy over the division between Southern and Northern railroads of revenues derived from freight traffic moving between Official and Southern territories. Official territory lies generally east of the Mississippi River and north of the Ohio River and certain points in Virginia. Southern territory lies generally east of the Mississippi River and south of Official territory.

(2) Freight traffic between the North and the South generally moves on joint rates, meaning that the shipper pays a single sum for the transportation service provided jointly by the Northern and the Southern railroads. That sum is then divided among the railroads participating in the particular shipment on established bases, and the resulting shares of the revenue are called "divisions." The first, or so-called primary, division of each joint rate is between the participating railroads north and south of designated primary dividing points (such as Ohio River points and Richmond, Virgina), as groups, and it was these primary divisions that were at issue in the proceeding here under review.

Subdivisions of the primary divisions among the participating railroads in each of the groups were not at issue in that proceeding.

(3) Prior to the orders of the Commission in this proceeding, the primary divisions of revenues accruing from Official-Southern traffic were made under an equal-factor scale prescribed by the Commission itself in its 1953 decision in Docket No. 29885 (officially reported at 287 I.C.C. 497). The length of the respective hauls in each territory varies from shipment to shipment, but, on the average, the longer haul on Official-Southern traffic is in the South.

(4) The general basis of divisions prescribed by the orders of the Commission consists of two separate scales, one of which determines the divisional factor for rail service in the North, while the other is applicable to rail service in the South. The Commission's finding that the prescribed divisional scales will decrease the revenue of the Southern railroads in the amount of $7,948,004 is a correct figure based upon the method of calculation used by the Commission (Plaintiffs, however, do not agree that the method used by the Commission correctly measures the revenue effect of its order). The plaintiffs' method of calculating the decrease in revenue is to apply the new divisional scales to their traffic study by mileage blocks. The record will not permit of such a calculation as to all of the traffic involved. But it is agreed that by the application of this method together with a reasonable estimate with respect to the traffic as to which said method of calculation cannot be used, the decrease in revenue to the Southern railroads would amount to $8,726,591, i.e., from $274,656,425 to $265,929,834. The latter figure is $204,940 less than Southern lines' cost proportion of the total revenue on the traffic involved based on the costs found by the Commission. The factors in the

Northern scale are 10% higher than the factors in the Southern scale for each 50 miles of line-haul service performed and 45% higher than the Southern factors for terminal and interchange service. (Defendants assert, however, that this does not mean that the divisions of the Northern lines are higher than those of the Southern lines by such percentages.) Overall, the divisions and revenues of the Southern railroads are reduced approximately 3%. Many divisions of Northern railroads were reduced by the Commission's order.

4. This case is to be heard upon the certified record of the proceeding before the Interstate Commerce Commission without the taking of additional evidence by the Court; consequently, apart from such factual matters as are incidental to the issues stated below, there are no contested issues of fact.

5. The parties are unable to agree upon a joint statement of the contested issues of law remaining in controversy.

A. The issues of law as stated by plaintiffs and intervening plaintiffs are as follows:

(1) Whether the Commission violated the requirements of Section 7(c) of the Administrative Procedure Act (5 U.S.C. § 1006(c)) by imposing upon the Southern railroads the burden of proof with respect to the costs of handling the particular traffic involved in this case, where the Northern railroads were the complainants in the proceedings before the Commission, and where the Northern railroads sought an inflation in their divisions which would accord them greater compensation than the Southern railroads for the same amount and kind of rail service?

(2) Whether, regardless of the proper allocation of the burden of proof in the proceedings before the Commission, the Northern railroads failed to comply

with a legal obligation to come forward with data in their sole possession showing their costs of handling the particular traffic involved in this case?

(3) Whether the Commission has power under Sections 12(1), and 20(1) of the Interstate Commerce Act (49 U.S.C. §§ 12(1), 20(1)) to compel parties before it to produce evidence in their sole possession necessary to resolve issues affected with the public interest, and, if so, whether the Commission's failure to assure the making of a complete record of the costs of handling the traffic involved in this case requires that its orders be set aside?

(4) Whether the Commission violated Section 8(b) of the Administrative Procedure Act (5 U.S.C. § 1007(b)) in adopting its examiners' approach to the issues of burden of proof, duty to come forward and responsibility for an adequate record, without making either rulings upon, or findings with respect to, the Southern railroads' specific exceptions to that approach?

(5) Whether the admitted participation of the Commission's Cost Section in its decision-making process deprived the Southern railroads and the Southern interveners of the full and fair hearing to which they were entitled under the Interstate Commerce Act (49 U.S.C. § 1, *et seq.*), the Administrative Procedure Act (5 U.S.C. § 1001 *et seq.*), and Amendment V of the Federal Constitution?

(6) Whether the action of the Commission in this case rests upon an unlawful conception of the rule that there must be evidence typical in character and ample in quantity with respect to the divisions and services performed under the particular rates being divided?

(7) Whether the Commission violated Section 7(d) of the Administrative Procedure Act (5 U.S.C. § 1006(d)) by relying upon evidence and data outside the record in the resolution of material issues before it?

(8) (a) Whether the Commission violated Section 7(c) of the Administrative Procedure Act (5 U.S.C. § 1006(c)), wrongfully sanctioned a failure on the part of the party in possession of evidence to come forward with it, or improperly ignored its own obligation to assure an adequate record when it rejected the Southern railroads' adjustment of territorial average costs to exclude suburban passenger deficits on the ground that the adjustment did not take into account the fact that a part of these deficits is related to freight service, where neither the Northern railroads nor the Commission put the data in the record which is necessary to disclose the existence or extent of this relationship?

(b) Whether the Commission acted arbitrarily and without the support of substantial evidence within the meaning of Section 10(e) of the Administrative Procedure Act (5 U.S.C. § 1009(e)) when it included all of the Northern railroads' suburban passenger deficits in the freight costs used to determine their costs of handling Official-Southern traffic, where the evidence showed, and the Commission expressly recognized, that some of the suburban passenger deficits had nothing whatever to do with freight operations?

(c) Whether the treatment accorded suburban passenger deficits by the Commission is inconsistent in principle with the previously recognized principle that such deficits constitute a problem which should be treated separately so as not to impose a burden upon freight service, and, if so whether the Commission's failure to make reasoned findings explaining its departure from this previously established principle violates

Section 8(b) of the Administratve Procedure Act (5 U.S.C. § 1007(b))?

(9) Whether the Commission acted arbitrarily and without support of substantial evidence within the meaning of Section 10(c) of the Administrative Procedure Act (5 U.S.C. § 1009(e)) when it ascribed 58% higher costs to the Northern railroads for interchanging freight cars at the territorial gateways?

(10) (a) Whether the Commission acted arbitrarily and without the support of substantial evidence within the meaning of Section 10(e) of the Administrative Procedure Act (5 U.S.C. § 1009(e)) when it used territorial average car costs as the measure of the cost of the cars handling Official Southern traffic, even though this traffic is carried in the same cars in both territories?

(b) Whether the Commission violated Section 8(b) of the Administrative Procedure Act (5 U.S.C. § 1007(b)) because the reasons given by the Commission to support its use of territorial average car cost figures are irrational and wholly insufficient to support such figures?

(c) Whether the Commission violated Section 15(6) of the Interstate Commerce Act (49 U.S.C. § 15(6)) in prescribing inflated divisions for the Northern railroads based partly upon higher average car costs in the North where these higher average car costs are the product, in part at least, of differences in rentals paid by the two groups of railroads for cars used by them but owned by other railroads, rather than any cost incurred in the service of transportation?

(11) (a) Whether the Commission violated Section 7(c), of the Administrative Procedure Act (5 U.S.C. § 1006(c)), wrongfully sanctioned a failure on the part of the party in possession of evidence to come

forward with it, or improperly ignored its own obligation to assure an adequate record when it rejected the Southern railroads' adjustment of territorial average switching costs (based upon an actual study of switching operations in the South) on the ground that no comparable study had been made in the North?

(b) Whether the Commission violated Section 8(b) of the Administrative Procedure Act (5 U.S.C. § 1007(b)) in simply reciting contentions of the parties with respect to switching costs without findings as to the soundness of the contentions recited, and in adopting practically verbatim the report of its examiners on this issue without making rulings upon, or findings with respect to, the Southern railroads' exceptions on the issue?

(12) (a) Whether the Commission violated Section 7(c) of the Administrative Procedure Act (5 U.S.C. § 1006(c)), wrongfully sanctioned a failure on the part of the party in possession of evidence to come forward with it, or improperly ignored its own obligation to assure an adequate record when it rejected the Southern railroads' adjustment of territorial average empty return ratios on the ground that this adjustment was based upon inadequate evidence with respect to the empty return ratios of the Northern railroads in handling the traffic at issue?

(b) Whether the Commission acted arbitrarily and without the support of substantial evidence within the meaning of Section 10(e) of the Administrative Procedure Act (5 U.S.C. § 1009(e)) when it used territorial average empty return ratios as a measure of the empty return experience of both groups of railroads on Official-Southern traffic, even though empty return ratios of freight cars are substantially affected by the kind of freight carried and there are substantial differences in the composition of the average traffic

in the respective territories that have nothing to do with Official-Southern traffic at issue in this case?

(13) (a) Where the Commission violated Section 7(c) of the Administrative Procedure Act (5 U.S.C. § 1006(c)), wrongfully sanctioned a failure on the part of the party in possession of evidence to come forward with it, or improperly ignored its own obligation to assure an adequate record when it rejected the Southern railroads' adjustment of territorial average costs to remove inconsistencies in the count of cars interchanged by the two groups of railroads on the ground the evidence of record was not adequate with respect to the Northern railroads' operations to permit a correct computation of the adjustment?

(b) Whether the Commission acted arbitrarily and without the support of substantial evidence within the meaning of Section 10(e) of the Administrative Procedure Act (5 U.S.C. § 1009(e)) when it used the count of cars interchanged as reported and included in the territorial averages, even though the evidence showed that this count overstated the costs of the Northern railroads relative to those of the Southern railroads?

(14) Whether the Commission violated Section 7(c) of the Administrative Procedure Act (5 U.S.C. § 1006(c)) wrongfully sanctioned a failure on the part of the party in possession of evidence to come forward with it, or improperly ignored its own obligation to assure an adequate record when it rejected the Southern railroads' adjustment of the territorial average constant cost of transit commodities in the South on the ground that evidence was not available by which it could be determined whether a comparable adjustment should be made in the territorial average of the North?

(15) Whether, even assuming that the Commission's specific cost findings are accepted, the Commission violated Section 8(b) of the Administrative Procedure Act (5 U.S.C. § 1007(b)) by failing to make reasoned findings to support the conclusion which it stated that the higher costs found to have been experienced by the Northern railroads in the handling of Official-Southern traffic reflected inherent disadvantages in transportation conditions in the North?

(16) Whether there is substantial evidence in the record within the meaning of Section 10(e) of the Administrative Procedure Act (5 U.S.C. § 1009(e)) to support the view taken by the Commission that the higher Northern costs found must reflect inherent territorial disadvantages, as compared to the South, because all other things which might explain the cost differences on other grounds are equal in the two territories?

(17) Whether the Commission satisfied the requirement of Section 15(6) of the Interstate Commerce Act (49 U.S.C. § 15(6)) that it give due consideration to the matter of relative efficiency in prescribing divisions of joint freight rates where the Commission found the Northern railroads experienced higher costs for several aspects of the handling of Official-Southern freight traffic but made no findings as to why it was necessary that the Northern railroads incur higher costs in handling the Official-Southern traffic at issue?

(18) (a) Whether the Commission violated the requirement of Section 15(6) of the Interstate Commerce Act (49 U.S.C. § 15(6)) that it give due consideration to the matter of relative needs in prescribing divisions of joint freight rates when it prescribed a basis of divisions which would diminish the revenues

of the Southern railroads by an amount substantially greater than found in its reports?

(b) Whether, regardless of the amount of the revenue loss imposed upon the Southern railroads, the Commission violated Section 15(6) of the Interstate Commerce Act (49 U.S.C. § 15(6)) by increasing the revenues of the Northern railroads through an inflation in their divisions without any finding that the revenue needs of those railroads were greater than those of the Southern railroads?

(19) Whether the Commission violated Section 8(b) of the Administrative Procedure Act (5 U.S.C. § 1007(b)) in prescribing an inflation in the divisions of the Northern railroads ostensibly to offset inherent territorial disadvantages in transportation conditions in the North, without: (a) making any ruling at all upon the Southern interveners' exception which objected to any imposition of the burden of the Northern transportation problems upon the South without specific findings that the Southern economy could sustain such burdens and that the North could not sustain its own burdens; (b) making any finding to explain the need for, or effect of, the Northern inflation in terms of the economic conditions in the two territories; or, (c) offering any explanation at all for the abandonment of the previously established principle of primary local responsibility under which divisions had consistently been maintained at a uniform level except to the extent that rate levels were found to be higher in one territory or another?

(20) Whether there is substantial evidence in the record within the meaning of Section 10(e) of the Administrative Procedure Act (5 U.S.C. § 1009(e)) to support the conclusion implicit in the Commission's action that the Southern economy can better afford

to provide the means for meeting Northern transportation problems than the North's own economy?

(21) Whether the Commission's issuance, on its own motion, of a supplemental report in which it undertook to answer issues raised in the complaint in this action, constitutes a denial of due process within the meaning of Amendment V to the Federal Constitution, either in that such supplemental report was issued without notice to plaintiffs and intervening plaintiffs, or in that such action failed to observe a separation between the judicial and executive function of the Commission?

(22) Whether the procedure adopted by the Commission in this proceeding by which its Cost Section was permitted to participate, not as a party representing the public, but as a decision-maker, and by which the Commission itself became an advocate defending its order against attack so far departed from the accepted course of administrative proceedings that the Southern railroads and the Southern interveners were denied the full and fair hearing to which they were entitled under the Interstate Commerce Act (49 U.S.C. § 1 *et seq.*), the Administrative Procedure Act (5 U.S.C. § 1001 *et seq.*) and Amendment V of the Federal Constitution?

(23) Whether, if the Court holds that the Commission's action prescribing an inflation in the divisions of Northern railroads is illegal for any of the reasons urged by the plaintiffs or intervening plaintiffs, the judgment of this Court should set aside only that part of the Commission's order which illegally prescribes an inflation in the Northern railroads' divisions and thus leave undisturbed that portion of the Commission's order correcting the relationship as between long-haul and short-haul carriers?

B. The issues of law as restated by defendants and intervening defendants are as follows:

(1) Whether the Commission violated the requirements of Section 7(c) of the Administrative Procedure Act, 5 U.S.C., Section 1006(c), with respect to the burden of proof regarding

(a) the cost of performing the service involved;

(b) the Southern lines' proposed adjustment with respect to suburban passenger deficits;

(c) the Southern lines' proposed adjustment with respect to switching costs;

(d) the Southern lines' proposed adjustment with respect to empty return ratios of freight cars;

(e) the Southern lines' proposed adjustment with respect to the count of cars interchanged;

(f) the Southern lines' proposed adjustment with respect to constant costs on transit commodities in the South.

(2) Whether the Commission's findings with respect to the cost of service are supported by substantial evidence as regards

(a) the Southern lines' proposed adjustment as to suburban deficits;

(b) the Southern lines' proposed adjustment as to the cost of interchanges at territorial gateways;

(c) the Southern lines' proposed adjustment as to car costs;

(d) the Southern lines' proposed adjustment as to empty return ratios of freight cars;

(e) the Southern lines' proposed adjustment as to the count of cars interchanged.

(3) Whether the clause numbered (1) in the last sentence in Section 8(b) of the Administrative Procedure Act required the Commission to state in its report any findings, conclusions, reasons or bases, beyond those stated therein, with respect to

(a) the burden of proof;

(b) the Southern lines' proposed adjustment as to suburban passenger deficits;

(c) the Southern lines' proposed adjustment as to car costs;

(d) the Southern lines' proposed adjustment as to switching costs.

(4) Whether the Commission or its examiners may lawfully consult with staff members of its Cost Section regarding cost evidence of record, or request and receive from such staff members analyses of such cost evidence, when said staff members are not shown to have any disability which would prevent them from performing such functions fairly and dispassionately.

(5) Whether the Commission relied upon data outside the record, and, if so, whether it violated Section 7(d) of the Administrative Procedure Act.

(6) Whether the acceptance or rejection of the cost adjustments proposed by the plaintiffs was an administrative question peculiarly within the competence of the Commission.

(7) Whether the Commission was bound, as a matter of law, to find, in support of its cost conclusion, that the higher costs experienced by the Northern railroads in the handling of Official-Southern traffic reflected in-

herent disadvantages in transportation conditions in the North.

(8) Whether the Commission discharged its obligation under Section 15(6) of the Interstate Commerce Act to "give due consideration to the efficiency with which the carriers concerned are operated"?

(9)A Whether the difference in the methods used by plaintiffs and the Commission in estimating the Southern lines' revenue reduction involves a violation of Section 15(6) of the Interstate Commerce Act, and requires that the Commission's order be set aside.

(9)B Whether the Commission was obliged by Section 15(6) to find a greater revenue need on the part of Northern lines than of Southern lines as a condition to prescribing cost related divisions?

(10) Whether there was any error of law in the Commission's application of the typical evidence rule?

(11) Whether the clause numbered (1) in the last sentence in Section 8(b) of the Administrative Procedure Act required the Commission to state in its reports any findings, conclusions, reasons, or bases, beyond those stated therein, with respect to the contentions of the Southern intervenors regarding the need for or effect of increased divisions for Northern lines in relation to economic conditions in the two territories.

(12) Whether the Commission's supplemental report in this proceeding resulted in a denial of due process or in any other violation of law.

(13) Whether, assuming that the Commission's order should be held invalid for any of the reasons urged by the plaintiffs or intervening plaintiffs, it may be concluded that the Commission found the pre-existing scale less 37 integers to be "the lawful equal scale";

if so, whether such was a severable finding and, if so, whether this Court has jurisdiction or authority to set aside the Commission's prescription of a higher basis of divisions for Northern railroads than for Southern railroads and adjudicate that, instead, the Southern railroads shall have a higher basis than the Northern railroads.

(14) If the Commission is found to have erred with respect to any of the issues stated above, were such errors prejudicial to plaintiffs or intervening plaintiffs?

(15) Were each of plaintiffs' points that are involved in the foregoing issues timely raised before the Interstate Commerce Commission?

(16) Is there a rational basis for the Commission's order?

6. The only exhibit in this case consists of the certified record of the proceeding before the Interstate Commerce Commission in the administrative proceeding identified in paragraph 1, *supra*.

7. Permission is granted the defendants, United States of America and Interstate Commerce Commission, to amend their answer to paragraph XV of the complaint, and paragraph XI of their answer shall be considered to have been amended to read:

With respect to the allegations contained in paragraph XV, admit that, among other things, the Commission's Section of Cost Finding of its Bureau of Accounts furnishes cost data, upon request, to the Suspension Board for use in considering whether or not to suspend newly filed rates and, upon request of hearing examiners or the Commission, analyzes the cost evidence submitted by the parties in proceedings involving rates and divisions thereof, but deny that the

Cost Finding Section engages in the performance of investigative or prosecuting functions, or that in furnishing analyses of the cost evidence in Docket 29885, it resorted to factual data, or assumptions with respect to factual data, not contained in that record. Except as expressly admitted herein, deny each and every other allegation of said paragraph XV.

8. The briefs of plaintiffs and intervening plaintiffs will be due on May 15, 1966, and briefs of defendants and intervening defendants will be due on August 1, 1966. Reply briefs of plaintiffs and intervening plaintiffs will be due on September 1, 1966.

The briefs will be printed on pages which are 8½ inches by 11 inches in size, sewn and bound on the left side. Type will cover approximately 5 inches by 8½ inches of the page.

9. Proposed findings of fact and conclusions of law will be filed by all parties to this action on September 15, 1966.

10. For the convenience of the Court in considering the case, a joint appendix containing portions of the record will be prepared in the following manner: On the day the plaintiffs and intervening plaintiffs file their briefs with the Court, they will serve upon the defendants and intervening defendants a designation of the portions of the record they think it necessary to print. The same procedure shall be followed by the defendants and intervening defendants on the day they file their briefs, as well as by the plaintiffs and intervening plaintiffs on the day they file their reply briefs. The joint appendix will be filed with the Court on September 15, 1966.

Plaintiff Southern railroads will initially sustain the responsibility for preparation of the joint appendix and the cost of its printing, but both the Northern railroads and the Southern railroads stipulate that the costs of the

joint appendix will be considered as a part of the costs of the case and taxed against either the Northern railroads or the Southern railroads, depending upon which party is taxed with the costs of the case.

Since this joint appendix is printed only for the convenience of the Court, the Court is not limited to the portions of the record there printed, but may refer to other portions.

The joint appendix will be printed on white opaque paper, 8½ inches by 11 inches in size, with type covering 5 inches by 8½ inches of the page (with reasonable variance for planographed documents, such as Commission reports and orders), stitched along the left margin, and covered with white cardboard covers.

Five copies of the joint appendix shall be furnished to the Court, 15 copies shall be furnished to the plaintiffs, 10 copies shall be furnished to the intervening plaintiffs, 2 copies to the defendant United States, 3 copies to the defendant Interstate Commerce Commission, and 15 copies to the intervening defendants Northern railroads.

11. The probable length of the trial (oral argument) will be three hours for each side, for a total of six hours.

Respectfully submitted,

(Subscription of Counsel for all parties omitted in printing.)

Entered: April 15, 1966

/s/ JOHN MINOR WISDOM
Circuit Judge

/s/ EDWIN F. HUNTER, JR.
District Judge

/s/ E. GORDON WEST
District Judge

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Order Amending Pretrial Order.

Considering the foregoing motion for amendment to pretrial order:

IT IS ORDERED that paragraph 9 of the pretrial order be and it is hereby amended to read as follows:

"9. Proposed findings of fact and conclusions of law will be filed by all parties to this action on October 15, 1966."

IT IS FURTHER ORDERED that the last sentence of the first full paragraph of paragraph 10 of the pretrial order be and it is hereby amended to read as follows:

"The joint appendix will be filed with the Court on October 15, 1966."

The remainder of the pretrial order of April 15, 1966, shall remain in full force and effect.

NEW ORLEANS, LOUISIANA, this 13th day of September, 1966.

/s/ JOHN MINOR WISDOM,
Circuit Judge.

Reporter's Transcript of Hearing Before the Three-Judge Court on December 12, 1966.

[1] *

TRANSCRIPT OF PROCEEDINGS heard in Open Court on Monday, December 12, 1966, at New Orleans, Louisiana, before the Honorable John Minor Wisdom, Circuit Judge, Fifth Circuit, the Honorable E. Gordon West and the Honorable Edwin F. Hunter, Jr., United States District Judges, presiding.

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* Figures in brackets refer to page numbers of typewritten transcript.

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Assistant General Counsel

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Interstate Commerce Commission

REPORTED BY

Felix L. Olivier, Official Court Reporter

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THE COURT (Judge Wisdom):

The Court has read all the briefs, believe it or not, and we question whether you need as much time for argument as you have said that you needed. Let first state our reaction to the case generally.

It occurs to us that it is hardly possible that Congress contemplated that the Southern economy should be burdened with supporting Northern commuters from Northern suburbs; and that the difference between the Southern

economy in the transportation area and the Northern transportation area is that we do not have suburbs nor commuter trains to any appreciable extent, and that this is such a difference between the two areas that it is a factor that should be given importance not only by the Commission, but by the Congress, and that if Congress really intended that one area should support another area, that the Congress should say so.

Now, against that is the King case, which may or may not be distinguishable on the grounds of common facilities. But since we do not have commuter trains and suburbs to any appreciable sense casts doubt; and perhaps the King case is inapplicable, because of the great difference between the two areas.

Now, we are open-minded on this question, but this is to us the important question: Should or does the Interstate Commerce Act require and does the Commission have the author-

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ity to, in effect, burden the South with the passenger deficits in the North? We consider that there are some points that are extremely picayunish raised in the briefs, and others if not picayunish, should not be argued. For example the cost analysis point. We see no reason to argue that point. We think that the Commission was fully entitled to use the cost analysis. We think the Commission was fully entitled to issue a supplemental report, and also there is nothing to the argument, or no merit to the argument that the Northern railroads withheld evidence. There was discovery open to be used and so we consider the point insubstantial. There may be other insubstantial points, but we have given you now our general reaction to the case and we suggest that you confine yourselves to important points.

You may proceed, gentlemen.

How much time do you think you will need for argument per side?

MR. TRIENENS:

I think we can open in forty-five minutes and perhaps save fifteen minutes for reply.

THE COURT (Judge Wisdom):

All right. That will be an hour and ten minutes. You speak now for the plaintiffs?

MR. TRIENENS:

Plaintiffs.

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THE COURT (Judge Wisdom):

We have allowed an intervention in this case. How much time would the intervenor require?

MR. SANDERS:

I am representing the intervenor. I think we can finish up our argument in about twenty to twenty-five minutes; no more than thirty at the most.

THE COURT (Judge Wisdom):

Let's see. That would be an hour and a half. We are not going to hold you strictly to the limits that you tentatively fix now; if you need more time, the Court will need more time, and we will just not confine you too closely to any estimate of time.

And I suppose, that speaking for the Commission, you would require about the same time?

MR. CERRA:

About the same time.

THE COURT (Judge Wisdom):

That being so, we think probably the case can be concluded in three hours, but we think it certainly should be concluded in less than the six, the first estimate.

You may proceed now, and will you please state your name for the benefit of the Court?

MR. TRIENENS:

My name is Howard Trienens. I appear on behalf of plain-

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tiffs, southern railroads.

The first item of business in a three judge matter is to offer in evidence the certified record. That is the only evidence and it has been stipulated that is the only evidence to be offered, and we ask that the certified record in Interstate Commerce Commission docket 29885 be received in evidence as Plaintiff's Exhibit Number 1.

THE COURT (Judge Wisdom):

Let it be received in evidence.

No objections?

MR. CERRA:

No objection.

MR. TRIENENS:

We are here, of course—without going into the background of what a division is, the background facts have all been developed—we are here aiming our whole challenge on the legal ground that the action of the Commission which fixed, in lieu of the uniform equal factor, a scale which is forty-five per cent higher in the North for terminals and ten per cent on the line-haul.

Now, I will direct my attention to that imposition of inflation and the grounds upon which the Commission based it and the reason why we think it violated the Administrative Procedure Act.

I think it is also important to note the background

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fact that the Commission has made freight rates on a uniform basis everywhere East of the Rockies, and the divisions today are on a uniform basis between the North and Southwest, on a uniform basis today between the North and Midwest, and were on a uniform basis between the North and South until this case.

THE COURT (Judge Wisdom):

But they are not necessarily between the South and the Northwest?

MR. TRIENENS:

Oh, no; those are on a completely different basis.

Now, as the Court points out, there is a lot of traffic handled by the railroads. The Southern roads, for example, we handle traffic between North and South. This is important; this is a million carloads a year or so. We also handle traffic to the Southwest, to the Pacific Coast; and we handle coal traffic which is not an issue.

But the traffic here before the court is about twenty per cent of our business.

THE COURT (Judge Wisdom):

And when you use percentage figures, how recent—what study were they based on? How recent were the studies made?

MR. TRIENENS:

These studies in this case were made—

THE COURT (Judge Wisdom):

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They must have been prior to '58.

MR. TRIENENS:

The costs are 1956 costs; the traffic figures I was giving you were based on traffic studies made for the last six months of 1958 and the first six months of 1959.

THE COURT (Judge Wisdom):

No effort was made to bring them anywhere near up to date?

MR. TRIENENS:

There have been no petitions to reopen except one. There was one petition to reopen asking the Commission to reopen in light of the northern merger movements.

THE COURT (Judge Wisdom):

And I assume we may take judicial knowledge of the fact or of the certainty of the development of the South in the intervening 9 or 10 years since the studies would show that relatively the South is better off. Is that correct?

MR. TRIENENS:

I'm sure that with the elimination of certain—

THE COURT (Judge Wisdom):

Certainly Florida, Georgia and North Carolina have had a great industrial development.

MR. TRIENENS:

There is a development; there is an evening out and decentralization of industry and the South has benefited.

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The North has grown, but the South has grown faster. There has been a greater demand—

THE COURT (Judge Wisdom):

But all your figures are still, I say, based on pre- or before 1958?

MR. TRIENENS:

That's right, before 1959 for the traffic.

And those same figures—some of these relationships stay the same. For example when we say that the traffic is six per cent of the North, the North still has a huge volume of intra-north traffic. The North is still a huge industrial area. There is intra-north business; there is north to the west business; but the north-south traffic was then six per cent of their business and there is no reason to believe that it has radically changed since then, that relationship.

Now, our problem is that the costs that are before the Court and before the Commission are averages. I want to suggest that several aspects of these averages led to this inflation. Now, the commuter aspect is one of several. I think the legal issue, the legal errors run like a thread throughout.

THE COURT (Judge Wisdom):

Is there anything in the record to show what is the percentage or the ratio of the commuter passenger deficit to the total amount?

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MR. TRIENENS:

I don't think in quite that form. We put in the record some studies, and of course we are not in a position to go out and make studies of the Boston or New York commuter service, but we had the benefit of studies that were made for Congress by the northern railroads when they were going to Congress saying that they should be relieved of this—or that they should be given a subsidy at the time—

saying that whoever paid for it, they shouldn't. So we had some facts as to what this commuter business was like, and used those facts in making the adjustments to exclude the commuter service that we made and advanced on the record.

THE COURT (Judge Wisdom):

Are copies of the transcript of the hearing in evidence?

MR. TRIENENS:

Yes, sir, and the testimony of the witness De Butts and the testimony of the witness Remington talked about the principles and about the mechanics respectively and is all in the certified record.

How did it all happen? And I want to direct myself specifically to the commuter, but I also want to show the common thread running through these several matters. These all arose from the use of an average cost formula. I want to make it perfectly plain to the Court that we are not going to ask this Court to review the accuracy of any Commission cost formula.

[11]

The point is that the formula used embraces the whole territorial average figure, and that was the intent. Now, we have cited in a footnote in our brief, and I want to emphasize at this time, that the case in which this cost formula was used rail form A, the case in which that was first promulgated was the class rate case, 262 ICC 588.

THE COURT (Judge Wisdom):

You don't have to read the citation.

MR. TRIENENS:

They made it perfectly plain that the intent of the cost system, the purpose of it all, was to measure territorial averages.

THE COURT (Judge Wisdom):

What is the case you referred to?

MR. TRIENENS:

It's the class rate case before the Commission, page 588. The intent was to measure territorial average conditions. Now, that's grand; we are not attacking here the accuracy of that formula to measure what it was intended to measure.

Now, the first thing that it seems to us that you do in one of these cases, under the Chenery principle and otherwise, since the Court is not here to decide the case at large, but the Court is here to review the lawfulness of what the Commission did. So the first thing that you have to do is find out what grounds did the Commission itself rely upon; because

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if that ground cannot be supported, it isn't for this Court to start over again and decide the case if the ground the Commission relied upon is unsupportable, or it was not supported by adequate findings or substantial evidence, back it goes before the Commission to start all over again. The first thing we have to do is go to the Commission's report and see exactly where the ultimate order came from. Now, they make it quite plain, their scales come from the costs, nothing else—from the costs. What do the costs represent? Are they supposed to represent some big old broad average of everything, or are they intended to represent in this case the costs of this north-south traffic that is at issue—the cars going from New Orleans to Cleveland, for instance. Well, this is also made plain by the statement in this case. They say that the costs they are concerned with are the costs of the parties reflecting their respective operations as to this traffic, this traffic, the north-south traffic. On

page 50 of the report and again at page 26 they said "the costs which are attributable to the traffic at issue." This traffic. Page 56, "the purpose is to measure the cost of services under the line-haul rates to be divided",—the north-south traffic. So the first point that we reach is: given what the Commission said its exclusive basis was, and given the kind of costs they set as the standard, the cost of north-south traffic, does the ultimate

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order respond to that in the sense of being supported by findings and substantial evidence? That is the first thing we have.

THE COURT (Judge Hunter):

Is it your position that if the Commission's order was based on specific traffic involved, or do you concede that it was based on passenger traffic as well?

MR. TRIENENS:

Here is the problem. The stated standard is cost of this north-south freight traffic. That is the standard they stated.

THE COURT (Judge Hunter):

You are saying that what they said is that they considered the standard as nothing else than the specific freight traffic?

MR. TRIENENS:

That is what I understand that they said.

The purpose is to measure the cost of service under the line-haul rates to be divided. That is what they said.

I would also say that when you get right down to the specific areas where the inflation arose, they didn't do that; they didn't follow their standard, and the specific elements from which the inflation arises are not under that standard,

they are not rationally supported by reasoned findings and they are not supported by substantial evidence as to the

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cost of this traffic. I also want to make it plain before I go into anyone of these individual ones—commuter or otherwise—we are not talking about northern railroads costs across the board; we are not talking about generally how much it costs to pay engineers, or how much it costs to pay crews, or how much it costs to pull the train, or how much it costs to maintain the roadbeds, or how much it costs to maintain the buildings; the reason we are not talking about that is that is not where the inflation came from. Most of the costs taken together aren't any higher in the north than they are in the south. It's because of several specific areas that this inflation arises. They get the ten per cent higher line-haul because some things are thirty-two per cent higher, some are eighteen per cent higher—a couple of these averages are very high, the Commission used them, and this is what accounts for the inflation.

Now, the Commission in its Appendix B did take those up item by item, so they recognized they had to deal with them. Now, I will get to several of them to try to show that there is a common thread cutting across this. I will deal with several of them to show that the Commission's approach was unlawful, that there is no support for the inflation as prescribed.

Now, the first one we discussed in our brief, the one I talked about is the commuter problem. Here we have to dif-

[15]

ferentiate the problems of the passenger service as exists in connection with freight service, and that which is separate. By "separate" we use the phrase "solely related", which is a phrase that means it is solely related to commuter, sep-

arate tracks, separate buildings, separate everything. We take a southern railway out of New Orleans to the north. It goes across the Lake Pontchartrain. Freight trains go across the bridge and passenger trains go across the bridge. If we didn't have any passenger trains at all, we would still have to maintain the bridge, it's a common cost. Now, if the passenger train pays for the maintenance and contributes toward it, that is wonderful, it should, and under the Commission's formula it does; if it can't, we have to maintain the bridge anyway, so it's entirely proper and we do not attack the idea of embracing passenger deficits measured on a fully distributed sense in maintaining the bridge. We don't take any quarrel with reflecting that kind of passenger deficits in the cost of freight traffic, becuase if the bridge was there and the passenger train wasn't going over that bridge, we would have to maintain it anyway for the freight. The only problem we raised before the Commission was what we regarded and what the northern lines told Congress they regarded as a separable part of their operations, namely this commuter business. And I emphasize the separability, because it does differentiate the problem.

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Of course, the northern lines take the view that the southern passenger trains don't even pay for their own solely related costs, if that be so, we dealt with that in our brief, the answer is take it all out, and we would be ahead if they took all of the deficits on solely related costs out.

But now the question is: why do you charge any of these costs of these solely related commuter costs to north-south freight traffic? Why? Now, we don't reach the question that your Honor posed this morning. We have not reached the question of whether they have the power to do this. The reason we don't reach it is this: The commission had a long investigation about what they should do with

passengers. The Commission, as a matter of policy, one of their policies—the Commission recommended to Congress that as to commuters, the States and local communities ought to support their own, and we are not attacking that policy, we think it is sound. The question is why did they depart from it in this case.

THE COURT (Judge Wisdom):

Is that policy enunciated by the Commission other than in the hearing?

MR. TRIENENS:

It was announced by the Commission in its findings in the so-called passenger deficit investigation, the report was issued in 1959; it's one that has been announced again recent-

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ly in what the Commission said about the Penn-Central merger, it's a policy which a number of northern communities have acted upon to undertake to cure this problem.

THE COURT (Judge Wisdom):

What is the title of the report?

MR. TRIENENS:

Rail Passenger Deficit Investigation.

THE COURT (Judge Hunter):

Is that cited in your brief somewhere?

MR. TRIENENS:

Yes. Railroad Passenger Deficit Investigation, 306 ICC 417, the particular recommendation is on page 483.

Now the reason we don't think we get to this question of power here, and I don't think we ever will, gets back to this: the Commission has here found north-south freight

traffic costs are the same; the Commission has also found as a fact that many, using the words of the Commission, many tracks, yards, stations, and other facilities are solely related to commuter service. Given that standard and that finding of fact, what is the rational basis for attributing any, any solely related commuter costs to the north-south rates? Before you get to the power, the duty of the Commission is to state the reasons or bases for its decision, and failing that, the duty of the Court, we believe, is to set the order aside and send it back to the Commission to do the job.

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Now, when it gets back, it may well be that this issue will vanish from the case, and the question of power will never be raised again and that is why we didn't reach it.

THE COURT (Judge Hunter):

Sir, you said earlier, when you set forth the standards, general standards are what the Commission sets them out to be. Do you agree with that standard?

MR. TRIENENS:

As far as—

THE COURT (Judge Hunter):

I mean do you think it should be limited to the specific traffic involved, as you say the Commission did?

MR. TRIENENS:

We argued the case before the Commission and took the position throughout on these cost issues, that the cost of this particular traffic were a test of the fairness of divisions, if—and only if—and we spent the whole case litigating these questions or areas of inflation—if it is proved that somebody has higher costs; we said as to each of these

items that we have to prove that it's for other reasons. Now, when you get to that point and you show the higher costs, we believe we did show it for the south, because of the apparent lack of industry at this time, we felt that that would be a proper standard to use. Now, we recognize also, a matter that counsel for the intervening plaintiff will go

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into much more directly, that there is a general policy question of whether you should depart from uniformity. In the past the Commission had always let the measure of the rate, equality of the rates govern the share that the railroads took and we feel that that policy is strongly imbedded in the practices of the Commission and again there is no rational explanation to depart from it. We think there is no real difference between these two for these reasons, that if you get down to the inherent cost of these several railroads, north and south, there isn't any difference, they are all hauling the same cars over the same size tracks, buying our engines from the same places, there is no showing of any great mountain ranges that they have that we don't. We think that if there are any differences, that we don't believe have been shown, as to what is in fact the cost today, we think the cost is transitory; there is no inherent reason why it should cost any more to haul a car across Ohio than it costs to haul one across Tennessee or Mississippi. So we don't think there is a great difference how you go at it.

THE COURT (Judge Wisdom):

You say the Commission has departed from its standard of policy. Is there anything wrong with the Commission reaching the conclusion that its former policy was wrong?

MR. TRIENENS:

No. There is nothing wrong with it, but if they do it,

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if they do it, they have to explain why they do it, so if it goes beyond their power, you can then attack that in Court and you will know what policy it is they are adopting and you can contest its legality. And also, if they state what they are doing and Congress doesn't like it, they can change it.

But I don't think there is anything wrong with the Commission changing, but in the first place it has to make findings as to what it is doing, and its burden to make findings is all the greater when it has previously announced a policy like the commuter deficit policy, or the uniformity policy, and then it changes, its duty is all the greater to tell the Court what it is doing.

THE COURT (Judge West):

Is it your position that the only improper inclusion by the Commission was the commuter deficits?

MR. TRIENENS:

No, sir.

THE COURT (Judge West):

What else was included improperly besides the commuter deficits? The reason I ask is that I understood you a moment ago to say that rates and divisions should be based on uniformity of traffic involved, the rates to be divided, and the cost of hauling that particular freight. What else should be included, if anything?

MR. TRIENENS:

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Now, another item—this is something different only in this sense, it is proper to include the cost of so-called interchange handling. Now an interchange is when we take a car from New Orleans to Potomac Yards and Southern gives it

to Pennsylvania Railroad, a switching service is called an interchange. It's proper to include in costs the cost of an interchange handling, but what isn't proper here and not supported by any evidence whatever is to use a cost fifty-eight per cent higher for the service performed by the northern railroad in the same Potomac yard in handling and interchanging the same cars, on a record that shows that the costs at that particular place are identical.

Or if you go to Cincinnati, L&N to Cincinnati, and Central beyond, they use a cost fifty-eight per cent higher just because it's a territorial average for the northern road handling the same car at the same terminal area, when such evidence as there is on the subject shows that the services are equal and there is no evidence whatever to show that they are any higher.

We don't object to their including interchange costs in a cost formula, but we do object to the use of territorial averages fifty-eight per cent higher where there isn't any evidence showing it was any higher, much less fifty-eight per cent higher. That is typical we think of the lack of substantial evidence.

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It also raises the kind of problem that the Commission never did undertake to explain with any reasonable findings as to why or how the costs could be any higher for the northern lines for the north-south traffic; nor did they explain why the northern lines shouldn't have the burden of proving and coming forth with evidence that the cost of interchange in the north-south traffic was higher.

THE COURT (Judge Wisdom):

Now, is that an indirect result of using the commuter costs in the total figure, in the end figure? I mean the interchange costs.

MR. TRIENENS:

Is this the indirect result of using—It's the indirect result of using an average and applying it to a situation where there is no evidence that this average relationship of fifty-eight higher has any factual application.

THE COURT (Judge Wisdom):

That would be true with any average, would it not? That is the reason we use an average to get away from adding all the actual costs.

MR. TRIENENS:

One of the reasons you get away from the average is if the factual situation you are measuring—in this case, we believe north-south traffic you should not use an average of something else. It's all right to use an average if you

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made studies of all north-south traffic, but you can't take an average of something that is white and apply it to something that is black.

THE COURT (Judge West):

That is the reason I asked you about what should not be included. Now which is it, the inclusion of the interchange handling or commuter services in the territorial averages that made that figure fifty-eight per cent?

MR. TRIENENS:

No, I don't believe it's the averaging of the commuter services. All we know about this is that the north has a lot of traffic that interchanges with western lines at Chicago, interchanges within itself at Buffalo, and interchanges across New York harbor. Ninety-four percent of their business is somewhere else. Now what they do with that, what the costs of all that are, controls the average; that is why

the average gets the way it is. We have nothing to do with that. But then they come down to these border interchanges and bear in mind this is a border interchange; that is a separate element that the Commission itself built into this scale.

THE COURT (Judge Hunter):

Did you consider a statement by the Commission that the differences between the parties as to the cost evidence runs to the degree to which the territorial average costs should be modified to fit the specific traffic at issue as

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being a fair statement of the differences?

MR. TRIENENS:

I think it states it the other way around. I think the way we went at it was: "You claim your costs are higher, we put in evidence to show it was as to these critical elements which accounted for the inflation." We said there is no proof, no basis for thinking—lots of basis for thinking the other way around—that these averages which have inflation, show anything higher as to this traffic. Now, they come around and state it that way, which I don't think quite states the issue as we were presenting it to the Commission.

The question is that a fellow comes in and he wants an inflation—

THE COURT (Judge Hunter):

You agree if there were territorial averages that you would make adjustments for it, wouldn't you?

MR. TRIENENS:

We would—unless we could prove that the cost for a particular element was higher in the south, unless we could

do that, we felt we would be stuck with the territorial averages. And we did. We isolated out, one of our cross exhibits, isolated out the parts of the territorial average costs that accounted for the inflation. Why were northern costs higher? Are they higher because they are ten per cent higher on everything? Oh, no, we isolated out those elements

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which accounted for the inflation, and those are the ones we have been litigating about, those particular ones.

For example, another one, these car costs. These costs on the average are about thirty-two per cent higher in the north. There is no doubt the average is thirty-two per cent higher; we are not challenging that as being the average. That is what the average is. The average is a mixture of hopper cars carrying coal, and L&N cars on the Pennsylvania that is not at issue in this case; it involves west-east cars that is not an issue in this case. We don't claim that the average is not thirty-two per cent higher, we say that there is every reason to believe, and no basis—no substantial evidence to the contrary—that the cost of handling the same car from New Orleans to Cincinnati is any higher per mile in the north than it is in the south.

So we think we told the Commission how come. We think we told the Commission why that is a result of the per diem rental offset against the car cost, and there is no doubt that a car renter, a fellow who rents cars, shows very low cost. So what has that to do with north-south traffic?

We have gone through their findings and analyzed them and we think we've shown why the average got there for reasons that don't have anything in the world to do with north-south traffic. But whether we are right or wrong about whether we proved our case, what is the rational finding? What is the

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evidence that supports a finding that the costs are thirty-two per cent higher per mile to haul the same car a mile in Ohio than to haul the same car in Kentucky? Was there any evidence to support it? Well, it's an average. That's all right, we are not saying the average is not accurate, but what is the substantial evidence as to this traffic, which is supposed to be the standard?

Now, I won't try to go through each and every one of these, but I do want to show that this thread goes through a number of these. Now the last one I'll mention is this empty return business.

Assuming all the costs were equal, everything else is equal, the northern lines would show higher costs in this formula because it hauls more empty miles per loaded car on this average, and we don't deny that. The average studies show that the northern roads haul more empty miles per load than the southern do. How come? That doesn't seem to be very efficient to haul more empty miles than the other fellow. Why is it? Is it inefficiency? Something inherent in all traffic in the north? Is it something that is caused by the north-south traffic in the north? We searched this Commission report in vain for any explanation as to how this empty hauling is any higher in box car traffic in the north than in the south. We came along and we undertook to show why it happened, because this average is an average of unlike things.

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There are some cars in there that are special, hundred per cent shuttle cars, they shuttle empty-loaded, back and forth, back and forth between the auto assembly plants and the auto parts plants. So that kind of car will have very high, hundred per cent empty return, even though all other box

cars are floating around the territory say thirty per cent. When we average these together, obviously the fellow with most of these shuttle cars will have the highest average. We said if that is so, it ought to show up in Detroit, and lo and behold it did.

Now what did the Commission say about all this. What finding did they have to show why the empties are higher in north, and what did they say about our Detroit figures? Oh, that may be a coincidence caused by some unknown factor. Who in the world would know? The northern railroads. Yet the Commission goes right ahead and uses the average of quite unlike things and comes out with a higher average and applies it to the north-south traffic without any showing how it can be properly applied. There is no substantial evidence to support a higher empty return in the north-south box cars. Now, the same reasoning applies to the refrigerator cars.

I don't want to go through each of these items, but I do want to indicate that besides the commuter problems, there are these other elements, problems, legal problems which are essentially the same: the lack of substantial evidence to show

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that the services are any higher on the north-south traffic. We are not asking—at this phase we are not asking the Court to depart from the Commission's own announced standard; we are simply asking for a finding of whether there is substantial evidence to support this inflation.

Now, we think perhaps that one of the reasons, practically, is that the Commission didn't pay attention, as required, to what we call typical evidence. Now typical evidence is nothing more than evidence relating to individual rates as we have been talking about. If they had thought about the problem from New Orleans to Philadelphia or

New Orleans to Cleveland, if they had thought about this traffic, then we think they wouldn't come to the really unsupportable use of these averages.

But whatever the cause, the net effect of all of these critical cost issues is that inflation does rest on averages, and when you bring in something extraneous like commuter service, you are bringing in something that has nothing to do with the traffic, or when you bring in the interchange you are bringing in something that has no rational relation to the particular cars or empty returns, and they apply these averages to north-south traffic when there is no supporting evidence.

Now, I realize, and I want to make this perfectly plain to the Court, that we realize that the factual questions are

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for the Commission. We also know that the Commission is the expert on costs, but we further know that any time you take costs, a sort of fog envelopes the whole area and things become obscure and there is a tendency on the part of all lawyers, and I don't exclude judges, to say, "We will not get into costs." We don't want to have the Court take in costs in that sense. We do know however that Congress in the Administrative Procedures Act made it perfectly plain that the discretion of the Commission is not unfettered and there is such a thing as judicial review and that judges do have duties.

We also know from our experience in recent years that this Administrative Procedures Act is intended to have teeth. And the word "teeth" is one that I picked out of Judge Doyle's opinion in the case out in Colorado. We think that these errors—we have discussed the lack of substantial evidence, and the lack of reasonable findings—we think it is perfectly plain what the Commission did and what they failed to do and the Court will thoroughly under-

stand these points. We want to go along, but when the lawyers don't understand what the Commission did, is that a ground for upholding the Commission or is that a ground for setting it aside?

Now, we had a number of cases in this area—reasons and bases must be clearly stated according to the Administrative Procedures Act—held that the necessity is greater—the necessity for stating the reasons is greater if the

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matter is complicated. It doesn't make it less important, it makes it more important. As Justice Cordozo once said, and the Supreme Court has repeated many times, the Court must know what the decision means before it becomes its duty to say whether it's right or wrong.

In our reply brief we cited a recent decision of the Court of Appeals of the District of Columbia on the government of Guam. The case we cited at pages 26 and 27 of the reply brief; we didn't have the Federal Reported citation, the citation is 365 F(2) 515, that case involved—

THE COURT (Judge Wisdom):

What is the citation?

MR. TRIENENS:

It's 365 F(2) 515. The case involved a finding problem involving a fairly exotic area of cost per working capital—a lot more difficult than this case, but the Court insisted that the Commission make sense on the subject. It must be adequately supported with reasonable findings. The numbers didn't make sense to the Court, and they were required to make sense or it would be set aside and remanded. It's the sort of thing involving the elements of a cost formula that we have before this court.

THE COURT (Judge Hunter):

Sir, you say you have no quarrel with the standards as set forth by the Commission. Do you consider that that stand-

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ard as set forth by the Commission—do you consider that standard permits consideration of passenger deficits?

MR. TRIENENS:

Permits consideration of passenger deficits upon a finding that they are common with freight service and properly a part of freight service, like the question of Lake Pontchartrain bridge, it's used in common and must be maintained in any event for freight service.

THE COURT (Judge Hunter):

And to that extent you agree with the Commission that you should consider suburban commuter traffic?

MR. TRIENENS:

Yes, sir, and the Commission found—

THE COURT (Judge Hunter):

Do you think the case ever got that far? Of course, if it's common it doesn't make any difference.

MR. TRIENENS:

That's the point. You see, the Commission said there are some things—they don't say how many, they never did—they say many items are solely related, other items are common. Now, we would agree that if there was a factual showing by the northern railroads which has never been made as to the part that is common, it has the same effect as this Pontchartrain bridge—they need the tracks there for the freight service, well, then that would be a comparable situation, and

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I wouldn't quarrel with it, but when there are many solely related items on which the northern lines alone have the basis of showing—

THE COURT (Judge Hunter):

Do you quarrel with the fact that the Commission did not set out precisely these common costs? I am talking about the common costs with suburban and suburban-commuter traffic.

MR. TRIENENS:

Yes, in two senses, one of them is that on this record I don't think they could have set out precisely that factor. We put into this record everything we could lay our hands on, including the study of the northern railroads had made. We put in this in our effort. They were given an opportunity to reply on this subject as to the separation of factual matters involved, but they remained silent. Now, we have quoted in our direct evidence this very point that we have got in our brief on the northern roads going to Congress, and they said that one of the common fallacies and misapprehensions in this business is that these matters are common; that there was a wide misunderstanding by the public, and they say it is a false belief that they use primarily those facilities which they must have and maintain for their operations. The northern railroads are telling Congress that there is a wide misapprehension on it.

THE COURT (Judge Wisdom):

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I can't help repeating our feeling, however, that present in this case is the fact that we don't—that in the South we do not have passenger service reflecting the development of suburbs and commuters going to New York or

going to Boston or Philadelphia, and shouldn't it make a difference that there is a cost, even if it is a common cost, in the North that is not a cost in the South?

MR. TRIENENS:

I couldn't agree more with that. The only problem it raises at this posture of the case—

THE COURT (Judge Wisdom):

That is not only a question of power, but it is also a question of policy in that it goes to the rationality of the Commission's decision.

MR. TRIENENS:

I agree with that. The only qualification that I have on that is timing. I don't believe, personally, if this case gets back to the Commission for them to state how they reconcile what they did here with the policy of putting this burden on the local area, and if they have to state this rationality about common cost, we will never hear of the problem. I don't think that it's necessary for us, and I don't urge the Court to make this a case going to the Commission's power and the reason is that I don't think when they level on it they are going to come out this way.

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THE COURT (Judge Wisdom):

It may be and I still have an open mind on it, and I have not heard from the other side yet, but it seems to me that the question is there, and it's there both in terms of power and in terms of policy and it involves the reasonableness of it.

I am sure that opposing counsel will listen to what I am saying and I expect to hear their remarks from them in a few minutes.

MR. TRIENENS:

The reason I say—I suppose you think counsel will come in here and they want to stage the fight on the question of basic power and that that may be our approach, but the reason I don't do that is not any lack of confidence on this question, but we have had the experience in the last several years—

THE COURT (Judge Wisdom):

I know that sometimes the Courts of Appeal go off on arguments that are not made by counsel and this might be such a case. I understand your reasons, you would rather attack it on policy than on the more difficult constitutional question.

MR. TRIENENS:

No, not policy.

THE COURT (Judge Wisdom):

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Say that they failed to follow their standards, the policy having been set.

MR. TRIENENS:

They didn't face up to the question either on the factual question of how many of these are common or solely related, or if it's a policy question, they should state the reason. I don't suggest to this Court this is a policy question. I'm sure, and I will state in a minute why I feel this way, that if the Commission is required to go back and face up to this question of what it did here and what it did elsewhere, that it will come out right.

THE COURT (Judge Wisdom):

In other words you are saying though that the Commission had a policy which it departed from.

MR. TRIENENS:

Didn't even recognize it.

THE COURT (Judge Wisdom):

You say did not follow even its own standards.

MR. TRIENENS:

In two senses, one its standard in commuter business and the other its standard as to north-south freight traffic, didn't follow it.

THE COURT (Judge Wisdom):

To me the net effect of it is that the South must shoulder the burden of supporting trains which have to run commu-

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ters, trains that have to run for commuters.

MR. TRIENENS:

No doubt that is the effect of it.

THE COURT (Judge Wisdom):

To me that is the important question.

MR. TRIENENS:

There is no doubt that is the effect of it, there is no doubt as to the importance of it, and there is no doubt that the Commission failed to face up to what it was doing, although we spelled that out exactly through the President of the Southern Railway.

THE COURT (Judge Wisdom):

It's impossible for me to believe that the Commission didn't actually face up to it. It's certainly obvious that they did. They are not sticking their heads in the sand.

MR. TRIENENS:

I would like to show why I think that may not be so, and the reason is this: I have been through this routine with them on other occasions, on other subjects, and I would like to tell you just what happens and why we think this is the way it worked out. We had a very technical question, a more or less technical question of scale construction present how the long hauls work, and short hauls; the Commissioner's examiner and technical staff had their theory and their theory didn't make any sense and was never supported by find-

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ings, but they didn't pause over it, they said "Let go and do it this way." We took this out to Colorado, Judge Doyle did not try to tell the Commission what the case should be, he said, "Now you have got this scale, you have got to take it back and you have to make reasonable findings and you have got to support those findings with substantial evidence."

When it got back to the Commission—and now I am talking about the Commission as distinguished from the staff—it got back to the Commission on remand from the Court, the Commissioners themselves—either themselves or through a new group they assigned to it, faced up to that question, and found that the practice they had over the years unlawfully, as they put it, hurt the long haul carriers and they completely changed it around. Now, here you have got a problem, and I am not going to get into the legality of the Commission resorting to the cost test, but what this case desperately needs in all these areas, not just some areas, is not for, we think, the Court necessarily to pass upon the question of power, but to send it back to the Commissioners to face up to this either themselves or through

someone else who has been obtuse to these questions, to look them in the eye, and we think we will get a very different answer if they do. I don't think we will ever see this particular question because I think the Commission is a responsible body. I think if this Court sends it back—

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THE COURT (Judge Wisdom):

I think the Commission has an exceptional record for being a well-run agency, and this is the general opinion of people that are better informed than I.

MR. TRIENENS:

But I think there are cases where the Commission's staff goes along in a particular direction, and I think that the use of averages is irrational and is an unsupported application of their own. This is a question where if they are required to face up to the hopeless incongruities, like the commuters and interchange of cars, they will face up to it, and it will really change the whole treatment, I think, far more, than if a particular issue was picked out and the question of their power to do it.

Now, I want to say in response to the question of whether we accept this standard or not, that so far we have accepted it for the purpose—the cost standard.

THE COURT (Judge Wisdom):

You have used about fifty minutes. Like I said, you needn't confine yourself too closely, but I want to remind you if you want to save some time for rebuttal.

MR. TRIENENS:

I will have about three or four minutes more.

I just want to say, and I think that I can pass this, the other questions that are raised, economic consequences,

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failure of the Commission to face up to the use of cost standard, these matters will be dealt with by counsel for the intervening plaintiffs and therefore I won't pause over that.

The last word that I would like to say is that the only aspect of this order challenged before this Court is this inflation; that is all I have been talking about.

I would like to address myself to the idea that if any part of this order falls, the whole order has to fall. I think that such a course, of course, would be inequitable to the long haul carriers who have been able to convince the Commission that they ought to obtain relief from prior prejudice. This doesn't have anything to do with North versus South, this is long versus short wherever you happen to be; no party has challenged that feature of the Commission's action. We don't think this involves the Court assuming jurisdiction that was not given by Congress; we don't think we are asking this Court to get into the position of having to fix what reasonable divisions should be. The choices are spelled out in the alternatives and in the interlocutory injunction.

Thank you.

THE COURT (Judge West):

Let me ask you one thing: Summing up, as I understand it, your position would be that if these northern railroads

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supported their higher costs and if the Commission had reason to believe they sustained their cost position, then you would say they had the right to issue their decision? You keep saying face up to it.

MR. TRIENENS:

I would like to respectfully avoid some of those assumptions only for this reason: We think if they go back on something like the interchanges, and frankly you can't find substantial evidence to make black white, and I don't think we will ever come back.

THE COURT (Judge West):

I understand. What you are simply saying is that they did not give reasons nor make findings that there was evidence that the excess costs were attributable to north-south traffic.

MR. TRIENENS:

That is it.

THE COURT (Judge Hunter):

I guess you could put it another way: That once you depart from uniformity, that then you have got to state specifically why and on what evidence.

MR. TRIENENS:

That's right. Now, the things all converge in this case. The northern lines are the ones that want the inflation; the northern lines are the proponents in this particular

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case and they have the burden of proof. You can take it any way you want, but either way you come up with the same thing.

THE COURT (Judge Hunter):

But previous to this it was equal mileage, equal pay?

MR. TRIENENS:

If you did half the work, you got half the pay.

THE COURT (Judge Wisdom):

Mr. Knight, will you state your name for the record, please?

MR. KNIGHT:

Nat B. Knight, Jr., Gretna, Louisiana, I am a member of the bar of this district.

Your Honors, interventions have been filed by two groups, the Southern Governors Conference and the Southeastern Association of Railroad and Utilities Commissions. I am a member of the latter group, and I wish to present to this Court a member of the former. He is a very distinguished attorney and practitioner in the State of Georgia, in the Federal and State Courts, as well as the Fifth Circuit and United States Supreme Court. And, at this time, I would like to present to the Court and move for his admission to the bar, the Honorable Carl Sanders of Georgia.

THE COURT (Judge Wisdom):

Governor Sanders, the Court welcomes you to the bar; we are very happy to have you here today, and we feel honored

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to admit you to our bar of the Fifth Circuit.

MR. SANDERS:

Thank you, very much.

THE COURT (Judge Wisdom):

To the Eastern District of Louisiana, I should say, just to keep the courts straight.

MR. SANDERS:

It is a real privilege to be here and I had hoped that I would resume the active practice of law on January 10, 1967, but recently we have had some problems and I might

add that one of my aides has just brought me word this minute, that the Supreme Court of the United States apparently—this is a curbstone opinion because I have not seen it—has just ruled that the Legislature of Georgia will have the power to select the governor. If this is true, perhaps I will have my wish and I will be back in the active practice of law on January 10th. I commend the Court for their wisdom, because otherwise we might have gone on ad infinitum in my state with elections.

I might say, too, that I have had the privilege of being governor for four years and I am delighted to appear in front of this distinguished tribunal to advocate the elimination of discrimination. I have done that on other occasions on other matters and I am glad to do so in the freight rate divisions factors.

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I have been the chairman of the Freight Rate Committee of the Southern Governors Conference for four years. In that period of time I have had the privilege of trying to keep up with some of these problems in the South. I am not going to make a political argument here this morning; I am not here for that purpose. I am trying to logically and reasonably give my reasons for why I think this ICC Commission order should be remanded.

I feel like, first of all, that we should go back for a few minutes, if I might, to recall to the Court's attention that in 1934, the Southern Governors Conference was formed on the burning issue of freight rate discrimination. That is how the Governors Conference started. In this present case, throughout the hearings before the ICC Commission, our Conference and the Southeastern Association of Railroad Commissioners and Utilities Commissioners were represented by special counsel Mr. Rubin Crim of Atlanta. Mr.

Crim as you probably know lost his life along with many others in this awful crash that was in Paris.

And so today, at the request of my life-long friend, Mr. Walter McDonald, who has been a commissioner of the Public Service Commission in my State for more than forty years, and who is in this courtroom today, I have been asked to come and make this argument for the Commissioners and for the Southern Governors.

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I want again to say, if I might, to the Court that I honestly and sincerely believe that there is no issue today in our country, and particularly in our Southern part of the country, that is more important to the citizens of the South than to try to rectify the order of the Commission in this case, because we feel if it is allowed to stand and allowed to remain, will recreate that age old division of North versus South.

I think, too, that if this Commission's order is allowed to stand, it reimposes that artificial barrier, the barrier that I think the Court is familiar with, the barrier which we feel is as formidable as the Great Wall of China, and which was finally toppled in the landmark decision of the United States Supreme Court in the case of New York versus United States almost twenty years ago.

Gentlemen, if the Court pleases, the question, of course, is a matter as it now stands of some sixteen million dollars that will be required in dollars and cents that the Southern railroads and the Southern people in my argument, I would say, would have to pay. The question of inflation on the South, the question of this money I might pose this question: What would it buy? What does it mean to this part of the country? For instance we could with this sixteen million dollars involved in this litigation, we could purchase 640 Big John Hopper cars to bring feed to our growing livestock

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industry; we could purchase over eight hundred fifty seventy-ton fifty-foot box cars to carry our manufactured products to the markets of our country. We think this is of paramount importance, but above and beyond this question of money, we think the real issue in this case this morning is a matter of principle and is not really a matter of money.

The Southern Governors I might point out, and I think this is very important,—the Southern Governors did not intervene when adjustments were made in divisions to reflect uniform rates. We were asked to intervene when this was done, but we did not intervene when judgment was granted in those cases. However, we feel this morning that we have a very different situation; we have here before this Court the very life blood of the South, and that is uniformity of rates. Once this principle is abandoned, we feel that it is being abandoned in this case, there will be nothing to hold on to. For those for whom I try to speak today, I might also point out, that they have defended the citizens in the South in their fight for uniformity of rates and for rail transportation—uniform rail transportation rates for nearly thirty years.

We might go back to 1937 when we begin there with the Southern Governors Commodity Rate case; that was continued on into the halls of the Congress of the United States and it resulted in an amendment to the Interstate Commerce Act

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of 1940 when they established in Congress the policy which I quote "the maintenance of reasonable charges for transportation services without unjust discrimination, undue preference or advantage" and they added to Section 3 Sub-Paragraph 1 of the Interstate Commerce Act that specific provision that it shall be unlawful for any common car-

rier to make, give or consider, any undue or unreasonable preference or advantage to any region, district or territory or subject any particular region, district or territory to any unreasonable preference or disadvantage in any respect whatsoever.

Now, on the 3rd of February, 1965, in this case, the Commission, as we already know, they prescribed a new division formula; they prescribed a formula that gave the Northern railroads forty-five per cent more than the Southern railroads for each terminal service performed; they gave them ten per cent more than the Southern railroads for each mile line-haul service performed, the sole basis of that order, according to our interpretation was a finding that the Northern Railroads incurred a higher cost for handling of the north-south freight traffic.

The finding of the Commission in this case did not attempt—I repeat, the finding of the Commission in this case did not attempt to dispose of the issues that were raised by the Southern Governors or the Southeastern Association of Railroad and Utilities Commissioners.

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The Commission simply assumed that the cost differences reflected inherent differences in transportation conditions, such differences as would allow the abandonment of the principle of uniformity and they thoroughly ignored our contention that even if inherent differences in transportation conditions did now make rail services in the North more costly, then the burden should be borne by the northern shippers and should not be imposed upon the Southern economy.

It appears to me that the Commission in its efforts—I say this not facetiously—may have attempted to arrive at some conclusions and in arriving at those conclusions they have tossed the baby out with the bath.

I would like to pause here, if I might, and point out if I might to the Court, that if you look at the Webster Dictionary, and you look at the definition of the word "inherent," when we talk about inherent territorial disadvantages in the North as compared with the South—I just simply would like to point out that the simple definition of the word inherent is defined as being involved in the constitution, the essential character of something. And we believe it is very obvious from the record in this case, that the cost differential between the north and the south does not arise from any inherent territorial disadvantage, and it is not involved in the constitution or essential character of the territory. Our specific grievance to the Court this

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morning is that the Commission examiners and the Commission itself refused to face up to the questions and to the issues that we raised. We contend that under the law that they must deal with these before a proper decision on divisions could be reached.

The basic question in this case is whether or not there had been any showing in the case sufficient to abandon the principle of uniformity. Now, in our view there are no differences between the north and south which would justify an inflation in the northern railroads' division.

Certainly the cost differences relied on by the North do not prove such a justification even if differences really exist, and this seems to us to be doubtful for many reasons already discussed by counsel for the southern railroads; such differences reflect not inherent differences between the territories, but they reflect temporary situations which will be evened out by the normal working of economic factors if these forces are not restrained by artificial factors.

In my preparation for this appearance this morning I went back and not only read the briefs, not only tried to

examine the record, but I went back and read an address by Mr. Walter McDonald which was made before the Southern States Industrial Council on December 10, 1941. The subject of Mr. McDonald's address at that time was, and I quote, "The South's Industrial Economy in Relation to the

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Pending Class Rate Investigation." In his magnificent dissertation, Commissioner McDonald very clearly set up example after example of industries in the north and industries in the south, and he set up the vast differences in the frieght rates for similar hauls to and from their respective territories. In that particular discussion he quoted Mr. E. R. Oliver of the Southern Railway System, who was vice president at that time and who had this to say twenty-six years ago as to the policy of the northern railroads—and I quote: "The policy is to build a rate wall at the Ohio and Potomac Rivers which will prevent or greatly curtail the movement of southern products into official territory."

And then we respectfully contend here this morning that if this same policy which we contend is being re-established under this order of the ICC Commission, that this policy will be re-established by this present order, if that present order is allowed to stand, and we would like to see that order remanded.

In another paragraph in that address, if I might please the Court, I would like to quote from one of the ablest lawyers in this land, who was then a United States Assistant Attorney General, that was Thurmond Arnold. Mr. Arnold, who in his discussion of monopoly in the south, I think, that he summarizes the crux of the South's economic problems

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very clearly, and here is what he had to say: "The indus-

trial East had been the mother country; the South and the West have been the colonies. The colonies have furnished the mother country with raw materials; the mother country has been exploiting the colonies by selling them manufactured necessities at artificially controlled prices. The industrial East has been the source of both capital and organization to develop the South and the West. Under such conditions, it has been natural enough that the South and the West have been developed in the way which would contribute the most to the domination of the Industrial East. Whenever it has interfered with the Eastern Industrial Domination, the competitive energy of the South and West has been stifled. Local independent capital in the South and West have been gradually disappearing; local independent enterprise have been under a constant handicap. How all this happened is a complicated business."

THE COURT (Judge Wisdom):

Is there any evidence in the record which would show what effect the order might have on the northern and southern areas?

MR. SANDERS:

I believe that there is some evidence in the record that would show that it would have some effect on the location of new industries into the South, yes, sir.

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And I want to cover a point of economic factors that you raised in just one second.

To finish this, Mr. Thurmond Arnold said that "big business has treated the South and West primarily as a source of raw materials, not as a place to manufacture or sell finished products at competitive prices. This is the age-old principle of colonial empires; it is dictated by the

necessity of keeping up the dividends in the mother country against cheaper local competition in the colonies. The methods of maintaining control of industrial markets in the South and West are based on the power of tightly organized cartels to control supply, transportation and distribution in such a way as to put new competing enterprise in the colonies under a continuing handicap." End of his quotation.

Now, if the Court pleases, I would like to simply say that fortunately for us today, as Margaret Mitchell said in her very remarkable book, the days that Thurmond Arnold talked about are "gone with the wind." And I feel like today in the South, that you and I live in, the New South, that we have no desire to feel the force of these winds ever again. In this case, the North's reliance on an example of—a classic example of a temporary situation was the question of higher wages, and higher taxes in the North. This is one of the things that they relied upon, and certainly we cannot say this morning that this is an inherent difference

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in the territory to the extent that if wages and taxes are higher in the North, I respectfully contend that the North is better off, not worse off, than the South. If their wages and taxes are higher, then they are better off than we are. And we hope in the South as you have pointed out to catch up; the South has been trying to catch up, but we are just like Alice in Wonderland, we're having to run twice as fast as the North in order to maintain our position and gradually improve, and we certainly will never be able to catch up, will never be able to deal as an equal with the North, if we are going to allow money to be siphoned off of Southern Industry, to subsidize a higher level of wages and taxes in the north. The North today has an unquestioned overcapa-

city of railroads. The northern lines have not managed their affairs with the same diligence and with the same business acumen as the southern lines. All of this is quite evident from the record in this case.

I respectfully submit that there is no reason and the Commission gives none for the South subsidizing the North to enable it to maintain an overcapacity of rail plant. The obvious cure is to cure the situation itself, not—

THE COURT (Judge Wisdom):

When you say rail plant, do you mean with regard to the movement of freight?

MR. SANDERS:

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Yes, sir, I mean with regard to moving freight; I am excluding the suburban deficits.

THE COURT (Judge Wisdom):

Obviously there is an increasing need for more trains for handling the commuters.

MR. SANDERS:

Yes, sir, of course, we do—

THE COURT (Judge Wisdom):

The South is developing more and more suburbs and—

MR. SANDERS:

If the Court please, the question you asked earlier, it's true that today we do not have the same problem, at least to the same degree as the northern suburban commuter passenger service, but if the Court pleases, I am sure that New Orleans is in the same predicament that Atlanta is in. We are right now in the process and I have just recommended for the first time, a budget appropriation for rapid transit

in Georgia. We don't feel that the South as you pointed out—that the South should be sitting down here subsidizing the operations of the northern commuter passenger service. This is one of the great factors involved in this case that we have here this morning.

Now we know today, too, in the north—and I will just mention this to you—we think that the cure to the situation is for the northern railroads to do something about it;

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to try to cure it. We believe they are trying to do something.

THE COURT (Judge Wisdom):

It seems to me it may be in the national interest that we handle their transportation. Perhaps the problem is bigger than either the north or the south.

MR. SANDERS:

Perhaps it is, sir; perhaps it should be spread nationally, nationwide; it shouldn't be taken out of the South just for the benefit of the North. We think that it should be something that the Congress of the United States should and apparently they are going into it, because as you know they are appropriating money for all sections of the country now who are going into rapid transit.

We don't think that in this particular case that the northern railroads should come down here and actually take out of the hide of the southern people sixteen million dollars, much of which is going to be related to these passenger deficits by these commuter services that they render the north.

THE COURT (Judge Hunter):

Governor, as I understand it, your colleague said the relative service cost is the decisive measure here in determining this decision.

MR. SANDERS:

Yes, sir.

THE COURT (Judge Hunter):

He says it's the relative measure. He says there are no

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cost differentials, and if so, the Commission didn't point them out. Is that really the South's case?

MR. SANDERS:

We don't think the Commission pointed out any of the cost differentials; I agree with that, but we also think that it was pretty obvious from the position we took in asking them to consider certain items of cost and certain factors; and the Commission in our particular instance, they ignored our position altogether in this case. They have failed to make any findings whatsoever on the intervention and on the points raised by the intervenors by the Southern Governors and by the Southeastern Utilities Commissioners at all. They simply ignored us; they treated us like an illegitimate child at the family reunion; they didn't know who we were.

THE COURT (Judge Hunter):

Could I say, then, that as far as you are concerned, that when they depart from uniformity in such an important matter as this, they should spell out precisely the reasons for it?

MR. SANDERS:

Yes, sir. That is correct.

I want to point out the reasons why I think they are

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in the North trying to do something about the problem. As we know there are many important mergers that are taking

place; there are many important consolidations taking place. In the Penn-Central Merger, the Commission itself pointed out that it expressly relied upon an over-capacity of rail plant in the north in the Penn-Central Merger; this was one of their reasons for recommending this merger. So we respectfully contend that the error in this case before you today is that the Commission has inflated the northern railroad divisions and they have said this, that when mergers are consummated and the cost savings reflected, then and only then will this Commission reflect this situation in the divisions of the railroads. This is certainly no answer to our situation.

If we as Southern Governors have urged, and we have urged, and the Commission has found in the Penn-Central case higher costs in the north, this is due to an over capacity of rail plant in the north, then there is no basis now or forever for requiring the South to subsidize such over-capacity through inflation of divisions. We also raise the question in this case as to whether, even if the north does suffer from cost disadvantages as compared with the south, the burden of those disadvantages should not be placed on the south. Our southern economy has lagged far behind the north, and although we have made giant strides since World

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War II, it still lags behind the north, and much of it has been due to the discriminatory freight rates that were suffered by the south until after World War II.

I don't have any figures beyond the '58 year either, but would just like to point this out, sirs, from 1947 to 1958, the number of employes in the South increased twenty-eight per cent.

THE COURT (Judge Wisdom):

When was that? What years?

MR. SANDERS:

1947 to 1958. 1947 is when we had this landmark decision on uniformity of rates. The number in the south increased twenty-eight per cent, the number in the north increased twelve per cent. In absolute figures, the north in 1958 had almost ten million persons employed, five times as many as the south. The value of manufactures for the nation doubled between 1947 and 1958. It increased about sixty-seven per cent in the north, and slightly more than doubled in the south. With all of the progress that the south has made, since World War II, the north is still making tremendous progress and cannot begin to justify the conclusion that the north suffers from any inherent disadvantage as compared to the south.

From a practical standpoint, our rate of progress is the inevitable result of the elimination of these unlawful

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trade barriers that previously benefited the north. We are still behind and in this situation it seems to us basically unfair to force the south to subsidize the north at least without first determining whether the north can bear its own burden.

Many cases have been cited and I would just like—I just have a couple of more points that I want to cover—but many cases have been cited in our brief to show that the principle of primary local responsibility has always been the guiding light of the Commission in division matters. If the Commission had faced up to the economic issues which we contend it did not, and had stated its policy conclusions, we could then argue what those policy conclusions were and whether or not they were within their lawful discretion, or—and this is important to our part of the country, we could go to Congress, we could go into the United States

Congress and have this policy of the Commission reviewed. But in the present situation that we have, if the Court please, our issues have been brushed aside without any reasonable explanation, without any statement of policy; and we have no remedy at all except to come and appeal to this Court.

Our exception number four, which specifically raised the issue, was simply ignored by the Commission, and we believe that this was clearly an error of law; that the Commission violated the Administrative Procedures Act when it

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ducked the issues placed before it. The administrative Procedures Act requires that Federal Agencies rule upon all material issues presented by the parties, and give a reasoned explanation of its conclusions on each issue of fact, on each issue of law, and on each issue of discretion.

We do not ask that this Court decide these questions on its merits; but we do ask this Court to remand this case to the Commission with directions that the Commission decide these issues on their merits.

If this is done, as it has already been pointed out, we have every confidence that when it is required to focus on these issues, the Commission will act in accordance with the economic policy of uniformity, upheld by the Supreme Court in New York versus United States, and we also want to make it clear that the Southern Governors and the Southeastern Association of Railroads and Utilities Commissioners have some other questions. We are not going to get into the cost claims advanced here by the northern railroads; we are not prepared for that. We have left this to the railroads to make a very thorough study of the cost issues, but we think, if the Court pleases, that even such—

just looking at those claims on their surfaces, that they sometimes seem to us to violate common sense.

For example, I want to cover this commuter service. By including the suburban commuter service deficits in the

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costs which produce an inflation for the northern roads, the southern economy which is the ultimate source of the revenues of the southern railroads, is being required to subsidize suburban passenger service in northern cities. And as you know, southern railroads predominately operate a railroad; they are not some of the wealthier western railroads where they have land with oil on it and other things to bring in income, our southern railroads get their income out of our southern people, out of our southern shippers. And so we say in this case, when you set up this inflation that they have set up here, that you take it right out of the south, you take it right out of our people, you take it right out of our shippers.

Nothing in this Commission's report justifies any such results; and this result is contrary to the previously announced policy of the Commission, that—and this is their policy—that suburban passenger service should be supported by State and local authority. And if you will refer to the Southern Governors brief on page 48, we set out the policy of the Interstate Commerce Commission.

Many northern governors have recognized this principle in recent years. Connecticut, Rhode Island, Massachusetts, advised the Commission, and I have here an excerpt from the proceedings in the Penn-Central Merger case, in which all three states came in and appeared and advised the Commission

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what they were going to do about these commuter services;

how they were going to take over the operation of this passenger service, and I can refer that to the Court.

The State of New York, as the Court is probably well aware of, has already purchased the Long Island Railroad; and Governor Rockefeller of New York and Governor Dempsey of Connecticut recently announced and I have a copy of their press release here, which I will not read, but they have recently announced a plan to purchase the commuter lines of the New Haven Railroad. New York has already purchased the Long Island, and Connecticut and New York now have set plans to purchase the New Haven Railroad.

Governor Hughes of New Jersey has actually in his State, and I have a copy of his transportation message to the General Assembly of New Jersey, in which Governor Hughes sets forth the policy of his State, that is to assume the burden of commuter service in the State of New Jersey.

Now, with all of these activities on the part of the northern governors—

THE COURT (Judge Wisdom):

Is that in the record?

MR. SANDERS:

Yes, sir. If it's not, I can furnish the Court with it and I will be delighted to.

THE COURT (Judge Wisdom):

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The Court would like to have it.

MR. SANDERS:

With all of this activity by northern governors in relieving the northern railroads of the suburban service deficits, all of this being in line with the Commission's

policy against the imposing of such deficits on freight shippers, the Commission's action in this case is not only unexplained, but we respectfully contend that it defies explanation.

So in conclusion, I respectfully submit to the Court, that this part of the order of the Interstate Commerce Commission prescribing inflation in the northern railroads division, should be remanded back to the Commission with directions to the Commission to fully investigate and to decide the economic issues raised by the Southern Governors and Southeastern Association of Railroad Commissioners and they should render a specific decision thereon as required by law. This we contend they have not done, and we respectfully submit they should do it, and we feel like as I said in the beginning, that this case is of paramount importance, that the very life blood of the south is hanging on it, and if you abandon this principle of uniformity, then we have nothing at all to hang on to.

THE COURT (Judge Hunter):

You say you would like to have a remand for the purposes

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just stated, but it seems to me this Court will have to face up to some general affirmative statements that were made. For instance the Commission said, other factors being equal, cost differences are the product of and reflect inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories. It seems to me the Court will have to pass on whether or not that is a correct conclusion.

MR. SANDERS:

If your Honor pleases, we contend that looking at this case from any angle that there is certainly no inherent ter-

ritorial disadvantage in the north over the south. And the differences they are bringing up in this case they brought up before the Interstate Commerce Commission based entirely on the fact that they are paying higher wages; they are paying higher taxes, and they still have many more millions of people that are employed than we have; they have more industry; they have everything. They are not operating their railroads as effectively and as efficiently as we are in the south, but what they want to do is they want to take this money, this unjust division here, they want to take it out of the hide of the southern shippers and southern people, and we don't think that this is the proper conclusion, and we think that in any fashion that the Court faces up to this issue, we think that this is a perfect case of the north

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again trying to re-establish the age-old policy of colonial empires that Thurmond Arnold pointed out twenty-six years ago, when he said they were simply using us for the purpose of producing the raw materials so they in turn could manufacture and receive the dividends. This is the position of the Southern Governors and Southeastern Railroad Commissioners, and we respectfully urge its consideration; and I want to thank the Court personally for allowing me to intervene and to make this argument this morning, and I will be delighted to furnish the Court with Governor Hughes' document and any other documents.

THE COURT (Judge Wisdom):

We would like very much to have that.

The court will be at recess for five minutes.

(RECESS.)

MR. CERRA:

If it please the Court, my name is Arthur J. Cerra, and I am Assistant General Counsel for the Interstate Com-

merce Commission, appearing here in defense of the Commission's order, on behalf of the Commission and the statutory defendant the United States of America.

Now, this attack upon the Commission's order to set aside the prescription of divisions that the Commission made on all joint freight rates between the north and south. The issues are many, and in order to avoid any duplication, sub-

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ject to permission of the Court, counsel for the Government and counsel for the intervening defendants have split the issues and will split the time allowed. But I want to emphasize one thing that the Commission is vitally interested in the outcome of the case because it touches upon matters which relate to the Commission's ability to effectively administer Section 15 (6) of the Act.

Mr. Kaier, for the intervening defendant railroads, in our split of issues, has taken the one concerning the passenger deficits, and if it please the Court now I would like to relinquish the floor to Mr. Kaier to permit him to proceed.

If it would be of any advantage to the Court, I have some additional printed copies of the Commission's initial report and supplemental report. They are in the pleadings and they are in the "telephone books," but if it will be of any help, we would be glad to pass them up.

THE COURT (Judge Wisdom):

You might as well.

MR. CERRA:

How many would you want? We have six your Honor.

THE COURT (Judge Wisdom):

Three will be enough.

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MR. KAIER:

May it please the Court, my name is Edward Kaier and I have had the honor of appearing before the Court in the application for an interlocutory injuction.

I appear, of course, on behalf of the intervening defendant railroads, the northern lines, and I greatly appreciate the privilege of appearing and arguing before your Honors this morning.

I shall not burden the Court with a long recitation of the history of the case, but there are certain things about the history that I would like to bring to your Honors' attention.

In consequence of the petition which the northern lines filed, about seventeen years ago, seeking recognition of what they regarded as higher costs of service, the Commission instituted an investigation out of which the order here under review has come. There was, of course, an initial earlier decision by the Commission and that was the one in 1953. In that decision the Commission recognized that, on the basis of the cost evidence which the northern lines had adduced, the northern lines were entitled to differentially higher divisions than the southern lines, but the Commission said that it would not accept those costs at face value because it regarded some of the items, particu-

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larly maintenance of structures and maintenance of equipment as being rather transient in nature, extraordinary expenditures in those years. So it said that it regarded and thought for the future the cost of neither group should be lower than the other and that it therefore prescribed equal divisions, mile for mile.

Then we petitioned for reopening of the case and said that in the intervening years we have confirmed that our

costs are higher, and as you know exceptions were taken and there was a long proceeding before the Commission; and the examiners recommended incidentally a higher basis of divisions for the northern lines that the Commission ultimately prescribed.

We had an oral argument before the entire Commission and the Commission prescribed the scale which your Honors are now familiar with, and in which we were given higher divisions because our costs were higher. And as we have stipulated—the parties have stipulated, in the stipulation embodied in the pre-trial order, the southern lines division on this traffic was reduced approximately three per cent.

Now, your Honors, ten of the eleven Commissioners concurred and the one Commissioner who dissented agreed in part, Commissioner Murphy, and even he considered that we should have higher divisions but he would not

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have gone as high as the majority.

Now, I submit, your Honors, that a review of the report will show that the matter was considered with great thoroughness, and I would like to call attention to the fact that this was not a one-way street. The southern lines won very important issues in this case. It was very hard-fought and if we had won, it would have added very considerably to the amount of money that would have been returned to the northern lines. That was true as to our request for additional revenue, because of our—I mean additional divisions because of our urgent revenue need.

In the past, your Honors, in fixing divisions between northern and southern lines, the Commission has relied heavily on the greater revenue need of the southern lines. The Supreme Court said that in that B & O versus United States case. Your Honors, the factors fixed by the Commis-

sion for the southern lines in the past cases gave the southern lines factors that were twenty-five per cent higher than our factors on general traffic and as high as eighty-five per cent on citrus fruit from Florida which is one of the heaviest moving commodities from the south to the north. There isn't anything new about one group having higher divisions than another.

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Back in those days, the Commission couldn't—they didn't have the sophisticated cost evidence such as they do now and they did the best they could with the evidence that they had, and revenue need was one of the important items of evidence in those past cases. And it was back in 1953 that the Commission departed from the inflation for the south and said, "Now, we have cost evidence and we are going to impose equality because the costs are equal." Here in this case they found that costs are no longer equal; and the costs were higher on the northern lines than the southern, so they reflected that in a modest way in the divisions.

THE COURT (Judge West):

Of course, counsel for the southern railroads indicates the higher costs are not properly allocated.

MR. KAIER:

Yes, he does that, your Honor, and I propose to go into that before I am through.

THE COURT (Judge Wisdom):

Before you do, tell me what factors enter into revenue needs? Does servicing of any bonds, for example?

MR. KAIER:

No, I don't think so, your Honor. I think that the principal thing is the need to have money to operate

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the railroads so that there will be public transportation.

THE COURT (Judge Wisdom):

Well, that would be broad enough to include the factor that I mentioned?

MR. KAIER:

Yes, rate of return would be a very important factor.

THE COURT (Judge Wisdom):

If you have, let us say, more interest to pay out than the southern lines there would be a greater revenue need.

MR. KAIER:

It would be in a sense, your Honor, but ordinarily the Commission doesn't pay much attention to that because they take a rate of return on property value which does not include the paying of interest. I mean it comes before interest and then the railroads would have to pay the interest out of that rate of return.

But, of course, the Commission simply dismissed the revenue need here and said, "No, we are not going to give either group of lines anything for their alleged greater revenue need.

Now, I would like to call attention to just one small passage from the Commission's report where, in

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concluding its discussion of the evidence, it says ". . . we are of the opinion and find that it (the cost evidence) affords a reasonable basis for the exercise of practical judgment. Stated in another manner, everything else being substantially equal, the relative costs of the parties reflecting their respective operations as to this traffic can properly serve here as a guide for the determination of just,

reasonable and equitable divisions." And then they said Cf Louisville and N. R. Co. versus Southern Railway Co., 319 ICC 639.

Now, your Honors, it was the Southern lines who at page 189 of their exceptions said there is nothing difficult or complex about the process of constructing divisional scales once the cost evidence has been analyzed and appraised; indeed the construction of divisional scales from the cost evidence proposed by the southern lines in this case is precisely the method adopted by division 2 in Louisville and Nashville R. Co., versus Southern Railway Company, 319 ICC.

Now, you might say, "Yes, but they were dealing there with the use of cost in the construction of scales and didn't agree on what the costs would be," but they had that in mind, too, and on page 188 of their exception, they said to the extent if at all the examiners are found to be correct in their rejection of specific

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aspects of southern lines' cost evidence, see exceptions 1 and 2 supra, the cost evidence as thus modified would provide the basis for constructing the divisional scales.

Well, the Commission constructed these scales in precisely the way the Southern lines suggested and followed exactly the case the southern lines cited, the Louisville and Nashville case. That case is very instructive, I think in this case, your Honors. In that case the Commission reached its conclusion just—Well, let me say first, that in that case it was a dispute between the Southern Railway System lines and the L & N about divisions over rates on coal from a limited area to a limited number of destinations, and would apply only on the one commodity. There as here, the Commission based the divisions on relative costs. The Southern

Railway then sued to set the Commission's order aside in the District Court in North Carolina, claiming that the Commission's cost determinations were improper, not supported by substantial evidence nor did they make the necessary findings.

The Court summarily disposed of these contentions in a per curiam opinion. It did not review the individual cost items, empty returns, car costs, and whatever else was in dispute, it said that the Commission

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had considered all of the factors set forth in the statute and that there, as here, they were equal as between the parties with the exception of costs. The Court said that the facts were supported by the findings and were supported by substantial evidence; that it had no power to substitute its fact appraisal for that of the Commission and stated that with much ingenuity counsel for Southern had attempted to find questions of law where there are none.

Now, that decision is Carolina and Northwestern Railway Company versus United States, 234 F. Supp. 112. It was affirmed by the Supreme Court on motion.

The theory of that decision of the North Carolina case which is so similar to the case here at issue, is embodied in the rules of judicial review stated in Illinois Commerce Commission versus United States, 292 U.S. at page—

THE COURT (Judge Wisdom):

You needn't give the citation unless the case is not in your brief.

MR. KAIER:

Thank you, Your Honor, it is in our brief.

I would like to take the liberty of reading just three sentences from that opinion, your Honors, because I regard them as very pertinent here.

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THE COURT (Judge Wisdom):

Where is it? Is it in your brief?

MR. KAIER:

It is, sir.

THE COURT (Judge Wisdom):

What page?

MR. KAIER:

I will find it. May I read it?

THE COURT (Judge Wisdom):

Yes, go right ahead.

MR. KAIER:

Whether or not the cost study was representative, if it please the Court, whether the study should have been more refined and whether it should have been supplemented as appellants desire, are questions of fact, the determination of which is within the competence of the Commission. The Commission reached its conclusion after full hearing and thorough consideration of all questions presented. As the record affords a sufficient basis for the Commission's determination, it is not subject to judicial review.

Now, while dressed up in language about burden of proof, substantial evidence and necessary findings, when you get right down to the substance of it, I submit that the plaintiffs' case here rests upon the contention that the cost studies were not representative of the traffic involved

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and that it should have been more refined; precisely the questions the Supreme Court said in that Illinois Commerce Commission case they refused to review.

We have established in our brief, I respectfully submit, that the Commission's decision is supported by adequate findings. I am not going to go into a discussion of each one of those cost adjustments.

THE COURT (Judge Wisdom):

I assume that you are going to address yourself to some of the remarks the court made.

MR. KAIER:

Yes, I will indeed. But at this moment, unless you would prefer, your Honor—

THE COURT (Judge Wisdom):

I don't want to interrupt the sequence of your argument if you feel it is better to continue along the line you were going to concern yourself with.

MR. KAIER:

I would like to argue before reaching the suburban deficits—I am most anxious to reach it—but I think for the purpose of continuity I would like to continue on this cost aspect.

We were the moving party in securing the reopening of the investigation. We offered evidence as to the relative costs of service based upon Form A Territorial

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Average for the north as against the costs of the south. Then the southern lines came along and they produced the same territorial evidence with some adjustments. Now, at the conclusion of the presentation of our direct evidence,

the southern lines obviously believed that we had made out a prima facie case, and didn't rest on the proposition that we hadn't carried the burden of proof; they submitted voluminous evidence before the Commission and traffic studies. All of this evidence is in the record and all of it was available to the Commission and for consideration by the Commission.

The Southern lines of course say that in permitting us to rely exclusively on territorial average costs developed by this Form A that the Commission didn't enforce the burden of proof on us. Now, your Honors,—

THE COURT (Judge Wisdom):

Doesn't the Commission's approach to this case put a premium on the current condition, for example, doesn't it demand that these facts be brought up to date, the facts on which it rests its decision are prior to 1958 and the essential or a certain part of the essence of the Commission's case is the difference in the current fact situation between north and south; and then extending that or going one step further if they are going

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to depart from uniformity would not the railroads constantly be asking to reopen the case because of cost differential? It's a long question, maybe two or three.

MR. KAIER:

Well, if your Honor please, on the first point as to whether the costs were incurred before 1958, yes, they are 1956 costs; but your Honor, this investigation has been in litigation continuously since then. And suppose we were to go back to the Commission to put in costs of, say, 1965, by the time we reach you again all that time would have transpired. The northern lines—both the northern and southern

lines are most anxious to have the case handled expeditiously and we have pressed at every stage for expeditious handling, because we thought we were going to get some money out of it and we want to get the money. But our southern friends insisted that they should have adequate time and the Commission agreed with them and they had their adequate time and so we are now that far behind in the costs; but if they think the costs have changed, they could go back to the Commission with a petition and show that and get an adjustment of the divisions.

Now, of course, you have said maybe we will be

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back again; if your Honor please, if there was a substantial change either way, they'd be back or we'd be back and the Commission would have to look at it; but I suppose that is in the nature of things, they have to decide these things on the facts.

THE COURT (Judge Hunter):

In my judgment, when you depart from equal divisions, you should do so by stating precisely the basis for that departure. Where in the judgment of the Commission do you find precise language as a basis for the departure?

MR. KAIER:

Well, I think, your Honor, the precise language for the reason for the departure is the costs now require that the northern lines have greater money.

THE COURT (Judge Hunter):

And that is based on Rail Form A for 1956?

MR. KAIER:

Rail Form A for 1956 as adjusted by the Commission for certain four or five adjustments proposed by the southern lines and which were adopted by the Commission.

THE COURT (Judge Wisdom):

My question as to the passenger deficits really goes deeper—I hope it does—the question of passenger

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deficits.

MR. KAIER:

It may be that they are substantial.

THE COURT (Judge Wisdom):

That is one reason I asked you about the interest payments. It may be that there are inherent differences in costs between the north and the south; now, does that alone justify higher divisions for the north? Aren't you in effect making the south pay for these higher divisions?

MR. KAIER:

No, your Honor, I don't think so. Of course, the south isn't paying, they don't pay the divisions.

THE COURT (Judge Wisdom):

Well, they ultimately bear the burden, the southern lines. It's the same as saying the consumer doesn't pay the tax.

MR. KAIER:

Let's assume that's true, they would only be paying for that part—paying higher rates, in effect, for that part of the transportation service that had the higher costs. Let's assume—

THE COURT (Judge Wisdom):

But why should one area of the country be burdened with this burden, if it is in the national interests,

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and I assume that it is, it's the burden of the nation.

MR. KAIER:

Your Honor—

THE COURT (Judge Wisdom):

And therefore it may well be that this discriminatory clause in the act may be applicable here.

MR. KAIER:

If your Honor please, one section of the country would not be bearing it. The northern shippers would be bearing it when they use the service. Let's suppose a shipment from Chicago to New York.

THE COURT (Judge Wisdom):

I agree with that. It falls principally on the southern shippers to make up that difference.

MR. KAIER:

Oh, no, no. Now, I'm not speaking at the moment of the southern deficits, just the general higher costs in the north. Let's suppose, your Honor, we didn't have any joint rates, the Southern Railway would set its own rate from Atlanta up to Washington and then we had our rates from Washington to New York, a combination of local rates, when the southern shippers shipped up there, they would pay our local rates which would reflect the higher costs; so why shouldn't the same

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thing be true if you have joint rates? They are paying no more than for the service they get, and the cost of rendering that service is affected by these higher costs.

THE COURT (Judge Hunter):

But, of course, the southern railroads are and that, of course, might affect the intrastate rates in the southern states. That is true, isn't it?

MR. KAIER:

It is conceivable. Obviously I would have to answer that it is conceivable, but I don't think that is applicable.

THE COURT (Judge West):

Mr. Kaier, it seems to me that the argument of the southern railroads is directed primarily to the fact that there were items in the costs added into the calculations which had a bearing on the traffic shared between the north and south. Judge Hunter asked you a while ago where was the precise language in the Commission's report to indicate that they gave reasons to deviate from uniform divisions, and in the quotation that was read a while ago, wherein they stated that everything else being substantially equal the relative costs of the parties reflecting their respective operations as to this traffic can properly serve here

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as a guide for the determination of just, reasonable, and equitable divisions. Now, as I understand it they are complaining about the fact that you had this traffic, the switching and handling charges at the interchange points which has nothing to do with this traffic, and various other elements such as wages and taxes that have nothing to do with this traffic. I understand that is their argument.

MR. KAIER:

Yes, sir and I can answer that question.

THE COURT (Judge West):

I would like to hear it.

MR. KAIER:

I am just about at that point, your Honor, at which I would like to demonstrate to your Honors, that first the use of territorial average was the reasonable thing and that we made a prima facie case, and then I would like to answer several contentions made by Mr. Trienens about the individual items.

THE COURT (Judge Wisdom):

I don't think that anyone necessarily questions the use of a territorial average; that might be similar to an area price used by the FTC, but the question is whether these particular items should be included among the items used for determining the average.

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MR. KAIER:

Of course, I intend to meet each of these.

THE COURT (Judge Wisdom):

We understand that.

MR. KAIER:

But at this point I would like to say that we have a case here of tremendous scope; we have all rates with a very few exceptions between the north and south and every station, every station in the south, and on all commodities except coal, coke and few others by stipulation, and over all railroads. Now, the mere statement of that, it seems to me, suggests that it would be appropriate to use average costs, and the Commission has held that the Form A Territorial Averages are appropriate in situations where you are considering rates on large amounts of traffic. They have said that in the Class Rate Case that was mentioned with some prominence this morning; and the Supreme Court recog-

nized that that case involved only aspects, and that the class rates were a very small percentage of the traffic, much smaller percentage of the total than we have here. The southern lines' evidence in this very case, your Honor, my second point—the southern lines' evidence in this case is Form A Territorial Averages; all of the costs in their presentation are Form A costs as they selected to adjust them; wages of trains, wages of agents, wages of track labor,

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cost of buying locomotives; every one of the costs in here that are very vital to their costs, are precisely the same costs as ours, the Form A Territorial Averages. In fact the Commission said that the costs that they used were the costs of the southern lines except for a few of the adjustments which were very few. This is at page 25 of their report. And the evidence used by the Commission in fixing the divisions that were superseded by this order was also based upon territorial average costs, Form A.

Now, your Honors, as a matter of fact, there is no such thing as precise costs incurred on special, specific and particular traffic. Any shipments or category of shipments are handled in the terminals in common with all other freight that goes in there; handled by the same switching crews, same trains, over tracks maintained for all traffic, and of necessity, therefore, any shipment's cost is a proportion of the expenses incurred in providing the operation and the railroad over which it is conducted.

Now this Form A classifies the expenses in various categories, and then it reduces those expenses to a unit cost; some of them are cost per car; some other categories are cost per car-mile; some other categories are cost per ton; and you get the railroad cost of pro-

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viding these units of serivce, and then you apply that to the traffic in question by making a traffic study to find out how many units of service a particular traffic incurred. We put in a traffic study and so did the southern lines, and the Commission relied on theirs and then took these various units of service that were used by this north-south traffic and it priced them out by unit cost from Form A averages.

So it seems to me that there was, therefore, very logical basis for the use of the territorial averages when you are dealing with movements from the whole territory to the whole territory over all railroads.

THE COURT (Judge Wisdom):

That assumes a close relationship or a proper relationship with the north-south freight.

MR. KAIER:

Yes, sir.

THE COURT (Judge Wisdom):

Let's assume a passenger train using its own rails and own terminals, is that, too, included in the averages, in the cost of operation?

MR. KAIER:

Your Honors, after the Commission determines the cost method, they call that an out-of-pocket cost, they then add overhead, overhead expenses, and return

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on investment, and a few other things, including passenger deficits, and as a part of the passenger deficit,—part of the passenger deficit is allocated in that fashion.

THE COURT (Judge Wisdom):

It seems to me there is no good reason for including such items. Now, plaintiffs may have an entirely different thing, and they concede with respect to common facilities.

MR. KAIER:

I think I had better get to suburban traffic.

Your Honor,—

THE COURT (Judge Wisdom):

I am assuming not just suburban deficits, but any costs that can be considered arising from an inherent difference between the two areas.

MR. KAIER:

Any cost that could be—

THE COURT (Judge Wisdom):

—that had just no connection to north-south traffic.

MR. KAIER:

It would be proper to take it out and the Commission took some out, and adopted several, I don't know, three or four of the adjustments proposed by the southern lines. The reasons they explained in detail in Appendix

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B to the report. For example switching; we used the territorial average switching cost as developed by the Commission in a seven day cycle; the Southern lines said, "Well, switching costs are very different on the north-south traffic because such movements within the south are affected by a great many multiple car movements and that reduces the switching costs within the south, and, therefore that should come out of the average, and when you apply the remaining part of the average which you will apply to the north-south traffic, it will be higher.

Then they presented a cost study to show that, your Honors, and the movement of north-south traffic was about 967,000 cars, and their study of the cost of switching within the south embraced forty-one cars which they asked the Commission to believe was representative of the whole movement on almost a million cars. But the Commission, of course, said that study is defective both as to the sample and as to the manner in which it was made. So they refused to make that adjustment, and they said that in a case like this involving traffic to and from all terminals in both north and south, there Form A average cost was particularly appropriate and they disposed of other contentions in the same way.

This gateway interchange that you have been hearing

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about, interchange at the gateway, we submitted the average cost per unit of the northern lines and the southern lines; the southern lines came along and said "Well, now, at some of these gateways, like Cincinnati, there is an equalization of engine time, six months of the year the northern railroads do the work and six months the southern railroads." The Commission pointed out that equalization of engine time doesn't mean equalization of cost. We still have higher wages, and they pointed out also, that a great deal of the interchange takes place on the tracks of a carrier itself that is doing the work, back in the yards, and so forth to make the interchange, and that was not being accounted for in the adjustment made by the southern lines. And then also, if the southern lines were to reduce the average as it applied at an interchange like Cincinnati, then they should increase the average as it applied at other points in the north and reduce it as it applied to other

points in the south; but they didn't do that. So the Commission said that their gateway interchange formula would not be acceptable. All on very reasonable bases.

We have the same thing about empty return ratio. The Commission analyzed that argument very carefully. Mr. Trienens told you this morning about the automobile

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part cars moving between points in the north; but they move between the north and south, too; they move down to Louisville; they move in great abundance down to Atlanta, but they want to cull those out and not pay any attention to them. The Commission would not permit them to do that. As a matter of fact, your Honors, the empty return ratio adjustment proposed by the southern lines was proposed in three steps; it didn't relate just to these automobile part cars. That was the first step which the Commission found to be based upon assumption and conjecture; and the second step was the southern lines said, "Well, there was an imbalance between the northern lines and the Canadian railways;" the Commission said there wasn't any such imbalance; and the third step was what the Commission said was purely an assumption, and they dismissed these adjustments about empty return ration, all for very rational reasons.

Now, if your Honors please, I am coming to the suburban deficits, and I should like to observe at the outset that although in this case the subject has been given great prominence, it was not so much as mentioned by the southern lines in the oral argument before the Commission. I have had that transcript combed and there was not one word about suburban service deficits from Mr. Trienens in the oral argument before the ICC.

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THE COURT (Judge Hunter):

I don't find that they are relying so much upon it this morning.

MR. KAIER:

That's right, the Governor did.

The Governors incidentally, I will say, your Honors, had two or three sentences about it in the argument there on behalf of—

THE COURT (Judge Hunter):

Tell us what suburban costs, what costs of suburban passenger traffic were taken into consideration in this case as they show in the record?

MR. KAIER:

You mean the amount of it, your Honor?

THE COURT (Judge Hunter):

No, I don't think you can find the amount, but what type of costs? WHat do they mean by common costs?

MR. KAIER:

Well, of course, common costs would be those costs which are common as between one service and another, freight and passenger.

THE COURT (Judge Hunter):

That is the way I interpreted it. It doesn't mean common to the north and south; it doesn't mean that.

MR. KAIER:

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No, it doesn't mean that.

Now, I would like to start at the beginning of suburban service thing, because obviously it is a matter of great importance.

By reason of the fact that railroad passenger service is not self supporting, the railroads are obliged to look to their revenues from freight service to help overcome their deficits from passenger operations, and that is the reason the Commission takes them into consideration, the passenger deficits, in fixing freight rates. The lawfulness of their doing so is specifically affirmed in the case of King versus the United States.

THE COURT (Judge Wisdom):

Is that case distinguishable on the ground that the opinion is based on the faciliteis being used in common?

MR. KAIER:

No, sir, that decision was not based on that at all. That decision resulted from proceeding in which the Commission was asked to increase rates within the south, freight rates within the south, on the ground that they discriminated against interstate commerce. The Supreme Court adverted to the fact that the Commission had said that where passenger services cannot bear their direct cost and share of joint costs, it is compelled to take the passenger deficits into account in an

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adjustment of freight rates, and that both freight and passenger service are essential and the deficit of one must be compensated by earnings from the other if the carrier is to continue operations. That is the basis for the Commission taking passenger deficits into account in fixing freight rates, not this idea that there are some costs in common; it's the necessity of having revenue to continue the opera-

tions which they are obliged by law to perform and provide. The Supreme Court quoted from the Commission's decision exactly, if not verbatim, just what I have told you, and that was the basis. The Supreme Court said, we conclude there is no reason why the Commission may not give weight to passenger deficits in prescribing the intrastate freight rates in Florida as it has done in prescribing the intrastate rates in other territories. And there was no effort at all on the part of the Court or the Commission to find out what expenses were common to freight or independent of freight, nonewhatever in this case.

Now, the Form A Formula provides that a proportionate share of the passenger deficits should be assigned to the freight service of a given traffic movement, and the passenger deficit that is thus allocated under the formula is the entire passenger deficit. It's a deficit that results from the operation of a train between

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Atlanta, Georgia, and Savannah, or between Birmingham and New Orleans, or any other place in the south or any other place in the north. There is no dispute about that.

THE COURT (Judge Wisdom):

Before you leave that, will you back up a moment.

Suppose it was proven that the difference in costs was due to inefficiency of the railroad, would you say then that those costs would still be properly considered?

MR. KAIER:

No, sir, I would not. The railroad would have to suffer for its inefficiency; it could not be compensated for those costs.

THE COURT (Judge Wisdom):

Still it would have that need for more revenue; and you would have to look to the freight revenues to make up that difference.

MR. KAIER:

The Commission woulnd't give it to them. If there was inefficiency, they would have to remove the inefficiency and get their revenues up by removing the inefficiency.

But here, your Honor, this passenger service, you have to get authority from the public body to take the train off. We are obliged by law to continue service.

THE COURT (Judge Wisdom):

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I realize that, and yet you still have a statutory provision prohibiting discrimination against any region. Now, I assume that your answer would be that it is not unreasonable.

MR. KAIER:

Well, that would be one thing, your Honor, but I would say that in the first place there isn't any discrimination between any regions.

Let me say that the passenger deficits of the southern railroads is relatively greater than the passenger deficits in northern railroads. And we said to the Commission forget about passenger deficits, predicate this decision just on freight costs and don't allocate any part of the passenger deficits and you will give us higher divisions than if you include them.

THE COURT (Judge Hunter):

How could you do that in face of the King case?

MR. KAIER:

Well, if the southern lines agreed to that it could be done; but they didn't agree to it. They said, "Oh, no, we want you to include the passenger deficits, but only that which is meaningful to us."

THE COURT (Judge West):

It was not necessarily meaningful for them only, if it was a passenger deficit that had something that would be

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common with freight service. But they are complaining about something that is unknown down here.

MR. KAIER:

Your Honor, that was the excuse, but there wasn't any evidence put in the record to show what part of their overall passenger deficit resulted from common costs and what resulted from direct costs. We put some evidence in to show that they have a deficit even from—before you get to common costs.

THE COURT (Judge Hunter):

The South, I think—at least one of the reasons they say is the natural disadvantage must be found in the north before you can have an increase in divisions for the north, and then the Commission goes ahead and says the fact that costs are more proves there are inherent natural disadvantages. Do you think the Commission based that decision on that holding?

MR. KAIER:

No, I don't think so, not at all, your Honor. I don't think they based it to any extent. To start out, I don't think there is any legal requirement whatever that costs can be given recognition only if they result from an inherent

advantage or disadvantage. The idea to me is shocking to hear it argued here before you today that the Commission couldn't give consideration to higher

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wages. In fact we are told that higher wages are an advantage to us because they mean that we are more industrialized. There is no requirement in law that before the Commission can take into consideration our higher costs that they must find that they result from—

THE COURT (Judge Wisdom):

The question of whether the Commission should give consideration to higher wages—there is no question about your being sound there, but should it do it by making up the difference on these divisions or should they do it by having you increase your rates, intrastate for instance?

MR. KAIER:

Your Honor, to the extent that the higher costs are incurred in providing this service, to that extent they should pay for it.

THE COURT (Judge Wisdom):

That gets you back to their argument of common facilities, and their relationship to the north-south freight. But if there is no relationship to the north-south freight movement, then, of course, your argument falls.

MR. KAIER:

Your Honor, I answered that when Judge Hunter asked me and I come back to it now with this, it goes to that ex-

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pression of the Commission which was made in answer to the argument put up by the Southern Governors group;

they said that there has to be a finding that the difference in costs relates to an inherent disadvantage. The Commission simply observed that as a matter of fact the costs reflect the totality of the operation in either territory, and the Supreme Court said that very same thing in almost the same words in that case where they reviewed the Class Rate decision, New York versus United States.

THE COURT (Judge Hunter):

From what Judge Wisdom and Judge West said, the south in 1958, didn't have suburban commuter traffic that you gentlemen have in the north and that, therefore, could not have been considered in this case.

MR. KAIER:

Your Honor, we didn't have some of the local passenger train deficits that are incurred in the south and yet that is included. Our friends didn't try to find out what part of their passenger deficits resulted solely from the operation of passenger trains and what part would remain.

THE COURT (Judge Hunter):

Perhaps you are arguing now that the Commission didn't do the job right.

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MR. KAIER:

No, I don't think so. I think that I am arguing that—

THE COURT (Judge Wisdom):

These are elements that should have been considered.

MR. KAIER:

It's a false standard, your Honor, this business of justifying the inclusion of some passenger deficits on the theory that the cost would remain even if the passenger

service were discontinued; it's a false standard. That is not the reason the Commission included passenger deficits. The Commission includes passenger deficits because it is necessary to have them to continue operation of the railroads, north and south.

THE COURT (Judge Wisdom):

I think we all understand that is the reason for it.

MR. KAIER:

I say that if they want—the southern lines didn't claim that that was the reason; they claim that the reason for including it was that there were common costs and that the conditions, if the passenger service were discontinued, the costs would remain. That was not at all proved.

And in the passenger train deficit investigation which was cited to your Honors this morning, the Commission said that that was extremely doubtful, and that

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there was evidence to the contrary, very strong evidence to the contrary.

THE COURT (Judge Wisdom):

Now you have had an hour; we took a good deal of your time. We will give you some time to finish your argument.

THE COURT (Judge West):

Just one question on that: Would you agree that if the evidence had shown that some of these passenger deficits costs were attributable to services having no connection at all with this north-south traffic, that to that extent the deficits shouldn't be included, or is it your position that they should be included regardless of whether it had any connection or not?

MR. KAIER:

It is the latter, your Honor, for the reason that this is an allocation of something in the nature of overhead. Just as the southern lines passenger deficits were greater than ours, that was allocated without showing any connection.

THE COURT (Judge West):

I understand that, but I say would you have any objection to saying that if the evidence showed that the southern passenger deficits were deficits on a service having common costs, passenger and freight, they should

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be included in figuring the costs, and that your only contention is that should it be shown that it is not a common cost, it should not be included in the overall costs of north-south traffic?

MR. KAIER:

I can not state that, your Honor, because there has been a definite theory upon which the Commission has allocated these costs as a matter of policy, and that is that there is a need for that revenue to continue operations.

THE COURT (Judge West):

I just wanted to see if I had it right in my mind.

THE COURT (Judge Wisdom):

Let me ask you this: The Commission does, of course, distinguish between costs of passenger service and cost of freight service, does it not?

MR. KAIER:

Yes, sir.

THE COURT (Judge Wisdom):

And makes separate studies and analyses and determines the proper rates. But what I am getting at is here it is for the services rendered by the railroads in connection with movement of freight; that seems to me is what their duty is, and are confusing the two—and I am not taking issue, because they recognize and every-

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body recognizes that deficits have to be made up somewhere; have to be made up from total revenues, but they are confusing the two, and it seems to me improperly perhaps, in charging the passenger service to the freight service.

MR. KAIER:

I'm sorry; I don't understand that, your Honor. How do you mean "confusing it?"

THE COURT (Judge Wisdom):

That they have improperly—never mind confusing—they are not confusing—the Commission keeps the terms straight—I realize that, but the services in connection with the movement of passengers, the cost of such services are being charged to the cost of moving freight.

MR. KAIER:

That's correct.

THE COURT (Judge Wisdom):

Now, there seems to me to be some question whether they should do that.

MR. KAIER:

Didn't King say they could do that, your Honor? That is the very point of the King case. The Supreme Court said

that the Commission had the power to do that. And so they are just doing what they have done in all

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these other cases. Now, along that line, your Honor, bringing it right down to this case, these passenger deficits are now in the rate scales that are being divided. So the question now is a matter of dividing the freight rates and if the deficits are there, should not the lines which incur the deficits get the deficits? Should the southern lines be rewarded and get some part of our passenger deficits which are in the freight rates?

The southern shippers aren't going to pay anything different no matter how you decide the case. They pay rates; it's a matter of making a fair division between the railroads as to what they should pay.

Now, if there is something wrong with the rates, that the rates are not to include passenger deficits, whoever pays them has a remedy, whether it be the northern shippers or southern shippers, eastern or western; they can go to the Commission and file a complaint against the rates and say, they should effect a change in the rates involved; say "you should take the passenger deficits out of the rates and let each service stand or fall on its own revenues."

THE COURT (Judge Hunter):

To what extent—you are talking about passenger deficits versus commuter deficits—to what extent did the Commission consider these deficits? Not in toto?

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MR. KAIER:

No, your Honor. There was an allocation. They get the deficits in toto—the difference between the revenues and costs—and they allocate that to the service in question, in

the relation between, I think it would be the tons and the ton-miles of this service in relation to the total tons and ton-miles.

THE COURT (Judge Hunter):

As compared to the north and the north-south and the south?

MR. KAIER:

No. They would take the relation between the north-south traffic, let's say, on a ton-mile basis; and they say that the north-south traffic is ten per cent of the total ton mileage, and they will allocate ten per cent therefore of the deficit to the north-south traffic.

THE COURT (Judge Hunter):

They include all of the deficits; it matters not whether the passenger and freight situations have something in common?

MR. KAIER:

They still consider it.

THE COURT (Judge Hunter):

Whether they have something in common or not.

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MR. KAIER:

That's right.

THE COURT (Judge Hunter):

But insofar as the suburban-commuter rates, am I to understand that they took only where the expense would have been there anyway, whether or not you had suburban-commuter traffic?

MR. KAIER:

No, suburban deficits simply were—None of these deficits—local passenger, express—were identified; but they took the entire suburban deficits, and entire passenger deficit—including suburban and everything else.

Now, of course, one of the biggest commuter lines in the whole country is the Illinois Central. To say there is no commuter service down south—the Illinois Central has a tremendous commuter service in Chicago; it is one of the biggest in the whole country and it has a passenger deficit; and its passenger deficits are reflected in the freight rates, and in the initial go-around in this case they were reflected in the Southern lines passenger deficit costs that were allocated in this service. Now, somewhere along the line, they tried to make an adjustment in their brief—I don't remember about that—but there is that line that has a great

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big commutation deficit.

Now, we have heard a great deal this morning about the supposed policy the Commission adopted that that rail deficit—that the local authorities should take care of the commutation deficit. Well, now, actually, that was not the adoption of a policy at all. That was one of a series of recommendations. The Commission started out "We recommend" and then went on to say that there should be greater help from local authorities in helping to meet this passenger deficit. The commission can't force them to do that and until it is forthcoming the reason for allocating them to the freight continues, the need of the money.

Now, secondly, your Honors, another recommendation they made there was that there be more freedom on the part of the railroads to take off local passenger services such as you have down here. That was just as much of a

policy as any of these things could be called policies, and yet the southern lines didn't take out their deficits, notwithstanding that same recommendation. So this business about the Commission having a policy, I am sure if you read that case you will find there would not be too much to it.

Now, I would like to say a few words about the intervention of the Southern Governor's group.

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I think I have pretty well covered this matter of this inherent disadvantage, in answer to Judge Hunter. There is no need or requirement for the Commission to find inherent disadvantages, and I know of no rule of law or statute and they have not cited any.

THE COURT (Judge Hunter):

Is there a decision on the subject other than the decision of the Commission?

MR. KAIER:

No, sir. The Commission, I submit that if the Commission finds the costs are higher and finds there is no inefficiency, there is no reason in the world why they cannot then give effect to the higher costs.

The Southern Governors also contend that our higher costs are the result of over capacity. There is no evidence of that, your Honors. There is no more reason in this record to suppose there is over capacity, greater overcapacity in the north than there is in the south. For all the record shows the over capacity may be much greater in the south than in the north.

They talk about merger activity; there are merger activities in the south: the Atlantic Coast Line and Seaboard merging, and Southern and Central of Georgia, and several lines trying to get into this and so forth. That is all highly speculative.

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As far as equal rates are concerned, if your Honors please, these southern lines themselves contended that the Commission should fix these rates on the basis of relative costs; they contend their costs were higher and that therefore they should have a higher basis of divisions.

THE COURT (Judge Wisdom):

Did the Commission make a finding as to the over capacity?

MR. KAIER:

They had something to say about that.

THE COURT (Judge Wisdom):

Well, I don't want to take time. I will find it if the Commission said it.

MR. KAIER:

They did. Your Honor, what they said in effect was that the merger action was going on in both north and south; and that there was no evidence of greater over capacity in one than in the other.

On page 17 of the report, it says that whatever savings come from mergers is something that will arise in the future. Last paragraph on page 17.

If your Honors please, there are many things that I want to cover but, of course, some of those things the Court has indicated they have already pretty much dismissed, but I would like to summarize in about two

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minutes.

The object of the proceeding before the Commission was divisions. It is the Commission's discretion to take into consideration what weight is to be given to the various fac-

tors. There is no doubt that they predicated their decision on relative costs. The costs that it used were the costs of the kind usually used in these cases, and the great bulk of the Southern lines cost evidence was the same as ours.

The Commission carefully considered each one of these adjustments that the southern lines proposed and gave very definite and very rational reasons for not adopting those which it did not adopt.

The case is very much the same as Southern Railway or rather South Carolina and Southeastern versus United States, the L & N Southern Railway case.

The Court in that case simply held that the Commission acted with authority, and held that there was substantial evidence and refused to send it back to the Commission.

Here is another very recent case, Illinois Central versus the Great Northern, ICC 34699 is the citation.

It is not yet in the official reports.

THE COURT (Judge Wisdom):

What is the number?

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MR. KAIER:

34699, served October 27, 1966. This is a recommended report of Examiner Birchmore; the case involved a dispute over the divisions on calcined alumina, originating in a few points south on the Illinois Central to a few points on the Great Northern. The Illinois Central put in its Form A costs, system average form A cost adjusted for switching, to eliminate platform handling, which is eliminated in our costs, and to reduce the billing expenses.

The Great Northern criticized the use of the Form A, as not tending to disclose the cost of handling the traffic at issue. The examiner said: It urges that the formula is designed to portray broad territorial costs and when

applied to individual roads, shows only the average costs characteristic of that road, which may be heavily influenced by predominate traffic different from the proceeding under consideratiom.

But the examiner said that costs determined in a similar manner had been relied upon in other division cases involving single commodities, citing L & N versus Southern, 319 ICC 39, that same divisions dispute between the L & N and the Southern Railway.

So here we have a situation where these lines have extended the use of this cost formula to embrace

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single commodities moving between a few points. The Illinois Central did it in this case, I just cited; the L & N did it in the coal case, and yet they come in and say to your Honors that in this broad territorial case that formula is not good.

It seems to me there is a marked inconsistency there.

But all of the evidence comes back to the proposition that the Commission is the one which is charged with the determination of whether or not the costs studies are representative or should it be more refined. We think they have discharged that duty and respectfully submit that the Court should apply that ruling to the issues here and as the North Carolina court did sustain the ruling of the Commission.

MR. CERRA:

If it please the Court, I just have two small points.

The Court has inquired about the power of the Commission to consider in a determination of the prescriptions of division, this business of passenger deficits, suburban deficits. This power stems from the statute itself, your Honors, Section 15 (6) states that in "prescribing and determining the divisions of joint rates, fares, and charges,

the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the

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amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property'' and it goes on, but that is the point there.

THE COURT (Judge Wisdom):

I have no doubt those factors should be considered but the question is whether they should be considered in a division of the rates.

MR. CERRA:

Yes, sir.

THE COURT (Judge Wisdom):

And you still have the statutory provision against discrimination.

MR. CERRA:

Now the statutory provision you are talking about on discrimination is 3(1)?

THE COURT (Judge Wisdom):

Yes.

MR. CERRA:

3(1), discrimination in freight rates between regions?

THE COURT (Judge Wisdom):

Ordinarily it's between shippers, I realize that it is ordinarily between shippers, but are there any cases involving rates?

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MR. CERRA:

Oh, yes, the New York case is a regional case under Section 3 (1), your Honor, yes, region. But there, again—

THE COURT (Judge Wisdom):

Is there a legislative history on this section? Is there legislative history on it?

MR. CERRA:

3 (1)? There is some legislative history on it when regions were included within the terms of Section 3(1); I believe it was in 1940 as Governor Sanders said this morning.

But the point we are trying to make here, and I think the most significant point, is that these freight rates are in existence, and the only squabble now is how are the carriers going to divide them. All right,—

THE COURT (Judge Wisdom):

You mean the freight rates already include these passenger deficits?

MR. CERRA:

They include all the costs; they are based on those costs. Now, the Commission must determine how are they going to divide these freight rates the shippers pay between the carriers who participate in the movement? Now, as Mr. Kaier has indicated they are in there and

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you are going to divide them, of course, in accordance with the way your costs are in there—the cost of handling on one side of the border and the other side.

We think that that is a significant point there; we think that in the Commission's determination in pro rating the

passenger deficits which include, for my discussion, the suburban deficits or commuter deficits, it is under an obligation to allocate the costs, the overhead costs which are incurred, among the various segments of the traffice that that railroad has. That is all that they did in this case. It took all of the suburban deficit, all of the passenger deficit of the southern lines, and all of the passenger deficit of the northern lines, and allocated it in proportion that that bears—that that traffic bears to the total traffic handled by the road, et cetera.

Now, there are basically—there is basically one further point which in reply brief, plaintiffs have urged, and that is the consideration of the Chenery Rule.

To express the Chenery Rule, it is but a simple, fundamental rule of administrative law that a reviewing court will judge the propriety of the agency action solely on the ground that the agency urges and that they can't accept appellate pro hac rationalization in

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every area.

When the Commission dismissed their cost adjustments—

THE COURT (Judge Wisdom):

Contrary to the rule with regard to courts, district courts; if the judgment is sound for any reason—

MR. CERRA:

You would have to sustain it, that's right, as a court of appeal. But this basically is that in Administrative—

THE COURT (Judge Wisdom):

I see there might be a difference with regard to administrative agencies.

MR. CERRA:

Yes, because you never know whether the agency actually had that in mind, in determining the case, and if they didn't say it, counsel can't say it. But in every area which we have in our brief attempted to bring up this rationale of what the Commission said in the report and Commission's findings, we had the Chenery rule on our neck. We think that the claim is clearly wrong because for example plaintiffs contend that defendants' counsel violated the Chenery rule by arguing to the court that the restated Rail Form A costs is appropriate for measuring south-north traffic costs, however, the

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Commission clearly found that Rail Form A average costs as restated by it, this is page 26 of their report, adequately reflects costs attributed to traffic.

It is our argument, of course, based on what the Commission found, and based on the grounds that the Commission invoked that the claim is apparently not well founded. We point them out in our proposed findings, specifying correlation between our statement and what the Commission has actually found.

THE COURT (Judge Wisdom):

And you reach it by following the same formula?

MR. CERRA:

Yes, sir; we tried to; that is correct.

In conclusion, let me say—

THE COURT (Judge Wisdom):

What disposition should we make of the injunction that issued should we remand it?

MR. CERRA:

As I recall, your Honor, the injunction was not granted but protective conditions were imposed.

THE COURT (Judge Wisdom):

I just don't recall that, sir.

MR. CERRA:

As I recall, the injunction was denied with the people getting together and saying if and when the Court should

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ever set it aside, that they would be a pay-back provision of the difference—

THE COURT (Judge Wisdom):

I remember it now.

THE COURT (Judge Hunter):

The northern railroads are now getting the money?

MR. CERRA:

They are getting the money; if it is reversed there will be some arrangement made after appeal, probably to get everything ironed out. I don't think the original injunction issued.

THE COURT (Judge Hunter):

The court was asked for an injunction and refused to issue the injunction; as a result of that refusal, the northern railroads are getting the money. Now, if the case were sent back, remanded to the Commission, what happens to that order?

MR. CERRA:

Well, I would assume, your Honor, that there would want to be an examination of whether there should be an appeal to the Supreme Court, and there would probably follow a request of the court to continue those same condi-

tions pending disposition of the Appeal. We have done that in the other case now pending in the Supreme Court, The Transcontinental Divisions case.

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Those pay-back provisions are continued until the matter is finally disposed.

THE COURT (Judge Wisdom):

Is that case analagous to this case?

MR. CERRA:

Your Honor, there are no cost issues in that case before the Supreme Court; it's simply a question there whether the Commission made adequate findings and whether those findings were made on substantial evidence.

THE COURT (Judge Wisdom):

I was wondering whether it was worth waiting for the Supreme Court?

MR. CERRA:

I don't see any reason why this court would have to wait for the Supreme Court, because I think that the issues here are quite different from what is before the Supreme Court, your Honor. There—and I don't want to get into a dissertation about what that District Court did, but they are different from what issues are presented to this Court today by this hearing.

THE COURT (Judge Wisdom):

I interrupted you when you were about to summarize.

MR. CERRA:

I want to end on this note: We believe we've shown the

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the superficial nature of these allegations concerning or in connection with errors concerning the Commission's costs,

and the other issues involved. While the issues are numerous, we submit that the Commission has adequately disposed, in accordance with the Congressional directive in Section 15(6) of the Act, which permits the Commission to prescribe divisions that are in its practical judgment fair to everyone.

In a final analysis, the question before this Court, besides all the technical points of whether there is power to do it and whether they did do it—if and when the Court gets back to this question, it is: whether the Commission's determination meets those standards. We feel in this case that all of those standards are met and the determination made by the Commission was rational and based on rational findings, and based on evidence; and we hope that the Court will sustain it.

THE COURT (Judge Wisdom):

Couldn't it be said that these deficits are in the nature of overhead? How do you answer that?

MR. TRIENENS:

I would say that if the Court or I should say the Commission were dealing with overall revenue needs, and found that that's the way you had to look at it, you

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had to see about the—all traffic, not just north-south—all the traffic to make sure in these divisions that all the overhead was met, same in the north, do it on an overall revenue needs basis, but that is not the basis on which the Commission decided. They said they were not deciding it on the overall revenue need as measured by rate of return, but were deciding this case on the north-south freight traffic.

There is a great danger, as a matter of policy, there is a great danger if you came along and said "Well, let's con-

sider commuter deficits and this and that," then what would be the incentive to go clean up your own back yard? Why wouldn't you just throw it in the pot and let the other territories help carry the burden. I think as a matter of policy they did the right thing in not trying to use these divisions for revenue needs, but the problem is that when they came and erroneously under their own standards and tossed them in against north-south freight traffic, they went and did through the back door what they said they would not do.

THE COURT (Judge West):

Let me ask you this, Mr. Trienens, I understood a moment ago, and correct me if I misunderstood you, to say that the establishment of the rates was over the

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northern and southern lines and were being used; and that the passenger deficits were taken into consideration in the establishment of the rates. Now, are you taking into consideration the establishment of the rates themselves, or what do the Southern roads have as to equal participation if in fact their deficits were less than, of course, the others? You would be benefitting by higher rates, in effect, more than if they were to eliminate that in establishing the rates.

MR. TRIENENS:

It my understanding that the current rates that are being applied are being applied under a principle and a policy of the Commission that the commuter service ought to pay its own way or that the states and local communities ought to pay it.

I would deny categorically that we are now collecting rates benefitting from commuter deficits, and I say that for several reasons, number one, it is a fact of life, that the Northern Governors, as Governor Sanders mentioned, are

in fact taking over the burden. Why are they doing it? Because Congress and the Commission assumed that they should bear those burden, their own local communities. I say also that in the Florida case, after all King versus the United States was a Florida

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intrastate rate case—the emphasis was, contrary to the argument of counsel, that these facilities were common; that you couldn't discontinue the high speed track necessary to haul vegetables, and also it rested on the concept of common costs.

THE COURT (Judge West):

I understand that. I understand; I wanted to make sure that I got your point, that if you assume that these deficits were used to make the rate, or used in the rate making process, that the thought comes to mind whether you should share in those deficits.

MR. TRIENENS:

But I would like to point out that this is our argument, that the rates, traditionally in the south-north field up to this decision have been divided. And our whole point was that in the old days when there were these discriminatory or differential freight rates, when you found a rate that equal north and south, we divided without any inflation provision. They came along and unified the freight rate and we divided the rates. Freight rates were made uniformly and we divided them uniformly. They are still made uniformly.

THE COURT (Judge West):

Mr. Kaier said a moment ago that there was a period back when there was an inflation on the part of southern

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lines.

MR. TRIENENS:

We got an inflation when and only when the rate was higher in the south. During that same period when the costs were supposedly also higher in the south and we found a rate that made on a uniform basis, we divided that on an equal factors scale.

Now, without going into those cases, they are listed in our brief starting at page 60, and they are discussed in the Southern Governors' brief pages 37 and 38.

And today, till today, when you have a uniform class rate, notwithstanding the commuter deficit—we have uniform class rates, they don't have higher rates because they have commuter deficits than we do, even today we have uniform rates, but the dividing is made, and the basis of this argument, your Honor, in answer to your question—the dividing should be made at each dividing line according to the uniform scale.

THE COURT (Judge Wisdom):

Let me ask you, assuming that the present rates do not include the commuter deficits, they do include the passenger deficits?

MR. TRIENENS:

Generally they reflect the common costs. I'm sure of

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that. Now I want to say on that that the problem of what the rate level has been prior, and I think it's important to the case—but in dealing with what this Commission did, they of course based it on this cost theory; and Mr. Kaier says that, well, this is based on common costs and King is decisive. My point is, and let me get this in first, I'm faced with a Commission report and I am told why they did this. I don't feel that I have to—or that I may properly specu-

late about the King case or other theories because the Commission on page 78 tells us why in this case, why in this case they threw back in commuter costs because suburban service includes common costs, and because there are some common costs we must throw them back in.

Now, mechanically what happened is we came along adjusted these costs and in this particular thing we took out the whole commuter deficit—and I want to make it perfectly clear we took out the Illinois Central Railroad right with the New Haven and right with the Pennsylvania; we took out all of those at once, because each community ought to bear their own burden, as it is solely related, as the northern lines themselves said. The Commission said "Well, we agree, many of those things are solely related, but because—and it's their "because"—some of these are common costs,

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we now throw them all back in. Now, that's the reason they did it, and it doesn't make any sense; and to philosophize about what if they decided on revenue needs instead of costs; what if they divided the rates as made, which they didn't do; what if they relied on King—that would be one of the problems this Court faces if it is going to decide these matters itself.

The Commission merely has to give a rational disposition of this issue under its standards, and we really don't get to all these other things. The Commission, we hope will have to face up to this—it may come out the other way, but if they do, well, at least we will have some basis to see where they started.

THE COURT (Judge Hunter):

Coming back to Judge West's question, if these freight rates were made on the basis of the passenger and commu-

ter deficits then why wouldn't it be equitable to the north to get a bigger proportion?

MR. TRIENENS:

My answer to that was, sir, we do have the uniform rates today; and to the extent that the north has higher commuter deficits they are not reflected in the rates to give them a differential higher rate. I was just trying to answer Judge West, only if the Commission got out another decision in its class rate case and de-

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parted from New York versus United States and say we are going to have higher rates in the north because of commuter deficits, then I would have to face up to it; but they haven't done it yet. We are happy to divide these rates on a uniform basis.

THE COURT (Judge Hunter):

If the rates are the same on this north-south traffic, the northern shipper pays the same as the southern shipper pays, but if that rate is higher because of the northern commuter service, then would that be a consideration?

MR. TRIENENS:

Then, too, since counsel accurately stated that this is spread, pro-rated over all freight traffic, if that supposition is true, your Honor, then the northern intra-north rate would be higher than the southern intra-south rate and the southern shippers would have the advantage of a differentially lower basis on intra-territorial freight which they do not have today, because the rates are equal.

THE COURT (Judge Hunter):

Let me be sure that I understand. It seems to me you are emphasizing, and it may be I am all haywire, but you

seem to be saying that the Commission started by saying "All we have to consider here is north-south

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freight costs." That is all they were going to consider; and you say their fatal error was in considering other things?

MR. TRIENENS:

The fatal error was in applying that standard. You see initially I take the standard, first the ground they relied upon was north-south freight, and I say if that is the test, then, in finding this inflation they have injected into this thing, things that do not meet their own test; their finding as to why they have the commuter solely related finding and why they have these higher interchanges; and findings of higher costs—these don't relate to their own standard, and are not supported by substantial evidence under their own standard, which is north-south freight traffic.

THE COURT (Judge Hunter):

All right. Well, now, what you are saying is that they set up a standard, too, that does not include the King consideration and that they included King.

MR. TRIENENS:

I don't think they did include the King consideration. I don't think they did; and the reason I say that is this, when you get to the page that deals with the commuter deficits, I think they covered the King consideration insofar as the costs are common, because the only

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clue I've got as to why they threw in the commuter costs is because they talk about the common; but I haven't got any clue—King or any clue—as to how they took these solely related commuter costs into the north-south freight traffic.

THE COURT (Judge Hunter):

What does common mean?

MR. TRIENENS:

By common I assume they mean they go over the same tracks, same bridges on some part of the commuter haul.

THE COURT (Judge Hunter):

And you are talking about common for the northern traffic, freight and commuter?

MR. TRIENENS:

That's right, and granted, common to a part of the north-south traffic that would go over that line if there be any.

And there are—Commuter trains sometimes go out and come in on the same lines that are used by freight trains, and to the extent that that is so, to the extent they're common then they go against freight, and if we have some of the freight, then so be it.

But as we have emphasized—I was told I didn't argue that before the Commission; I argued all these points as examples of what was going on. It may well

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be that Mr. McDonald argued about the commuters, but we have argued from the day the Southern Railway put in its evidence, the cost man put it in, the common misapprehension about the commuter costs being in common, this business of imposing a burden on the south—it was argued before the examiners, and the Commission ruled on it. I don't think there is any problem that we raised it, because the Commission ruled on it, here is their ruling and it doesn't make sense.

In closing I have two points that do not deal with commuters. We have to deal with this report, it doesn't make

sense and there is no justification for the solely related costs.

I ask as to these other points, and I would like to say just one word generally about these costs.

We have set forth in the foot notes to our brief, perhaps we should have spelled it out on a whole page—but it is a foot note at the bottom of 7 and it goes through to 8—

THE COURT (Judge Wisdom):

Which brief?

MR. TRIENENS:

Our reply brief, your Honor.

This spells out and gives the cases and authorities

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that show overall average costs were used in the class rate investigation and were intended to deal with averages. Averages are a lot of things; the north is a different economy today from the south; maybe it has changed, and maybe in the next generation they will be much more similar, but today they are handling a lot of manufactured goods, auto parts back and forth, and naturally some of their averages are higher and the quality of service is different. In our operations we are hauling pulpwood back and forth, which is very cheap, of course, and that affects your averages. One of our problems here is Commission says, "Well, pulpwood is very cheap"—that is one of the things we have never gotten reconciled—but our point here is that you are dealing with very different concepts of the total problem and some of the averages naturally are higher averages in the north; the average costs of handling auto parts back and forth are higher than where you are handling other commodities. It's when you get to the same traffic—after all, we are partners in the north-south traffic, and when you are handling the same traffic, you have to

focus on that; and that is where you don't find the difference.

I would love to spend some time analyzing the

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so-called L & N versus Southern case; it was represented to you that that involved all these cost issues. We looked to that case for guidance. I would like to—

THE COURT (Judge Wisdom):

We are going to give you thirty days in which to file a brief; it need not be printed, so if you feel that anything was left out, or if you feel you should analyze this case a little more than you have, you will have an opportunity to do so. Is thirty days sufficient time?

MR. KAIER:

On what subject?

THE COURT (Judge Wisdom):

On any subject you care to brief. Mr. Trienens has just suggested that he would like to have time to analyze this case.

MR. TRIENENS:

Now, Your Honor, I meant that as a preface.

THE COURT (Judge Wisdom):

Well, there is no reason why you shouldn't. We feel that if you think that there is anything further to say we want to read it.

MR. KAIER:

Thirty days would be sufficient for us.

THE COURT (Judge Wisdom):

Well, we feel that the briefs should be filed simul-

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taneously. No one will be taken by any surprise.

MR. KAIER:

I think it would be well if we could agree, your Honor, so we will know.

MR. TRIENENS:

Well, as a matter of fact, there is this matter of the L & N case, and I have before me the motion to affirm which was filed in the Supreme Court by the Justice Department and by the Commission; it's very short—

THE COURT (Judge Wisdom):

Let me put it this way: The Court doesn't want the scope necessarily confined, and you can write about what you please, but certainly in order that the briefs will meet the issues, I think that counsel should get together on the topics, and should agree on the topics.

MR. TRIENENS:

If I may ask leave of court to lodge this motion to affirm, a public document of the Supreme Court, I think that will relieve us from having to discuss that any further.

THE COURT (Judge Wisdom):

Suppose you do that and the clerk will receive it.

MR. TRIENENS:

We have no further argument.

THE COURT (Judge Wisdom):

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You have no further argument, Mr. Kaier?

MR. KAIER:

No, your Honor.

THE COURT (Judge Wisdom):

Well, it was a very enlightening argument and very enlightening briefs and the Court appreciates the excellent presentation.

(Whereupon at 1:20 o'clock P.M. Court adjourned.)

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THE UNDERSIGNED in his capacity of Official Court Reporter, United States District Court, Eastern District of Louisiana, hereby certifies the above and foregoing one hundred thirty-three (133) pages constitute the transcript of his original stenographic record made in the above entitled and numbered cause heard in open Court at New Orleans, Louisiana, on Monday, December 12, 1966, before the Honorable John Minor Wisdom, United States Circuit Judge; the Honorable E. Gordon West, and the Honorable Edwin F. Hunter, United States District Judges presiding.

BATON ROUGE, LOUISIANA

DECEMBER 19, 1966.

FELIX L. OLIVIER
Official Court Reporter

Opinion of the District Court

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 15454

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.,
Plaintiffs

v.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION,
Defendants.

Before WISDOM, *Circuit Judge,* and HUNTER and WEST, *District Judges.*

HUNTER, *District Judge:*

This is an action to set aside and enjoin in part the order of the Interstate Commerce Commission (Commission) in Docket No. 29885,[1] *Official-Southern Divisions,* 325 I.C.C. 1 and 325 I.C.C. 449, which prescribed divisions of

1. Also embracing No. 29799, Akron, Canton & Youngstown R.R. Co., et al. v. Aberdeen & Rockfish R.R. Co., et al.

joint-rail rates on freight traffic moving between Official and Southern territories.[2]

Freight traffic between the North and the South moves on joint rates which are established when two or more carriers publish a single charge to be paid by the shipper for carriage from the originating point on one line to a destination on another. The proportion of the joint rates which each line receives as its share is called a "division" which is normally determined by agreement among the participating carriers. Prior to the orders of the Commission in this proceeding, the primary divisions accruing from Official-Southern traffic were made under an equal-factor scale prescribed by the Commission itself in its 1953 decision in Docket No. 29885 (officially reported at 287 I.C.C. 497). This decision followed the landmark decision of the Commission in *Class Rates Investigation, 1939*, 262 I.C.C. 447 (1945), wherein the Commission found that the higher rate level which was at that time applicable to the movement of rail freight in Southern territory, constituted an unlawful discrimination against the South.[3] In the *Class Rates* proceeding, the Commission ordered the discriminatory class rate structure eliminated and replaced with a uniform rate structure to be applicable throughout the United States east of the Rocky Mountains. In the *Divisions* case that immediately followed the order removing the territorial differences in class rates, the Commission ordered that, in line with the new uniform class rates, a uniform divisional scale be used by both Northern and Southern railroads in dividing revenues from North-South

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2. Official territory lies generally east of the Mississippi River and north of the Ohio River and certain points in Virginia. Southern territory lies generally east of the Mississippi River and south of Official territory.

3. The Supreme Court sustained this action in New York v. United States, 331 U.S. 284 (1947). The uniform rates prescribed by the Commission became effective in 1952. *Class Rates Investigation, 1939*, 281 I.C.C. 213 (1951).

traffic. *Official-Southern Divisions,* 287 I.C.C. 497, 523, 546-47 (1953).[4]

In 1956, the Northern railroads, dissatisfied with this equal-factor basis of dividing joint rates, called upon the Commission's statutory authority to determine that the joint rate divisions "are or will be unjust, unreasonable, inequitable or unduly preferential" and to prescribe "just, reasonable and equitable divisions" in their place (49 U.S.C.A. 15(6)).

Upon completion of the hearings, issuance of an Examiners' Report, exceptions and replies thereto, and after hearing oral argument, the Commission issued its 1965 report and order finding that the existing divisions were in violation of Section 15(6). Considering each of the Section 15(6) criteria, the Commission found that both groups of carriers were being operated efficiently and that neither group should be considered as more or less efficient than the other (325 I.C.C. at 18), that there were no dif-

4. "Divisional scales," are the form in which the Commission has consistently prescribed divisions of North-South revenues. Divisional scales are simply tools for determining percentage divisions by a most elementary use of the common fraction. The use of the uniform divisional scale prescribed by the Commission in 1953 may be illustrated for a shipment moving 200 miles in the North and 400 miles in the South. The Northern factor on such shipment under the uniform scale is 101; the Southern factor is 149. Accordingly, the Northern division would be 40.4% (101 divided by 250, or 101 plus 149); the Southern division would be 59.6% (149 divided by 250). Where the 400-mile haul is in the North and the 200-mile haul is in the South, the Northern division is 59.6% and the Southern division is 40.4%. For shipments moving equal distances in the two territories, the equal-factor scale yields equal divisions, as can be shown by an example of a shipment moving 300 miles in the North and 300 miles in the South. The factor prescribed for a 300-mile haul is the same in each territory (125) (287 I.C.C. at 552, Col. 1). As a result, the percentage division for the North is 50% (125 divided by 250) and for the South is also 50%. Thus, under the uniform scale prescribed in 1953, Northern and Southern railroads each received the same compensation from joint revenues for performing the same amount of service in carrying North-South traffic in their respective territories.

ferences in importance to the public attributable to the two railroad groups (325 I.C.C. at 28), that neither group had greater revenue needs than the other (325 I.C.C. at 49), but that there is a decisive difference in the relative costs of rendering the service as between the groups of carriers (325 I.C.C. at 50).

Finding everything else to be substantially equal and that an adjustment in the existing divisions was required to compensate the respective carriers according to their expenditures in the joint effort of handling the traffic, the Commission concluded that the relative costs of the parties can properly serve as a guide for the determination of just, reasonable, and equitable divisions for the future (325 I.C.C. at 50).

The order prescribed a new divisional formula which gives the Northern railroads 45% more than the Southern railroads for each terminal service performed and 10% more than the Southern railroads for each mile of line-haul service performed. The Commission went on to construct new scales which reflected the principles affecting long versus short hauls and then prescribed a scale of divisional factors based on fully distributed costs which divide the revenue in proportion to those costs (325 I.C.C. at 50-51). The net effect of the Commission's action was to reduce the revenue of the Southern railroads by $8,838,000.[5]

The action in this Court was originally brought by forty-two (42) railroads which together made up virtually the entire rail system in the States of Alabama, Florida,

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5. The Commission found that the net effect of the scales which it prescribed would be to reduce the revenues of the Southern railroads by $7,948,004 (325 I.C.C. at 50). The Commission's calculation was based upon "an overall estimate" and the Commission abandoned any defense of the accuracy of that calculation in its supplemental report, taking the position that it need not find the revenue effect of its action (325 I.C.C. at 453, 454).

Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. The Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners filed an intervening complaint asking that the Commission's action be set aside in part. Forty-eight (48) railroads serving primarily Northern areas intervened in defense of the Commission's order.

It should be noted that plaintiffs do not seek to set aside the order in its entirety. Their argument is that the Commission determined two precise issues which are severable, namely: (1) whether the Northern lines were entitled to an increase in their divisions because of higher costs than the Southern lines, and (2) whether the old scale of divisional factors was invalid because of an excessive terminal element of 37 integers in the initial mileage block. The effect of the Commission's action on the two subjects (as petitioners put it) would be:

(1) The reconstruction of the divisional scale benefited the Southern railroads by $7,426,000 annually.

(2) The inflations accorded the Northern railroads reduced the Southern railroads by $16,264,000 annually.

(3) The net effect of these two computations was to reduce the revenue of the Southern railroads by $8,838,000.

Plaintiffs argue that we possess the power and should set aside as unlawful only that part of the order which prescribed increased divisions for the Northern lines. They further contend that such action would leave in force the old uniform scale, minus 37 integers which resulted from the Commission's alleged "separate action correcting the excessive terminal factors in the existing uniform divisional scale." This Court, it is true, by virtue of its authority under 28 U.S.C.A. 2321, has the power to "set aside in whole or in part" an order of the Commission, and there

are situations where provisions excised from administrative orders are separable or so minor as to make remand inappropriate. This is certainly not the case here. The Commission gave weight to the plaintiffs' initial mileage block argument only "in light of our subsequent conclusion to be guided by the relative costs in our general determination * * *." It cannot be known what the Commission would have done with respect to giving weight to that argument if it were viewed independent of the other facts which induced the Commission to prescribe the divisional bases which it did prescribe.

The Commission determined only one issue in two steps, (I.E.) it determined the unlawfulness of the old divisions and prescribed new divisions for the future. If the plaintiff succeeds here in permanently setting aside the Commission's order as it prescribes the new divisional scales, there would remain no severable part of the order. This is true because there is nothing whatever in the record to even suggest that the Commission found reasonable (provisionally; contingently, or otherwise) any basis of divisions other than that which plaintiffs seek to annul in this action. Accordingly, since the Commission's order is not severable and this Court lacks jurisdiction to prescribe divisions, the the function of this Court ends if it finds the Commission's order prescribing divisions is contrary to law or unsupported by adequate findings or substantial evidence. *F.P.C. v. Idaho Power Company*, 344 U.S. 17 (1952); *Saltzberg v. United States*, 176 F. Supp. 867 (S.D. N.Y. 1959).

We proceed to a review of the Commission's findings, conclusions and the evidence. The applicable standards of judicial review are limited in scope by settled principles of Administrative law, both general[6] and statutory.[7] These standards are to be vigorously enforced.

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6. See Roadway Express, Inc. v. United States, 213 F. Supp. 868, 873 nn. 18 & 19 (D.C. Del. 1963), aff'd, 375 U.S. 12, 84 S. Ct. 53, 11 L. Ed. 2d 38 (1963).

7. 5 U.S.C.A. § 1009(e); 5 U.S.C.A. 1007(b).

In *Burlington Truck Lines v. United States*, 371 U.S. 156, 167-168 (1962), the Supreme Court stated:

> "Expert discretion is the life blood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, *expertise*, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' *New York v. United States*, 342 U.S. 882, 884 (dissenting opinion). 'Congress did not purport to transfer its legislative power to the unbounded discretion of the regulatory body.' *Federal Communications Comm'n v. RCA Communications, Inc.*, 346 U.S. 86, 90. The Commission must exercise its discretion under § 207(a) within the bounds expressed by the standard of 'public convenience and necessity.' Compare *id.*, at 91. And for the courts to determine whether the agency *has* done so, it must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it.' *Phelps Dodge Corp. v. Labor Board*, 313 U.S. 177, 197. The agency must make findings that support its decision, and those findings must be supported by substantial evidence. *Interstate Commerce Comm'n v. J-T Transport Co.*, 368 U.S. 81, 93; *United States v. Carolina Carriers Corp.*, 315 U.S. 475, 488-489; *United States v. Chicago, M., St. P. & P.R. Co.*, 294 U.S. 499, 511."

The statutory standards of judicial review are found in the administrative Procedure Act, which provides, to the extent here pertinent, that the reviewing court shall:

> "hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; * * * (5) unsupported by substantial evidence in any case * * * reviewed on the record of an agency hearing provided by statute * * *. In making

the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error." (5 U.S.C.A. 1009(e)).

* * *

"Section 8(b)—

"Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof." (5 U.S.C.A. 1007(b)).

The statutory duty of the Commission is clear. Section 15(6) of the Interstate Commerce Act, 49 U.S.C.A. 15(6), directs it to set aside inequitable divisions of joint rates and then prescribe equitable ones. The ICC is explicitly directed to consider relative efficiency, public interest, terminal costs, revenue needs, and any facts which would, without regard to the mileage haul, entitle one carrier to a greater or lesser proportion of the joint rate. Among the "other facts" which the Commission may consider is the cost of service of the participating carriers, which issue may be entirely different from the issue of revenue needs. *Baltimore and Ohio RR v. United States,*

298 U.S. at p. 360. Here, the divisions were prescribed solely on the basis of the relative costs of handling the specific freight traffic at issue. The Commission said:

> "Everything else being substantially equal, the relative costs of the parties reflecting their respective operations as to this traffic can properly serve, as here, as a guide for the determination of just, reasonable, and equitable divisions." 325 I.C.C. at p. 50.

A fundamental rule of administrative law is that a reviewing court, in dealing with a determination of an administrative agency must judge the propriety of that action solely on the basis invoked by the agency. If this basis is inadequate, the court is powerless to affirm the administrative action. *S.E.C. v. Chenery Corp.*, 332 U.S. 194 (1947).

The *Chenery* rule was expressly applied in the review of an order of the Interstate Commerce Commission under the Administrative Procedure Act in *Burlington Truck Lines v. United States*, 371 U.S. 156, 168-169 (1962). The Supreme Court reaffirmed these rulings again in *N.L.R.B. v. Metropolitan Life Ins. Co.*, 380 U.S. 438, 443-444 (1965):

> "* * * the integrity of the administrative process requires that 'courts may not accept appellate counsel's post hoc rationalizations for agency action * * *.' Burlington Truck Lines v. United States, supra, 371 U.S. at 168; see Securities & Exchange Comm'n v. Chenery Corp., 332 U.S. 194, 196. For reviewing courts to substitute counsel's rationale or their discretion for that of the Board is incompatible with the orderly function of the process of judicial review. Such action would not vindicate, but would deprecate the administrative process for it would 'propel the court into the domain which Congress has set aside exclusively for the administrative agency.' Securities & Exchange Comm'n v. Chenery Corp., supra, 332 U.S. at 196."

This brings us to what petitioners refer to as the fundamental error, which affects virtually all of the Commissions's cost determinations. They put it this way: The higher costs claimed by the Northern railroads were found to have been incurred in handling this specific traffic in issue, but when it came to determining the relative costs which were to control this divisional formula, the Commission in at least seven instances relied, not upon the actual costs incurred by the two groups of railroads on the traffic in issue, but upon the unadjusted average costs incurred by the railroads on the average of all traffic handled in their respective territories. The Commission's rebuttal to this assertion appears on Page 6 of the Commission's original brief:

> "In a comprehensive analysis rejecting seven of Southern lines' adjustments as unsound in concept or based upon unsupported inapplicable facts or assumptions, the Commission accepted the Rail Form A costs, as restated by it, as reliably and accurately reflecting the costs attributable to the handling of North-South traffic. Whether these costs were adequate and whether they should have been more refined or supplemented as plaintiffs desired, are questions of fact within the exclusive competence of the Commission to determine, which were determined here and are based upon substantial evidence of record.

The Northern lines insisted throughout the hearing that unadjusted Rail Form A[8] costs reliably and accu-

8. Rail Form A is a formula for assigning the territorial or systemwide costs of operation including rents and taxes for any given year to the service units (ton-mile, car-miles, switching time, etc.) performed by the railroads during that year. This procedure assigns the costs as between those that are incurred in the origination and termination of a shipment, which are applicable to all shipments regardless of the distance of movement (terminal expenses), and those costs which are incurred in moving a shipment between the origin and destination points (line-haul expenses). It is adaptable for use in ascertaining the service unit costs of a single railroad or a group of railroads collectively. Territorial average costs here were based on the expenses and operations for 1956.

rately reflect the costs attributable to the handling of the traffic at issue. Only a relatively few elements of the Northern railroads' average costs are higher than the Southern railroads' costs. It is uncontroverted on this record that most elements of railroad costs (such as operating trains, maintaining roadways, etc.) are no higher in Northern railroads than for the Southern railroads. The inflation in the costs is attributable to a relatively few cost items. These include the cost of commuter operations, the cost of interchanging cars, the ratio of empty to loaded cars, the cost of railroad freight cars, and a few other items. As to each of these controverted items, the Commission relied exclusively on territorial average costs (Rail Form A). This was pegged on a finding that Rail Form A costs were reliable and reflected the costs attributable to the handling of the specific traffic. The theory is that in broadly based proceedings and interterritorial division cases, the territorial costs are entitled without more to full credence and weight as the initial indication of what would be fair and equitable. The Commission concluded in each of these instances that Rail Form A provided more reliable data for application to the Official-Southern traffic than did the adjustments prepared by the Southern lines. The Commission took no independent action to require the development of more refined cost data. Typical of this approach is the conclusion made by the Commission, in disposing of petitioners' request for an adjustment of switching costs:

> "For these reasons, we conclude that the contions of the northern lines are of merit and that Rail Form A territorial average switching costs more accurately measure the relative switching costs on each side of the border of the official-southern traffic than the switching costs computed by the southern lines." 325 I.C.C. at page 77.

Plaintiffs and intervening plaintiffs urge some 31 propositions as reflected in the Pre-Trial Order, but their

briefs resolve them into 17 separate questions of which the great majority relate to the Commission's treatment of relevant service costs. These are:

1. Section 7(c) of the Administrative Procedure Act provides that "The proponent of a rule or order shall have the burden of proof" (5 U.S.C. § 1006(c)); and this provision has been held to apply to proponents of changes in existing rate divisions. The Northern railroads here failed to satisfy their burden of proof, and the Commission failed to enforce that burden and thus violated Section 7(c) when it permitted the Northern railroads to rely entirely upon territorial average evidence, without showing that such averages were applicable to North-South freight traffic.

2. The Northern railroads had a duty to come forward with relevant evidence in their sole possession necessary to resolve the issues raised when the Southern railroads challenged the application of territorial average costs of all traffic to North-South traffic. The Commission erred in failing to enforce this duty and in holding instead that the absence of adequate and comparable evidence was a ground for resolving those issues against the Southern railroads.

3. The Commission has power to require the development of adequate and comparable cost data. Section 20(1) of the Act expressly grants the Commission the power "to require the carriers to provide full, true and correct answers to all questions upon which the Commission may deem information to be necessary" (49 U.S.C. § 20(1)). The Commission has a duty to use its powers to obtain cost evidence where such evidence is necessary to assure an adequate record. That duty was violated here as the Commission failed to take affirmative action to require the development of an adequate record as to the actual costs of handling the North-South traffic at issue.

4. Section 8(b) of the Administrative Procedure Act requires the Commission to "rule upon each * * * exception presented" (5 U.S. § 1007(b)). The Commission violated its statutory duty by failing to rule upon the Southern railroads' "Exception No. 1" dealing with the burden of proof, the duty of the party in possession of relevant evidence to come forward with it and the power and duty of the Commission to require a complete record.

5. The Commission stated as its standard the costs of handling North-South freight traffic, its reliance upon territorial average costs caused it to include in the Northern costs which it found, the Northern deficits from suburban commuter passenger service operations. This action constitutes a violation of both Sections 8(b) and 10(e) of the Administrative Procedure Act when judged against the standard stated by the Commission itself as governing in this case—that is, the relative costs of handling North-South freight traffic. The Commission made no reasoned findings and had before it no substantial evidence on which such a conclusion might be based. The lack of rational basis for the Commission's conclusion is highlighted by the Commission's own inconsistent finding that "many individual items of suburban service can be considered solely related * * * to suburban service" (325 I.C.C. at 78).

6. The Commission's prescription of divisions based on costs which include a separate allowance for "border interchange service" 58% higher for the North than for the South violates the requirement that the Commission's findings and conclusions be supported by substantial evidence within the meaning of Section 10(e) of the Administrative Procedure Act.

7. The Commission's action in using 32% higher car costs for the Northern railroads than for the Southern railroads violates Sections 8(b) and 10(e) of the Administrative Procedure Act since there were no reasoned findings

to support that action, nor was there substantial evidence in the record to support such a finding.

8. Section 15(6) of the Interstate Commerce Act provides that in a divisions case the Commission is to determine the costs incurred by the respective railroads which are "applicable to the transportation of passengers or property," a determination which has nothing whatever to do with the financial results of car rentals. Since the Commission's finding of 32% higher Northern car costs is in substantial part of the product of the greater amount of car rentals received by the Southern railroads (on traffic other than North-South traffic), the Commission's action also violates Section 15(6) because it fails to differentiate the railroads' separate function as car-owning or renting agencies as compared with their function as transportation agencies.

9. The Commission's use of territorial averages in computing the "switching costs" of the Northern and Southern railroads rather than the specific costs incurred by those railroads with respect to North-South traffic is not supported by reasoned findings and not based on substantial evidence in the record and thus violates Sections 8(b) and 10(e) of the Administrative Procedure Act. In addition, the Commission's rejection of the Southern railroads' special studies of switching costs on the traffic at issue because there were no comparable studies of Northern costs constitutes a violation of Section 7(c) of the Administrative Procedure Act in that it places the burden of proof on the Southern railroads rather than the proponents of the Northern inflation who had the evidence in their sole possession.

10. The Commission's use of territorial average "empty return ratios" rather than the actual empty return ratios for the North-South traffic in issue also violates Sections 8(b) and 10(e) of the Administrative Procedure Act.

because it is unsupported by reasoned findings and not based on substantial evidence in the record. This also violates Section 7(c) of the Administrative Procedure Act which puts the burden of proof on the proponent of change, and the principle that those in possession of relevant data are obliged to come forward with it.

11. The Commission's inconsistent counting of cars interchanged and terminated and its rejection of the Southern railroads' attempts to correct that inconsistency violate the burden-of-proof provisions of Section 7(c) of the Administrative Procedure Act, the principle that those in possession of relevant evidence are obliged to come forward with it, and the obligation of the Commission to assure the making of an adequate record.

12. The Commission's use of territorial averages in dealing with the constant cost of transit commodities and its rejection of Southern adjustments designed to reflect the costs associated with North-South traffic also constitute violations of the burden-of-proof provisions of Section 7(c), the principle that those in possession of relevant evidence are obliged to come forward with it, and the obligation of the Commission to assure the making of an adequate record.

13. The "typical evidence rule" requires that there must be evidence typical in character and ample in quantity with respect to the divisions and services performed under the particular rate being divided. The Commission must consider evidence of actual services performed on particular traffic involved, and not rely wholly on averages which "are apt to be misleading." *United States v. Abilene & Southern R. Co.*, 265 U.S. 274 (1924), at p. 291; *Atchison, Topeka & Santa Fe R. Co. v. United States*, 225 F. Supp. 584, 592-600 (D. Colo. 1964).

14. The Commission's departure from uniform divisions related to uniform rate levels is not supported by the

reasoned explanation required by Section 8(b) of the Administrative Procedure Act.

Other alleged errors are:

15. The Commission's Supplemental Report invoked its quasi-judicial powers to decide this case as an aid to its executive function of defending its order before the Court. This resulted in an unconstitutional denial of notice and an opportunity to be heard. *Atchison, T. & S.F. Ry. Co. v. United States,* 231 F. Supp. 422, 428 (N.D. Ill. 1964).

16. Section 7(d) of the Administrative Procedure Act (5 U.S.C. § 1006(d)) requires that: "The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision * * *." The Due Process Clause of the Federal Constitution requires also that the Commission not go outside the record in reaching its decisions. The Commission violated both of these provisions when its use of its Cost Finding Section led it to rely on data not contained in the record in three separate instances.

17. The Commission's conclusion that the North suffers from inherent disadvantages in transportation conditions was supported by neither reasoned findings in the Commission's report as required by Section 8(b) of the Administrative Procedure Act, nor by substantial evidence, as contemplated by Section 10(e) of that Act.

Propositions 15 and 16 may be readily disposed of. The Commission's use of its Cost Section to give technical aid in analysis and evaluation of the cost evidence of record was an integral part of this administrative proceeding. This infringed the rights of no one.[9] The Commission's

9. The Commission's use of its staff assistants was specifically approved in T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex., 1960), aff'd sub nom. Herrin Transp. Co. v. United States, 366 U.S. 419 (1961).

issuance of its supplemental report was lawful and proper and constituted sound administrative practice.[10] Moreover, in issuing its supplemental report the Commission did not change its outstanding order in any respect, except as to divisions of the Norfolk Southern Railway, which is not here challenged.

Proposition 17 requires amplification. The failure to draw a clear line of demarcation between findings of fact, summaries, analyses and discussion had contributed heavily to the difficulty of reviewing this case. Intervening plaintiffs insisted before the Commission that for at least 30 years prior to this case, the Commission has consistently followed the view that primary responsibilty for meeting the costs and revenue needs of any territory lies with the people and industry of that territory, and that deviation from the equal division factor now in effect can be justified under 15(6) of the Act only if the higher costs found to exist are brought about by inherent territorial disadvantages. This is so, they say, because differences in cost which cannot be related to such inherent disadvantages might well be the product of nothing more than inefficiency or overcapacity on the part of one group of railroads. Plaintiffs insist that this was the express principle enunciated by the Supreme Court in *New York v. United States,* 331 U.S. 284. The Commission was cognizant of this contention, which was the main thesis of intervening plaintiffs before the Commission, and handled it as follows:

> "Relying on *New York v. United States,* 331 U.S. 284, 315 (1947), the interveners also take the position that natural disadvantages must be found in the North before we may increase the divisions of the northern railroads. In essence, however, other factors being equal, cost differences generally are the product of,

10. Alamo Express, Inc. v. United States, 239 F. Supp. 694, 697, 698 (W.D. Tex., 1965), aff'd 382 U.S. 19; Donaldson v. Read Magazine, 333 U.S. 178 (1948).

and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories." (Pgs. 27-28).

Plaintiffs read this language as an implicit holding by the Commission that the North suffers from inherent territorial disadvantages and a recognition of their judicial construction of Section 15(6), (i.e.) that only cost differences related to inherent disadvantages should be permitted to serve as a basis for an increase in interterritorial divisions. Defendants' answer to this is that the Commission made no finding on this question at all and "were simply commenting on Intervenors' contention." Surely, the Commission report should be so phrased that there be no room for such a dispute as this. We have read the language carefully and we have some hesitation in saying which interpretation is correct. The question of whether a showing of inherent disadvantages is prerequisite to an increase in territorial divisions is, at least in the first instance, a question for the Commission. If, as petitioners read the report, the Commission has held that such a showing is necessary, then this Court need only consider whether in view of such a test, the requirements of reasoned findings and substantial evidence of Sections 8(b) and 10(e) of the Administrative Procedure Act have been met. If, on the other hand, as defendants contend, the Commission has made no holding on the question of inherent disadvantages, the Court must consider whether the Commission's failure to resolve the material issue raised with respect to that question can be reconciled with the express requirement of Section 8(b). We are considering not a restriction upon the statutory powers of the Commission to make divisions, but whether the Commission followed requirements of the Administratve Procedure Act. The Administrative Procedure Act requires findings on material issues of law. N.L.R.B. v. Hearst Publications, 322 U.S. 111 (1944). If, as plaintiffs assert, the Commission has held that a showing

of inherent disadvantages is a pre-requisite to an increase in territorial divisions, then the Commission's conclusion (that higher Northern costs reflect inherent territorial disadvantages) is subject to attack because there are no findings as to what these inherent territorial disadvantages consisted of. Intervening plaintiffs have consistently and strenuously made the contention that as a matter of law the Northern railroads cannot have an increase in the absence of inherent territorial disadvantages. This case is to be remanded *for other reasons.* Upon remand, the Commission should decide and dispose of this contention in accordance with the Administrative Procedure Act.

The remaining exceptions to which we must address ourselves relate to cost evidence. Reduced to its simplest terms, the situation is this: All agree that the relevant costs are those of the North-South freight traffic to which the divisions apply. However, when it came to determining the relative costs which were to control this divisional formula, the Commission relied upon the actual costs incurred on the average of all traffic handled in the respective territories.[11] The Commission, as to each of seven specific items of unit cost (which account for the entire inflation) decided that the Northern lines established a prima facie case that Rail Form A costs properly measure the cost of the specific traffic.[12] In each instance the Southern lines introduced evidence and sought adjustments to reflect what they contended to be the actual cost of the specific traffic. In each instance the Commission rejected these adjustments, and employed Rail Form A territorial unit costs as accurately representing the cost of service. The Commis-

11. The North-South traffic in issue constitutes on 6.0% of the total freight revenue of the Northern railroads and constitutes 21.4% of the total freight revenue of the Southern railroads (V.S. 36, Ex. 5).

12. The Northern lines presented a train utilization study, which revealed that of the total of 13,647 loaded trains shown for five study lines for a selected week in May of 1959, 6,099 trains representing 44.7% were found to be transporting at least one loaded car moving from or destined to Southern territory.

sion did not assume any responsibility for the development of a more adequate record, and in several instances held that the absence of comparable evidence in the record itself prevented adjustments in territorial averages.[13]

Typical of the overall approach of the Commission was its inclusion of suburban passenger deficits as a part of the cost of handling North-South traffic. Through the use of average costs, deficits attributable to both inter-city passenger service and suburban commuter service were included in cost computations. It is generally agreed that the intercity passenger deficits should be considered as a part of the cost of providing freight service, because such deficits are usually the product of costs allocated to passenger operations from common facilities which must be maintained in order to provide freight service.[14] Suburban (commuter) deficits are in a different category. The railroads, which on today's market carry large numbers of people from their homes in the suburbs to their place of work in the cities, often, if not preponderantly, use separately constructed and maintained lines. These suburban commuter operations require equipment and facilities that in many instances have no other use whatsoever. The reason stated by the Commission for the inclusion of commuter deficits is that "the suburban service deficit includes common costs" which must be incurred to provide freight service (325 I.C.C. at p. 78). But the Commission also found as a fact that "many individual items of suburban

13. For instances in which evidence of the Southern railroads was rejected for lack of "comparable" data for the North, see 325 I.C.C. at 69 (refrigerator car empty return ratios); 325 I.C.C. at 76; 325 I.C.C. at 60. The same result was reached due to an absence of "adequate" data at 325 I.C.C. at 66 (box car empty return ratios).

14. The necessity for maintaining common facilities for freight service was explained by the Supreme Court in King v. United States, 344 U.S. 254, 265 (1952):

> "In Florida, moreover, the discontinuance of railroad passenger service would not permit the discontinuance of high-speed tracks and equipment because of the need for fast freight schedules to transport perishable fruits and vegetables from Florida."

service can be considered solely related * * * to suburban service." (325 I.C.C. at p. 78). This latter finding seems to be a concession that many commuter facilities are solely related to that service and have nothing whatsoever to do with the cost of handling North-South traffic or any other freight traffic. The critical issue on this cost item was to determine how much of the railroad's cost of commuter service was in fact common with the cost of freight service and how much was solely related to commuter service. But, in accordance with its general approach to these issues, the Commission, by adopting Rail Form A, inflated the Northern railroads' freight cost by the entire commuter deficit of those railroads, without regard to the plain conflict between this action and its own finding that "many individual items of suburban service can be considered solely related * * * to suburban service." Counsel for defendants, during argument, repeatedly suggested that the commuter deficits are properly chargeable to the traffic at issue as an "overhead." They argued:

> "* * * there has been a definite theory upon which the Commission has allocated these costs as a matter of policy, and that is that there is a need for that revenue to continue operations."

The complete answer to this contention is that the Commission did no such thing. The revenue need issue was hotly contested before the Commission, each group contending that its needs were greater—the Northern railroads, on the basis of lower rates of return; the Southern railroads, on the basis of their growing service responsibilities to an expanding economy. The Commission rejected both contentions, and categorically stated:

> "We find that no affirmative reasons appear in this record which would warrant any adjustment of the divisions in question over and above the relative cost of service, either on the grounds of greater revenue needs or otherwise."

There is no finding rationalizing the conclusion that suburban passenger deficits reflecting costs not common to freight service, but "solely related" to suburban passenger service, can or should be treated as cost of North-South freight traffic.

The Supreme Court, on May 29, 1967, in the cases of *C. and N.W. Ry. Co. v. A.T. and S.F.R. Co.*, and *U.S. v. A.T. and S.F.R. Co.* (Nos. 8 and 23, October Term, 1966) commented on a possible divisions case, where, as here, it is argued that carriers in one part of the country are being required to subsidize passenger operations elsewhere. There, it was said:

> "And while the Commission has sometimes acted to offset passenger deficits in freight rate cases, the issues are quite different when, in a divisions case, it is argued that carriers in one part of the country should subsidize the passenger operations of carriers elsewhere.
>
> "If the Commission were to give controlling weight to passenger deficits in a divisions case, it might be appropriate to take more evidence on the issue and discuss it in greater depth than the Commission did here. But in light of the fact that, in this case, passenger deficits were of negligible relevance to the Commission's decision to increase the Midwestern divisions, we find no errors in the Commission's findings and procedure on this point that would justify setting aside its order."

Another example of the Commission's approach is characterized by its use of a territorial average box car empty return ratios. The nature of this problem is summarized in the dissenting opinion of Commissioner Murphy (325 I.C.C. 54, 55):

> "The higher than average empty return ratios used for cars moving over the official lines is another instance where true costs have not been used. The

official lines handle approximately 800,000 carloads of automobile parts annually which originate in the Detroit, Mich., area and are destined to assembly plants in various parts of the country, including New Jersey, California and Georgia. Many of these cars are fitted with special devices to protect the automobile parts in transit. Because these cars carrying parts contain special devices and are assigned to particular plants manufacturing such parts in official territory, they normally experience an empty return movement which is, for all practical purposes, 100 percent. No adjustment is made in the cost data to cover the higher empty return costs of this type of equipment. Territorial average box car empty return ratios, as used in the report, overstate the costs of the official railroads when applied to Official-Southern traffic."

Another example of the general approach of the Commission is illustrated in its treatment of the issue of "Switching costs" (325 I.C.C. 71-78). The specific cost factor was the amount of the switching service actually performed in originating and terminating the traffic at issue. The Northern railroads placed their entire reliance upon the territorial average switching service for the average car in each territory.[15] The Southern railroads sought to develop the costs associated with the specific traffic in issue. In the face of these special studies, the Northern railroads continued to rely upon Rail Form A switching costs, which were substantially higher in the North. In its cost findings on this point, we repeat the Commission's finding at 325 I.C.C. 77:

"* * * the contentions of the Northern lines are of merit and that Rail Form A territorial average switching costs more accurately measure the relative switch-

15. The North-South traffic constitutes only 4.07% of the total cars originated and terminated in the North and 8.93% of the total cars originated and terminated in the South.

ing costs on each side of the border of the Official-Southern traffic than the switching costs computed by the Southern lines."

Although important as separate issues, the three items heretofore detailed are of greater significance as illustrations of the more pervasive error of the Commission in prescribing divisions on the basis of the average cost of all traffic for this series of important elements of cost which are higher in the North for reasons that have not been shown to have any relation to the North-South freight traffic here at issue. We are not suggesting that one might not dig out of the record argumentative support for the Commission's view, but it is not conducive to a fair administration of the Commerce Act, nor is it a proper discharge of this Court's duty, to require us to dig out indications of evidence from this massive record.

Defendants argue that the question of whether or not Rail Form A was representative, and whether it should have been supplemented are questions of fact, the determination of which is within the competence of the Commission. We start, of course, from the premise that on the subject of transport economics, the Commission's judgment is entitled to great weight. The appraisal of cost figures is itself a task for experts and, unlike a problem in mathematics, it cannot be precisely right or wrong. We know, too, that the Rail Form A cost formula was devised for the express purpose of measuring territorial average costs and has been widely used as an acceptable means of comparing relative transportation costs. It represents a comprehensive study entitled to full weight when the issue is one that it was designed to cover. However, this formula was designed to measure the cost of handling all the traffic in two or more territories, and cannot appropriately be accepted without further evidence for mechanical application to particular segments of traffic in a divisions case. The "many minute calculations" contained in

Rail Form A were used to measure the overall average costs and certainly produce a misleading appearance of exactitude when applied mechanically to measure a specific cost of a specific body of traffic such as that involved here. Evidence of overall territorial averages surely can and should be considered, but as to specific important cost items the Commission should not wholly and exclusively rely on such averages. *United States v. Abilene and Southern R.R. Co.*, 265 U.S. 274; *Atchison, Topeka and Santa Fe Ry. Co. v. United States*, 225 F. Supp. 584. The Commission stated its exclusive standard to be the relevant cost of handling the specific freight traffic to which the divisions apply. We are persuaded that the order is not based on substantial evidence nor supported by reasoned findings within the meaning of Sections 8(b) and 10(e) of the Administrative Procedure Act because the use of territorial averages accounting for the Northern inflation has not been supported with findings of evidence relating any such inflation to the North-South freight traffic.

What is appropriate in one case may be inappropriate in another. We do not hold that the Commission was required to start from scratch and construct a new divisional scale directly from cost data. We do find that, having stated its exclusive standard to be the relevant cost of handling the freight traffic to which the divisions apply, the Commission's order is not based on substantial evidence within the meaning of the Administrative Procedure Act. We note that in the Chicago and N.W. R. Co. case (supra, Supreme Court of the United States, May 29, 1967), disputes over the applicability of Rail Form A occupied a large part of the administrative proceedings. There, the Commission based its cost findings on a special cost study and analysis prepared by the Mountain-Pacific carriers and made certain adjustments which it considered more accurately reflected the true costs of the traffic involved. These adjustments (3) were derived from Rail

Form A. The Supreme Court held that the attack on the legal validity of these adjustments to costs were unsubstantial. Here, of course, the entire inflation is pegged on relative costs derived from Rail Form A.

With the Commission's expertise in mind, it is our duty to review the record and the conclusions reached, as required by the provisions of the Administrative Procedure Act. As to the sufficiency of the evidence to support the order, it is not the proper function of this Court to substitute its judgment or to weigh evidence.[16] On the other hand, it is our duty to ascertain whether or not the findings and conclusions are supported by substantial evidence. We have endeavored to review the record without a rubber stamp approach. We repeat and reiterate that in making our decision we are not unmindful of the function that the Interstate Commerce Commission is to perform and the discretion that it has. The Commission has had a hard and difficult task here. The record reveals that this facet of this case began in 1956 and that the report and order of the Commission was not issued until February 3, 1965. This in itself certainly suggests the magnitude of the problem which faced the Commission.

"Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, *expertise*, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' "[17] In 1953, in recognition of its previous action in prescribing

16. Illinois Commerce Comm. v. United States, 292 U.S. 474, 484, 54 S. Ct. 783, 78 L. Ed. 1371 (1933); Boston and Maine R.R. v. United States, 153 F. Supp. 952 (D. C. Mass., 1957); see Nashua Motor Exp., Inc. v. United States, 230 F. Supp. 646 (D.C. N.H. 1964); J. B. Acton, Inc. v. United States, 221 F. Supp. 174 (W.D. Mo. 1963), aff'd, 376 U. S. 779, 84 S. Ct. 1133, 12 L. Ed. 2d 83 (1963).

17. Burlington Truck Lines v. United States, 371 U.S. 156, 167, 83 S. Ct. 239, 245, 9 L. Ed. 2d 207 (1962).

a uniform rate level, the Commission prescribed divisions on a uniform basis with no inflation for either Northern or Southern railroads and concluded that (287 I.C.C. at 526):

> "* * * We consider it to be the safest assumption for the future upon the facts before us that neither contesting group will have an appreciably lower basis of operating costs than the other, and that there are no other relevant circumstances which are of sufficient importance to justify higher divisional factors for one group than the other."

Furthermore, for many years prior to this case the Commission has consistently followed the view that the primary responsibility for meeting the cost and revenue needs of the railroads of any territory lies with the people and the industry of that territory. *New England Divisions,* 126 I.C.C. 579, 599 (1927); *Divisions of Rates, Official and Southern Territories,* 234 I.C.C. 175, 190 (1939); *Official-Southern Divisions,* 287 I.C.C. 497, 523 (1953); *Akron, Canton & Youngstown R. Co. v. Atchison, T. & S.F. Ry. Co.,* 321 I.C.C. 17, 51 (1963). In this very case, prior to re-opening, the Commission held that the primary division of revenues accruing from this traffic were to be made on an equal-factor scale. We recognize that the Commission is not perpetually bound by their 1953 holding, but we do believe that the Commission has special responsibilities in a case of this magnitude when it departs from its prior finding (*Sec'y of Agriculture v. United States,* 347 U.S. 645). The Commission's duty to use its powers to obtain cost evidence where such evidence is necessary to assure an adequate record was stressed in *Pacific Inland Tariff Bureau v. United States,* 129 F. Supp. 472, 486 (D.C. Ore., 1955):

> "The Commission is not a passive arbitrator of disputes between carriers. It is the instrument chosen

by Congress to regulate interstate commerce in the public interest. When carriers fail to produce satisfactory evidence, the Commission may require them to produce additional and more satisfactory evidence. It may make its own investigation. It may consult with 'other interested and presumably better informed agencies of the Government as to particular question.' *Cantlay and Tanzola, Inc. v. United States,* 115 F. Supp. 81. However, the record does not disclose that any of those courses was followed in this case. *The fate of our national transportation system should not depend upon evidence either offered or withheld by competing carriers.*" (Emphasis added.)

The same principle was reiterated recently by the Second Circuit in *Scenic Hudson Preservation Conference v. Federal Power Commission,* 354 F. 2d 608 (2nd Cir. 1965). There, the Court set aside an order of the Federal Power Commission, saying (354 F. 2d at 620):

"In this case, as in many others, the Commission has claimed to be the representative of the public interest. This role does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission.

"This court cannot and should not attempt to substitute its judgment for that of the Commission. But we must decide whether the Commission has correctly discharged its duties, including the proper fulfillment of its planning function in deciding that the 'licensing of the project would be in the overall public interest.' The Commission must see to it that the record is complete. The Commission has an affirmative duty to inquire into and consider all relevant facts. See *Michigan Consolidated Gas Co. v. Federal Power Comm'n* 283 F. 2d 204, 224, 226 (D. C. Cir.), cert.

denied, 364 U.S. 913 (1960); *Isbrandtsen Co. v. United States,* 96 F. Supp. 883, 892 (S.D. N.Y. 1951), aff'd by an equally divided court, 342 U.S. 950 (1952); Friendly, *The Federal Administrative Agencies,* 144 (1962); Landis, *The Administrative Process,* 36-46 (1938); cf. *City of Pittsburgh v. Federal Power Comm'n,* 237 F.2d 741 (D.C. Cir., 1956)."

There is no doubt as to the Commission's statutory powers to require the development of adequate and comparable cost data. Section 12(1) of the Interstate Commerce Act authorizes the Commission to "obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of [the Act]" (49 U.S.C. § 12(1)). Section 20(1) of the Act expressly grants the Commission the power "to require * * * special reports from carriers" and to require the carriers to provide "full, true and correct answers to all questions upon which the Commission may deem information to be necessary" (49 U.S.C. § 20(1)). This power was sustained in *Baltimore & O.R. Co. v. ICC,* 221 U.S. 612, 621 (1911).

The Commission in this case never mentioned or, for all that appears, even considered the possibility of developing a record on the specific cost at issue, but merely relied upon unadjusted territorial average costs to reflect the average cost of the traffic at issue. The Commission is not expected to merely call balls and strikes. The ICC is not the prisoner of the parties' submissions. It is empowered to investigate and gather evidence beyond that presented where exercise of that power is necessary to supplement the record and is in the public interest. The record here does not show, except in nebulous fashion, that the cost figures represent anything but the overall average territorial costs and they certainly are not computations of cost figures of the particular movements here involved. The ICC has tools to assemble complete factual records, it employed virtually none of them in this extremely important pro-

ceeding. (See Justice Brennan's concurring opinion in the Railroad merger cases, 386 U.S. 372, decided March 27, 1967).

This opinion has been rather lengthy and includes findings and conclusions. By way of repetition and emphasis we add the following specific conclusions:

Conclusions of Law

1. This Court has jurisdiction, under 5 U.S.C. § 1009 and 28 U.S.C. §§ 1336, 2284, 2321-2325, to suspend, enjoin, annul and set aside the enforcement, operation and execution of orders of the Interstate Commerce Commission.

2. The venue of this action is properly laid in the Eastern District of Louisiana under 28 U.S.C. § 1398.

3. The Commission has power to require the development of adequate and comparable cost data. Section 20(1) of the Act expressly grants the Commission the power "to require the carriers to provide full, true and correct answers to all questions upon which the Commission may deem information to be necessary" (49 U.S.C. § 20(1)). The Commission has a duty to use its powers to obtain cost evidence where such evidence is necessary to assure an adequate record. That duty was violated here as the Commission failed to take affirmative action to require the development of an adequate record as to the actual costs of handling the specific traffic at issue.

4. The Commission stated as its standard the costs of handling North-South freight traffic, but reliance upon territorial average costs caused it to include in the Northern costs deficits from suburban commuter passenger service operations. This action constitutes a violation of both Sections 8(b) and 10(e) of the Administrative Procedure Act when judged against the standard stated by the Commission itself as governing in this case—that is, the relative costs of handling North-South freight traffic. The Commission had before it no substantial evidence on which

such a conclusion might be based. The lack of rational basis for the Commission's conclusion is highlighted by the Commission's own inconsistent finding that "many individual items of suburban service can be considered solely related * * * to suburban service" (325 I.C.C. at 78).

5. The Commission's use of territorial averages in computing the "switching costs" of the Northern and Southern railroads rather than the specific costs incurred by those railroads with respect to North-South traffic is not supported by reasoned findings and not based on substantial evidence in the record and thus violates Sections 8(b) and 10(e) of the Administrative Procedure Act.

6. The Commission's use of territorial average "empty return ratios" rather than the actual empty return ratios for the North-South traffic in issue also violates Section 8(b) and 10(e) of the Administrative Procedure Act because it is unsupported by reasoned findings and not based on substantial evidence in the record.

7. The "typical evidence rule" requires that there must be evidence typical in character and ample in quantity with respect to the divisions and services performed under the particular rate being divided. The Commission must consider evidence of actual services performed on particular traffic involved, and not rely wholly on averages which "are apt to be misleading." Here, the Commission relied on "unsifted averages." *United States v. Abilene & Southern Railroad Co.*, 265 U.S. 274 (1924), at p. 291; *Atchison, Topeka & Santa Fe R. Co. v. United States*, 225 F. Supp. 584, 592-600 (D. Colo. 1964).

Conclusion

We are not unmindful of the complicated nature of this problem. However, when the outcome of factual issues is bound to cut deeply into economic relations on such a scale and when the result involves a departure from an equal division formula previously adopted, it is appropriate to

remand the case to the ICC for further study, followed by an explicit development of a record to assure adequate and comparable evidence with respect to the cost of the specific traffic at issue.

With the passage of each year, the 1959 test year adopted here becomes more and more vulnerable to the charge of staleness. It therefore has less and less to recommend it as a reliable basis upon which to predicate a division order. We make this observation not to indicate that it would necessarily be an abuse of discretion for the Commission not to re-open the investigation to receive later operating figures, but as a suggestion that such a re-opening well might be warranted.

The Commission Order, in its entirety, should be set aside and the cause remanded to the Commission for further proceedings consistent with the views expressed herein.

Counsel for plaintiffs will prepare and submit an appropriate decree in conformity with this opinion.

U. S. District Court
Eastern District of Louisiana
Aug 22 1967
FILED
A. Dallam O'Brien, Jr.
Clerk

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION
No. 15454
DIVISION "C"

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

---

Final Decree

This action came on for trial before the Court, Honorable John Minor Wisdom, United States Circuit Judge, Honorable Edwin F. Hunter, Jr., United States District Judge, Honorable E. Gordon West, United States District Judge, and the issues having been duly tried, heard and determined, an Opinion with the findings of fact and conclusions of law having been duly filed, Now, Therefore, in accordance with said Opinion and its findings of fact and conclusions of law,

IT IS ORDERED AND ADJUDGED that the order of the Interstate Commerce Commission dated February 3, 1965, as supplemented by the third ordering paragraph of the order of that Commission dated May 18, 1965 (each as entered by the Commission in the cause under its Docket No. 29799, *Akron Canton & Youngstown R. Co., et al. v. Aberdeen & Rockfish R. Co., et al.*, and Docket No. 29885 *Official Southern Divisions*), and each of said orders, be and the same are hereby set aside and that said cause be and the same is hereby remanded to the Commission for further proceedings consistent with the Opinion, findings of fact and conclusions of law of this Court.

JOHN MINOR WISDOM
United States Circuit Judge

EDWIN F. HUNTER
United States District Judge

E. GORDON WEST
United States District Judge

Dated: August 8, 1967.

U. S. District Court
Eastern District of Louisiana
Aug 22 1967
FILED
A. Dallam O'Brien, Jr.
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION
No. 15454

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

---

Order Staying Decree

IT IS HEREBY ORDERED AND ADJUDGED (1) that the effectiveness of the Decree signed, dated, and entered concurrently herein on this date is hereby stayed for the period of sixty (60) days from said date, and if a notice or notices of appeal to the Supreme Court are filed within such period, then this stay shall continue until final disposition or termination of such appeal or appeals; and (2) that during the aforesaid period or periods the protective provisions contained in Paragraph 3 of the Order of this Court of June 3, 1965, denying Application of Plaintiffs and Intervening Plaintiffs for an Interlocutory In-

junction and Dissolving the Temporary Restraining Order, shall continue in full force and effect.

Dated: August 8, 1967.

JOHN MINOR WISDOM
John Minor Wisdom
United States Circuit Judge

EDWIN F. HUNTER
Edwin F. Hunter
United States District Judge

E. GORDON WEST
E. Gordon West
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Stipulation Covering Record on Appeal.

WHEREAS, by letter of August 28, 1967, Richard B. Montgomery, Jr., Esq., as attorney for intervening defendants, The Baltimore and Ohio Railroad Company et al., informed Honorable A. Dallam O'Brien, Clerk of this Court, of their intention to file with him early in October 1967, after the Rules of the Supreme Court adopted June 12, 1967, become effective October 2, 1967, their notice of appeal to the Supreme Court of the United States from the final decree of this Court herein, dated August 8, 1967, and entered August 22, 1967; and, in accordance with Rule 12 of said Rules, requested him, on behalf of said intervening defendants, to certify the entire record in this cause and to provide for its transmission to the Clerk of the Supreme Court of the United States; and to include with and as a part of said record the briefs, joint appendix, and reporter's transcript described in items 1 to 13, inclusive, of Section A of said letter (copy of which is attached);

AND WHEREAS, all the parties consent to the inclusion of the above-described materials with the certified record, and none of the parties desire to have any additional materials so included:

IT IS HEREBY STIPULATED by the parties to the above-entitled cause: (1) that all the materials requested by intervening defendants for inclusion in the record on appeal be

included by the Clerk with and as a part of the certified record on appeal; and (2) that the Court is hereby requested to make such order as it may deem necessary or appropriate to enable and permit the Clerk to include with the certified record on appeal all additional materials hereinabove referred to or described.

DATED: September 15, 1967.

(Subscription by Counsel for all parties omitted in printing.)

Attachment—Letter Request of Attorney for Intervening Defendants on Clerk of District Court Concerning Record to be Certified on Appeal.

August 28, 1967

Honorable A. Dallam O'Brien
Clerk
United States District Court
Eastern District of Louisiana
400 Royal Street
New Orleans 70130

Re: Aberdeen & Rockfish RR Co., et al.
v. United States, et al.—Civil No. 15454

Dear Sir:

This will advise that The Baltimore and Ohio Railroad Company et al., the Intervening Defendants in the above-entitled cause, expect to file with you, early in October, after the new Supreme Court Rules become effective, their Notice of Appeal to the Supreme Court of the United States from the Final Decree of this Court herein, dated August 8, 1967, and entered August 22, 1967.

In accordance with new Rule 12 this will request, on behalf of said Intervening Defendants, that you please certify the entire record in this cause and provide for its transmission to the Clerk of the Supreme Court of the United States; said record to include among other things the following materials:

A. The documents described below, filed with this Court or relating to its proceedings, an extra copy of each of which Intervening Defendants will undertake to furnish you promptly for your convenience in making up the record:

1. Brief for Plaintiff Southern Railroads. (Dated May 15, 1966)

2. Brief for Intervening Plaintiffs. (Dated May 15, 1966)

3. Joint Brief for the United States of America and the Interstate Commerce Commission. (August 1966)

4. Brief for Intervening Defendant Railroads. (Dated August 1, 1966)

5. Reply Brief for Plaintiff Southern Railroads. (Dated September 1, 1966)

6. Reply Brief for Intervening Plaintiffs. Dated September 1, 1966)

7. Joint Appendix, Volume I. October 15, 1966)

8. Joint Appendix, Volume II. (October 15, 1966)

9. Reporter's Transcript of Hearing and Arguments before the Three Judge Court at New Orleans, La., on Monday, December 12, 1966.

10. Supplemental Brief for Plaintiffs and Intervening Plaintiffs. (Dated January 11, 1967)

11. Supplemental Brief for Defendants and Intervening Defendants. (Dated January 11, 1967)

12. Supplemental Reply Brief for Plaintiffs and Intervening Plaintiffs. (Dated January 20, 1967)

13. Supplemental Reply Brief of Defendants and Intervening Defendants. (Dated January 31, 1967)

B. The entire certified copy of the Record before the Interstate Commerce Commission in its Docket No. 29885, *Official-Southern Divisions,* and Docket No. 29799, *Akron, Canton & Youngstown Railroad Company et al. v. Aberdeen & Rockfish Railroad Company, et al.,* covered by the 22 certificates of the Secretary of the Interstate Commerce Commission (17 certificates dated May 28, 1965, 4 certificates dated August 2, 1965, and one certificate dated May 9, 1966) and admitted into evidence as Plaintiff's Exhibit No. 1 (Tr. 6) at the hearing before the Court on December 12, 1966; including among other things the Briefs of the parties,

Report of the Examiners upon Further Hearing, Exceptions of the parties thereto, Replies of the parties to Exceptions, the Transcript of Argument before the Interstate Commerce Commission, and the Reports and Orders of the Commission of February 3, 1965, and May 18, 1965, all as specified in said certificate of the Secretary of the Interstate Commerce Commission.

Copies of this request are today being sent to counsel for all parties to this proceeding as noted below.

Sincerely,

Richard B. Montgomery, Jr.
Attorney for Intervening
Defendants

cc: Messrs. Ashton Phelps
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IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Notice of Appeal of the Baltimore and Ohio Railroad Company et al., Intervening Defendants, to the Supreme Court of the United States.

I.

Notice is hereby given that The Baltimore and Ohio Railroad Company and the other Intervening Defendants named in the list attached hereto and marked "A" appeal to the Supreme Court of the United States from the Final Decree of this Court dated August 8, 1967, and entered August 22, 1967, setting aside the Order of the Interstate Commerce Commission dated February 3, 1965, as supplemented by the third ordering paragraph of the Order of that Commission dated May 18, 1965 (each as entered by the Commission in the cause under its Docket No. 29885, Official-Southern Divisions and Docket No. 29799, *Akron, Canton & Youngstown R. Co. et al. v. Aberdeen & Rockfish R. Co. et al.*) and remanding said cause to the Commission for further proceedings.

This appeal is taken pursuant to 28 U. S. C. §§ 1253, 2101(b).

II.

In accordance with the provisions of Rule 12 of the Rules of the Supreme Court effective October 2, 1967, these Intervening Defendants, by letter addressed to the Clerk of this Court under date of August 28, 1967, copies of which were then sent to all parties to the proceeding, informed

him of the intention of Intervening Defendants to file this Notice of Appeal with him early in October, 1967, and requested said Clerk to certify the record and provide for its transmission to the Clerk of the Supreme Court of the United States.

(Subscription of Counsel for Intervening Defendants, omitted in printing.) Dated and filed October 2, 1967; List "A" of Appellants (omitted in printing); Proof of Service (omitted in printing).

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Motion.

Now come The Baltimore and Ohio Railroad Company et al., intervening defendants in the above numbered and entitled cause, and upon suggesting to the Court that on the 3rd day of October, 1967, intervening defendants filed their notice of appeal to the Supreme Court of the United States and that intervening defendants have requested the Clerk of Court to certify to the Supreme Court the entire record in this cause, including with and as a part of said record the briefs of the parties filed herein, joint appendix and the reporter's transcript of the proceedings heard in open court at New Orleans, Louisiana, on Monday, December 12, 1966, described in Items 1 to 13, inclusive, of Section A of intervening defendants' letter to the Honorable Clerk dated August 28, 1957, and upon further suggesting that all parties to this cause have consented to the inclusion of the above described materials in the certified record, pursuant to the stipulation filed September 15, 1967, and that intervening defendants desire that this Honorable Court grant an order permitting the inclusion in the certified record of the briefs, joint appendix and reporter's transcript.

WHEREFORE, intervening defendants respectfully move the Court for an order permitting the inclusion in the certified record of the briefs of the parties, joint appendix and reporter's transcript of the proceedings heard in open court as described above.

(Subscription of Attorneys for Intervening Defendants and Certificate of Service omitted in printing.)

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Order of Circuit Judge John Minor Wisdom Concerning Record on Appeal.

Considering the motion filed herein by The Baltimore & Ohio Railroad Company, et al., intervening defendants, to include certain materials in the certified record on appeal to the Supreme Court of the United States,

IT IS ORDERED that the Clerk of this Court be and he is hereby directed to include in the certified record on appeal to the Supreme Court of the United States in the captioned cause the briefs of the parties, joint appendix and the reporter's transcript of the proceedings heard in open court at New Orleans, Louisiana, on December 12, 1966.

New Orleans, Louisiana, October 4, 1967.

/s/ JOHN MINOR WISDOM
United States Circuit Judge.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

(Title omitted in printing.)

Notice of Appeal of United States of America and Interstate Commerce Commission to the Supreme Court of the United States.

I.

Notice is hereby given that the United States of America and the Interstate Commerce Commission, defendants in the above-entitled action, appeal to the Supreme Court of the United States from the final judgment of this Court entered August 22, 1967. This appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101(b).

II.

In accordance with the provisions of Rule 12 of the Rules of the Supreme Court of the United States, effective October 2, 1967, these appellants hereby adopt and incorporate into this Notice of Appeal the designation of record contained in the letter of August 28, 1967, addressed to the Clerk of this Court by the intervening defendants, The Baltimore & Ohio Railroad Company, et al., but request the Clerk to include in said transcript to be transmitted to the Clerk of the Supreme Court of the United States, as an additional document, this Notice of Appeal.

(Subscription of Attorneys for defendants and Proof of Service omitted in printing.)

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APPENDIX.
Volume II.
(Pages 373 to 582.)

Office-Supreme Court, U.S.
FILED
JUL 3 1968
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Supreme Court of the United States

October Term, [redacted] 1968

No. [redacted] 13

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,

Appellants,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees.

No. [redacted] 15

INTERSTATE COMMERCE COMMISSION,

Appellant,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees.

Appeals From the United States District Court for the Eastern District of Louisiana, New Orleans Division.

Filed December 18 and 21, 1967.

Probable jurisdiction noted March 4, 1968.

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Before the

Interstate Commerce Commission

No. 29885.

OFFICIAL-SOUTHERN DIVISIONS.

In The Matter of Divisions of Joint Rates Between Official and Southern Territories.

No. 29799.

The Akron, Canton & Youngstown Railroad Company, et al.

v.

Aberdeen and Rockfish Railroad Company, et al.

PETITION OF EASTERN RAILROADS FOR LEAVE TO FILE PETITION FOR GENERAL REOPENING FOR FURTHER HEARING AND FOR MODIFICATION OF ORDER.

Come now the Eastern Railroads respondents in No. 29885 and complainants in No. 29799, herein termed petitioners, and petition the Commission for leave to file the attached petition for a general reopening of these proceedings for further hearing and for modification of the order therein of January 12, 1953, as amended by order of May 26, 1953, and, in support of this petition for leave to file, respectfully state:

I.

By its report and order herein of January 12, 1953 (*Official-Southern Divisions*, 287 I.C.C. 497), as amended by its report and order of May 26, 1953 (*Official-Southern Divisions*, 289 I.C.C. 4) the Commission prescribed divisions

of joint rates (other than those on coal and coke) between Official and Southern territories, which divisions became effective July 15, 1953. In so far as the original order in No. 29885 related to divisions of rates to and from points on the lines of the Norfolk Southern Railway Company, Atlantic and East Carolina Railway Company, and Beaufort and Morehead Railroad Company (A. T. Leary, Lessee) the amendatory order of May 26, 1953, postponed its effective date until the further order of the Commission and assigned the case for further hearing at a time and place to be fixed. By its Second Supplemental Report and accompanying order of November 2, 1953 (*Official-Southern Divisions,* 291 I.C.C. 90) the Commission made The Atlantic and Danville Railway Company a respondent in No. 29885 and assigned the proceeding for further hearing at a time and place to be determined. At the instance of the parties these further hearings have been deferred until now.

II.

As more fully explained in the attached petition for further hearing and for modification of order, the Commission, in prescribing the present "equal-factor" basis of divisions as between the Eastern and Southern railroads, declined to fix for Eastern lines the higher basis of divisions which the relative cost of service then before it would have warranted, on the ground that "for the future * * * neither contesting group [Eastern or Southern] will have an appreciably lower basis of operating costs than the other" (287 I.C.C. 497, 526). Subsequent experience, however, has not sustained this conclusion. On the contrary, the results of later years disclose that the service costs of Eastern roads exceed those of the Southern roads in even greater measure than shown by the figures then before the Commission. These facts, together with other facts, circumstances, and conditions relating to the current situation which are appropriate for Commission consideration in fixing divisions of the joint rates involved, and which petitioners will de-

velop of record if the general reopening here sought is granted, warrant the prescription of increased divisions for petitioners.

III.

As it appears from its original decision herein, (*Official-Southern Divisions,* 287 I.C.C. 497, 539) the Commission, in fixing petitioners' divisions of rates on fresh fruits and vegetables, specifically took into account, as an offset to costs, the revenue received by petitioners from the unloading charges at New York and Philadelphia it had approved in I. & S. 5500, *Unloading Charges, fruits and vegetables, N. Y. and Phila.,* 272 I.C.C. 648; 286 I.C.C. 119. This was again recognized by the Commission in its report of June 28, 1956, on further hearing and reconsideration in the latter proceeding, — I.C.C. — (mimeographed), where at sheet 7 it stated:

> "In *Official-Southern Divisions,* 287 I.C.C. 497, 538-543, and in *Official-Southwestern Divisions,* 287 I.C.C. 553, 584-592, we considered evidence of terminal costs of terminating perishable traffic in official territory, including fresh fruits and vegetables, presented by the eastern railroads in prescribing the divisions of the rates there in issue. Those costs, which included the costs of unloading cars at New York, and Philadelphia, were reduced by the amounts of these unloading charges then being collected from the shippers. Such costs were treated as items of terminal expense, except to the extent that they were offset by such unloading charges."

By this report of June 28, 1956, and accompanying order as extended, the Commission nevertheless required respondents to cancel the unloading charges effective October 17, 1956, under circumstances clearly indicating that reimbursement of their revenue loss might be sought from increased divisions (See sheets 35-36).

IV.

For these and other reasons which petitioners will develop of record if further hearing is granted as herein prayed, the divisions which the Commission prescribed in *Official-Southern Divisions,* 287 I.C.C. 497; 289 I.C.C. 4, and which are now in effect, do not conform to the statutory standards but, as to Eastern railroads petitioners, are unjust, unreasonable, inequitable, and unduly prejudicial in violation of Section 1(4) and Section 15(6) of the Act. In this connection petitioners respectfully request that the facts and reasons set forth in the annexed petition for a general reopening of these cases for further hearing and for modification of order be considered as if here incorporated in full.

V.

Accordingly, petitioners seek a general reopening of these cases for further hearing to bring the records up to date and to present to the Commission further facts—not available to petitioners for introduction before the close of the hearings herein on December 8, 1950, or thereafter under the stipulation of that date—which show that petitioners are now entitled to increased divisions out of the joint rates within the scope of these proceedings.

WHEREFORE, Petitioners respectfully ask leave to file the attached petition for a general reopening of these cases for further hearing and for modification of order, and for such other and further relief as the Commission may deem appropriate in the premises.

Respectfully submitted,

(Subscriptions and Certificate of Service Omitted in printing.)

November 1, 1956

Before the

Interstate Commerce Commission

(Title omitted in printing.)

PETITION OF EASTERN RAILROADS FOR GENERAL REOPENING FOR FURTHER HEARING AND MODIFICATION OF ORDER.

Come now the Eastern railroads, respondents in Nos. 29885 and complainants in No. 29799, and with leave of the Commission, file this their petition for a general reopening of these cases for further hearing and for modification of the order entered by the Commission in these proceedings on January 12, 1953, in connection with its report of the same date in *Official-Southern Divisions,* 287 I.C.C. 497, as amended by its order entered on May 26, 1953, in connection with its report on reargument in said cases, *Official-Southern Divisions,* 289 I.C.C. 4; and in support of this petition respectfully state:

I.

No. 29885 is an investigation into the divisions of joint rates on classes and all commodities between Official and Southern territories, instituted by the Commission's order of December 4, 1947, in response to a petition of Eastern Railroads dated July 16, 1947, seeking further hearing and modification of order in No. 24160, *Divisions of Rates, Official and Southern Territories,* 234 I.C.C. 175 (1939). No. 29799 is a proceeding begun by the complaint of Eastern railroads, also dated July 16, 1947, and filed with said petition, in which they sought increased divisions of joint rates on Florida citrus fruit to points in Official territory.

II.

In view of the Commission's recognition of the vital importance of relative costs of service as the primary and even paramount factor for consideration in fixing the divisions of joint rates,* Eastern lines included in their evidence a full showing of relative service costs.†

The initial cost presentation of Eastern lines in these proceedings was based chiefly upon data for the *year 1946* as adjusted to January 1, 1948. Subsequently, when the requisite data became available, they computed similar costs for the *year 1948* (287 I.C.C. 507).

While the record before the Commission, when it made its decisions of 1953 herein, included some statistical data for 1951, which was received pursuant to a stipulation providing for its receipt for a limited period after the close of the hearing on December 8, 1950 (Tr. C-2119-20), the latest Form A costs before it were those for the year 1948, as the stipulation did not cover later cost data.

Taking for illustration the 1948 Form A freight service costs for transportation of a 26-ton load in box car equipment for a short line distance of 350 miles,‡ Eastern lines' evidence which was before the Commission showed the following cost relationships:

---

* *New England Divisions,* 66 I.C.C. 196, 198; *Divisions of Freight Rates,* 156 I.C.C. 94, 100-101; 203 I.C.C. 299, 335; *Southwestern-Official Divisions,* 234 I.C.C. 135, 148; *Official-Western Trunk Line Divisions,* 269 I.C.C. 765, 776.

† Eastern lines' costs were based on the formula known as Rail Form A, employed by the Commission's Cost Section in I.C.C. Docket No. 28300, *Class Rate Investigation, 1939,* 262 I.C.C. 447, 571, and reflected in the "Rail Carload Cost Scales by Territories", issued from time to time by the Commission's Bureau of Accounts and Cost Finding. See, for example, Statements Nos. 3-49, 2-50, 1-51, 2-52, 4-53, 2-54, 2-55 and 5-56. Since in the handling of joint traffic each group of carriers performs only a single origin or destination terminal service, Eastern lines' cost comparisons were computed accordingly.

‡ On general traffic the study of Eastern lines developed average short-line, ton-mile hauls of 349.2 miles north and 472.3 miles South (Ex. 5-2).

FREIGHT SERVICE COST RATIOS AT 350 MILES—1948
For 26-Ton Load in Box Car

Southern Region	Eastern District Incl. Pocahontas	Eastern District
100	110	116

The Eastern lines proposed, and asked the Commission to fix, divisions as between the two groups of carriers based on divisional prorating factors for themselves which would be 110 percent of the corresponding factors fixed for the Southern carriers for hauls of like distance.†

In fixing divisional factors for the two carrier groups on the same equal-factor basis, the Commission did not accept at face value the Eastern lines' showing of their relatively higher costs. This directly appears from its statement in *Official-Southern Divisions*, 287 I.C.C. 497, at page 526:

> "If we were to give controlling weight to the cost studies of the northern lines for 1946 and 1948 in this record, the differentially higher basis of divisional factors sought by those lines would be justified. We do not accept that showing at face value because, admittedly, there were certain important items of expense in those years which may reasonably be regarded as transient, particularly in the northern lines' accounts for maintenance of way and structures and equipment. This was particularly true of the Pennsylvania, which in 1948 and the two following years had high freight-car repair costs apparently cyclic in nature. We consider it to be the safest assumption for the future upon

† Due to the specially heavy burden of terminal costs borne by Eastern lines on fresh fruit and vegetable traffic, which moves on relatively low rates, Eastern lines proposed factors for themselves on this traffic to certain primary market cities which were 125 percent of those for Southern lines, but the Commission fixed a single equal-factor basis for all such traffic. 287 I.C.C. 497.

the facts before us that neither contesting group will have an appreciably lower basis of operating costs than the other, and that there are no other relevant circumstances which are of sufficient importance to justify higher divisional factors for one group than the other."

As indicated in the foregoing quotation, the Commission prescribed the present divisions of the rates involved in these cases on the assumption and under the belief that "for the future * * * neither contesting group will have an appreciably lower basis of operating costs than the other, * * *."

Contrary to the Commission's conclusion in this respect, the facts now available disclose that Eastern lines' costs have not declined to the level of those of the Southern railroads. Instead, the costs of the Eastern lines have risen in relation to those of the Southern lines, so that there is now a greater disparity in such costs than shown in the record for 1948. This is illustrated by the following freight service cost ratios in which comparison with Southern Region costs is made of those for the Eastern District, which are more typical of petitioners' costs covering the traffic involved than those including costs for the Pocahontas Region.

FREIGHT SERVICE COST RATIOS AT 350 MILES
For 26-Ton Load in Box Car

Year	Southern Region	Eastern District
1946	100	111
1948	100	116
1950	100	126
1952	100	125
1954	100	129

The costs reflected in the foregoing comparisons are carload freight costs with 6 percent return on depreciated

investment, as computed under the Form A formula by your petitioners. If comparison is made with the corresponding Form A costs results disclosed by the statements issued by the Commission's Cost Section *—which include passenger and less-carload deficiencies and include a four percent return on I.C.C. valuation figures—it will be found that they confirm the increasingly higher service costs in the East.

FULLY DISTRIBUTED COST RATIOS AT 350 MILES
For 26-Ton Load in Box Car

Year	Southern Region	Eastern District
1947 as of 1/1/49	100	111
1948 as of 1/1/50	100	113
1949 as of 1/1/51	100	110
1950 as of 1/1/52	100	124
1951 as of 1/1/53	100	124
1952 as of 1/1/54	100	125
1953 as of 1/1/55	100	125
1954 as of 1/1/56	100	128

The foregoing comparisons relate to an assumed inter-territorial movement of a shipment handled 350 short-line miles by each territorial group of roads. The following tabulation compares the Eastern percentage of the total revenue under the prescribed divisions for the average hauls in each territory on the general traffic involved, with the Eastern proportions of the total costs for such average hauls as computed by petitioners for the Southern Region and Eastern District for the several years shown. As will be noted, Eastern lines' proportion of revenues under the prescribed divisions is substantially below their proportions of the total service costs.

* Statements Nos. 3-49, 2-50, 1-51, 2-52, 4-53, 2-54, 2-55 and 5-56.

PERCENTAGES OF REVENUE EAST ON OFFICIAL-SOUTHERN GENERAL TRAFFIC UNDER PRESCRIBED DIVISIONS AND RELATIVE COST BASES.

Divisional Basis *	Eastern Percentage
Prescribed	45.1
Relative Cost By Years†	
1946	46
1948	47
1950	49
1952	50
1954	50

III.

In addition to evidence bearing on relative costs of service for periods subsequent to those for which such costs are of record, petitioners desire opportunity to present other evidence relating to the intervening and current situations which are appropriate for Commission consideration in fixing divisions and which, together with the evidence of relative service costs, fully warrant the prescription of increased divisions for petitioners out of the joint rates involved in these proceedings.

IV.

As stated more fully in paragraph I of the accompanying Petition for Leave to File, the Commission has already re-opened No. 29885 for further hearing with respect to the divisions of the joint interterritorial rates involved to or

* Prescribed divisional factors and relative costs applied to average short-line ton-mile distances on general traffic of 349.2 miles East and 472.3 miles South.

† Fully distributed freight service costs (excluding deficits) for 26-ton load in box cars increased 14% for circuity.

from points on the lines of the Norfolk Southern Railway Company, Atlantic and East Carolina Railway Company, Beaufort and Morhead Railroad Company (A. T. Leary, Lessee), and The Atlantic and Danville Railway Company, and further hearing with respect to such rates remains to be had.

V.

As more fully set forth in paragraph III of the accompanying Petition for Leave to File, the Commission on further hearing and reconsideration in I. & S. No. 5500, *Unloading Charges on Fruits and Vegetables at New York and Philadelphia* — I.C.C. — (June 28, 1956) ordered the cancellation of the unloading charges it had previously approved in that case, *Unloading Charges, Fruits and Vegetables, N. Y. and Phila.*, 272 I.C.C. 648; 286 I.C.C. 119. As shown by the Commission's report of January 12, 1953, in the instant proceeding (287 I.C.C. 497, 539), and at Sheet 7 of its report of June 28, 1956, in I. & S. No. 5500, petitioners' present divisions on fresh fruits and vegetables were prescribed on the assumption that such unloading charges would remain in effect. In requiring their cancellation, effective October 17, 1956, the Commission plainly indicated that petitioners may appropriately seek reimbursement through increased divisions. (See sheets 35-36.)

VI.

If further hearing is granted as herein prayed, petitioners will undertake to present to the Commission evidence which was not available to petitioners for introduction before the close of the hearings on December 8, 1950, or thereafter under the stipulation of that date (Tr. C-2119-20), and accordingly was not considered by the Commission in arriving at its decision herein of January 12, 1953, as amended by its decision of May 26, 1953.

VII.

By reason of the foregoing facts and others that petitioners will undertake to prove to the Commission if these proceedings are reopened generally for further hearing as herein prayed, the present divisions, which are those prescribed by the Commission in its said decision of January 12, 1953, as amended by its decision of May 26, 1953, are now and for the future will be unjust, unreasonable, inequitable, and unduly prejudicial as to petitioners contrary to the requirements of Section 1(4) and Section 15(6) of the Act.

WHEREFORE, petitioners respectfully pray that the Commission reopen these proceedings generally for further hearing, that thereafter upon due consideration it prescribe such increased divisions for petitioners as it shall find just, reasonable, and equitable and modify its orders herein accordingly, and that it grant petitioners such other and further relief as it may deem appropriate in the premises.

Respectfully submitted,

(Subscriptions omitted in printing.)

November 1, 1956

Before the

Interstate Commerce Commission

(Title omitted in printing.)

REPLY OF SOUTHERN RAILROADS TO PETITION OF EASTERN RAILROADS FOR GENERAL REOPENING FOR FURTHER HEARING AND FOR MODIFICATION OF ORDER.

Come now the Southern Railroads, respondents in Docket No. 29885, and defendants in Docket No. 29799, and for their reply to the Petition of the Eastern (Northern) Railroads dated November 1, 1956, as amended, for general reopening for further hearing and for modification of Order, respectfully state as follows:

PRELIMINARY STATEMENT.

These cases concern the divisions which were prescribed by the Commission in *Official-Southern Divisions*, 287 I.C.C. 497, decided in 1953, and which became effective July 15, 1953. The Northern railroads, by their Petition, originally filed November 1, 1956 but not activated by them until April 1, 1959, are seeking to obtain an increase in the divisional factors so recently prescribed for them on an exhaustive record. For the reasons hereinafter set forth the Southern roads oppose the reopening of the proceeding, no basis having been shown justifying further investigation of the North-South Divisions at this time.

Under the Supreme Court's holding that "The Commission may not change an existing division unless it finds that division unjust or unreasonable" (*Beaumont S. L. & W. R. Co. v. United States*, 282 U. S. 74, 82), petitioners must make a strong and convincing showing in order to justify a general reopening of these cases which will inevitably result in expensive litigation. No such showing has been made in the Petition herein.

The decided cases are a complaint case and an investigation, instituted by the Commission in 1947 in lieu of reopening an earlier North-South Divisions proceeding which had been concluded in 1939 (287 I.C.C. 497, 498). These cases were pending before the Commission for more than five years before its first decision was rendered. Since then four supplemental reports have been issued, the last one being dated March 5, 1956. The decision has only been in effect for a period equivalent to the time it took the Commission to obtain an adequate record and to decide the case.

The extent of the exhaustive record on which the Commission based its order prescribing the present divisions was picturesquely described by the Northern roads' counsel (Tr. C-2440):

> "The record in the three cases before the Commission—not counting duplications—if piled in a column here before you would extend more than fifteen feet in the air."

The reference to "three cases" includes the parallel *Official-Southwestern Divisions* proceeding, 287 I.C.C. 553. Many of the hearings in the instant cases were conducted jointly with the *Official-Southwestern Divisions* case; many of the exhibits were introduced in all three proceedings while others were introduced in one case but not in another.

The instant *Official-Southern* cases and the parallel *Official-Southwestern* case were decided together, and identical divisional scales were prescribed in the related proceedings (compare the Official-Southern scales at 287 I.C.C. 497, 552, with the Official-Southwestern scales at 287 I.C.C. 553, 595). It is to be emphasized that, in both proceedings, the level of the Official, Southern and Southwestern divisional scales were geared to the uniform level of class rates prescribed in Docket No. 28300. (See 287 I.C.C. 497, 526 and 287 I.C.C. 553, 578.)

In light of this exhaustive record and the deliberate correlation of the prescribed divisions factors and the class

rate levels, reopening of the North-South Divisions at this time would require a most compelling showing. Moreover, reopening of the *Official-Southwestern* cases is not sought and any increase in the Northern lines' factors would destroy the existing divisional parity between the South and the Southwest on the one hand and the North on the other.

The Northern lines' request for reopening rests on a contention that their costs have advanced more than those of the Southern roads since the present divisions were prescribed. We shall show that there is no basis for this claim. Before dealing specifically with that contention, however, we shall point out the fundamental changes now in process which make it impossible fairly to appraise the respective positions of the two groups in the period ahead, either in absolute or relative terms.

Drastic corrective steps are being taken by the Northern roads, individually and through cooperative action, to reduce their excessive and duplicate facilities. But these very steps, which will effectively reduce costs in the future, presently operate to increase charges to operating expenses and thus, temporarily, not only obscure the true results, but seem to reverse their effect. (See *infra*, p. 9.)

Moreover, long needed legislation has just been enacted which effects significant changes in competitive rate making, grants important tax relief and enlarges the power of the Commission to deal with marginal or deficit operations. These changes in the legislative climate in Congress and in the states should especially benefit the Northern roads.

The combined effect of these and many other changes cannot now be measured, and yet they not only strongly affect, but undoubtedly govern, the territorial cost relationships.

In view of the events of the last ten years, it seems moderate to say that the Northern roads have devoted themselves to incessant efforts to obtain higher rates from the public and higher divisions from their connections. Human nature being what it is, the Commission will realize that

managements so preoccupied with such pursuits will never thoroughly exhaust the tremendous possibilities of self-help which are available to them. It would be a disservice to them and unfair to their connections to begin another round of North-South Divisions litigation and thereby divert their attention and energies from activities of internal improvement which provide the essential means for meeting the hard facts of life in the railroad business.

Turning to the specific allegations of their Petition for Reopening, review of the points urged by the Northern lines will demonstrate the utter inadequacy of their Petition herein.

I.

THE ALLEGED RELATIVELY GREATER INCREASE IN TRANSPORTATION COSTS IN THE EASTERN DISTRICT THAN IN THE SOUTHERN REGION DOES NOT JUSTIFY AN OPENING AND RETRIAL OF THE INSTANT CASE.

The contention of the Northern Railroads is that their costs have increased relatively more than the costs of the Southern Railroads, and that this fact in itself justifies an increase in their divisions. The argument is unsound.

The divisions prescribed by the Commission in these cases very substantially reduced the divisions and the revenue of the Southern roads. The effort to obtain an even larger transfer of revenue rests on the basic contention that "subsequent experience" has shown the Commission to have been in error in its finding that "for the future neither contesting group will have an appreciably lower basis of operating costs than the other." The charge is without merit.

The Commission was informed by an extensive record. It knew the conditions encountered by the two groups of roads in handling the identical traffic in the respective territories. It found nothing that could rationally explain or justify a permanently higher level of costs in the North

and found that deviations from such a relationship in a particular period must therefor reasonably be regarded as transient. The experience and the prospect in this dynamic epoch in the industry tend strongly to support rather than to impeach that conclusion.

Cost is a highly significant factor in the measure and determination of divisions, but it is the cost of performing the respective services covered by the joint rates that is important, not the cost of handling other traffic by a different group of roads. The cost relationship upon which the North relies in its Petition as having changed since the prior decision reflects: (1) territorial average costs for services of which, in the North, approximately 95% are provided for other freight traffic and 79% for intra-Official territory of freight traffic; (2) territorial average costs of a group of roads in the North which do not include the costs of the roads handling a third of the inter-changed traffic subject to the divisions at issue; and, (3) average costs based on annual report data for recent years which do not yet reveal, but actually distort, the effect of many changes now in progress.

1. The Rail Form A Costs Cited by the Northern Lines Reflect System Average Operations, Not the Costs of Handling the 5% of the Northern Lines Traffic Here at Issue.

The system average statistics of the Northern lines, including their Rail Form A costs, reflect predominantly intra-Official territory operations. Their passenger deficits, commuter and LCL problems are almost exclusively problems which must be met and solved within Official territory. And as to carload freight traffic, the Commission's 1% waybill statistics show that 79% of the Official territory traffic is intraterritorial, *i.e.*, 14,427,800 carloads of Official to Official traffic out of the 18,342,200 total carloads handled in Official territory. Carload Waybill Statistics, 1956, Statement TD-1.

Of the total freight revenue for Official territory, only about 5% is derived from divisions on the North-South traffic here in issue. In contrast, the system average Rail Form A cost data, the only cost data relied upon in the Northern lines' Petition, reflects territorial average traffic. Seventy-nine per cent of that traffic is intra-Official territory traffic, and 95% is other than the North-South traffic here at issue. In response to criticisms that Rail Form A costs, in the form cited by the Northern lines in their petition, were not applicable to the movement of a particular class of traffic, the Commission stated in Docket No. 28300 (262 I.C.C. 447, 588):

> "This is true. On the other hand, the intent of the cost study was to reflect territorial average operating conditions, including main-line and branch-line operations, through train and way train operations, operations of lines of heavy-traffic density and lines of light-traffic density, and the switching performed at large terminals and small terminals. It is obvious that some lines in virtue of their topography or traffic density will have costs which are lower or higher than the territorial average."

Since the issue sought to be again raised is the cost of the North-South traffic, not the average cost of all traffic, the Northern lines' Petition should be denied as based entirely on inadequate cost data.

2. The Cost Data Cited by the Northern Lines Are Deficient and Misleading Because They Omit the Cost of the Lines Which Handle Nearly One-Third of the Subject Traffic in the North.

The Rail Form A cost data set forth in the Northern lines' Petition is confined to costs of the lines assigned to Eastern District for statistical purposes. Such a grouping of roads omits many important lines which participate in the North-South traffic as Northern lines in important

measure, including the lines assigned to the Pocahontas Region for statistical reporting purposes.

The Pocahontas lines are parties to the joint through rates between Official and Southern territories, they participate in the transportation of traffic moving between the two territories under these rates, and the present divisions apply, and were prescribed to apply, on this traffic. *Official-Southern Divisions,* 287 I.C.C. 497, 498; 298 I.C.C. 83. Moreover, the divisions were determined in the light of conditions affecting the carriers in Official and Southern territories, the Pocahontas lines being included among those in the former territory. *Official-Southern Divisions,* 287 I.C.C. 497, 503, 510; *Division of Rates, Official and Southern Territories,* 234 I.C.C. 175, 201.

Nevertheless, the cost data for Eastern District omits, for example, the C&O, which is an important carrier of North-South traffic via Cincinnati and Lynchburg gateways as far into Official territory as Chicago, Buffalo and Traverse City, Michigan. Most significantly, the use of Eastern District costs omits the low costs of the Richmond, Fredericksburg and Potomac Railroad, the bulk of whose operation is as a Northern line hauling North-South traffic to and from the important Richmond gateway.

It is estimated that approximately 30% of the services performed by the Northern lines under the divisions here in issue are performed by lines other than those assigned to Eastern District. The Northern lines' Petition is wholly deficient and very misleading when based on cost data which excludes such important participation in the subject traffic.

3. The Cost Data Relied Upon by the Northern Lines Fails to Reflect or Is Obscured by the Important Activities of Self-Help Now Being Pursued Within Official Territory.

As previously shown, the Rail Form A cost data relied upon by the Northern lines reflect predominantly operations within Official territory. Under such circumstances, the Northern lines' Petition is inadequate in the absence of a

convincing showing that their opportunities for self-help within their own territory have been reasonably pursued and the results reflected in the accounts and statistics upon which the Petition is based. No such showing has been made, and the statements of the Northern lines prove instead that the important changes now in process within Official territory have not as yet been reflected in the system average cost statistics relied upon by the Northern lines.

Those roads have just begun to tap the opportunities for increased revenues and reduced costs available within Official territory. It is apparent from the statements of their managements that this is a period of profound change in that territory—a particularly inappropriate period for a general reopening and reappraisal of divisions recently prescribed by the Commission.

The following are illustrative examples of such areas of increased revenues and reduced costs.

A. Mechanized maintenance, modern yards and other technological advances.

The Commission emphasized in *Ex Parte 206,* the necessity for the railroads pursuing this means of cutting costs (300 I.C.C. 633, 685), and the Northern lines are now in the process of obtaining the benefits of such technological improvements. For example, the New York Central has advised in its 1958 annual report, issued within the last month, that:

> "Track maintenance was mechanized throughout the system, and the savings each year are more than the $4,500,000 investment in equipment." (p. 25.)

The New York Central is now obtaining an 87% annual return on investment in CTC installations (Statement of President Perlman, March 15, 1956). The Pennsylvania's new Conway Yard, recently placed in operation, will return 30% annually on investment in reduced operating cost (Statement of President Symes, May 10, 1955).

Because of the extensive changes currently taking place on Northern roads, it is improper to place reliance on expense data shown in their recent annual reports. This was emphasized by NYC President Perlman in his remarks before the New York Society of Security Analysts on October 18, 1957. After describing the extensive improvements taking place on the NYC, Mr. Perlman stated:

> "These then are some of the changes which have taken place on the Central since last we met. Some of you I know are thinking, 'well so what?' They may sound good but they have not been reflected in the earnings of the property. The magnitude of these results has been obscured * * * the tremendous program for additions and betterments has inflated the charges to Transportation and to Maintenance of Way. For when one modern yard permits us to retire eight obsolete yards, or a CTC installation permits us to take up 2 of the 4 main tracks, operating expenses are substantially affected. Practically the entire rebuilding of our line from Elkhart, Indiana to Jackson, Michigan will be a charge this year to operating expenses."

Thus, Mr. Perlman explains why reliance cannot be placed on the recent reported expenses in measuring the costs of the Northern lines at this time. Instead of reflecting the savings which will result from these improved yards and other facilities, their recent expenses are inflated by charges to operating expenses resulting from the vast improvement program.

B. Piggy back rates.

The new service of handling trailers on flat cars with a minimum of switching service is especially adapted to Official territory with its large centers of population and congested highways. The total piggy-back loads have increased from 168,150 in 1955 to 276,767 in 1958, a recession year (AAR car service statistics). This is particularly important to the Northern lines because the traffic which the

roads handle in piggy-back service is about 100% new business (C&O Annual Report, 1958, p. 27).

C. The new legislative climate will be of particular benefit to the Northern lines.

Section 13a of the Act has recently been of special benefit to Northern lines in removing wasteful ferry service and other deficit operations. Subsidies or tax relief have only recently been provided for the New Haven in Boston (Wall Street Journal, August 4, 1958), the Pennsylvania and Reading in Philadelphia (Wall Street Journal, October 17, 1958), and by the State of New York for the New York City commuter lines (New York Times, April 24, 1959). This New York legislation relieves Northern railroads of $1,500,000 in taxes immediately and provides for a gradual four-year increase in tax relief to a maximum of $15,000,000 annually as well as exempting new railroad structures from local real estate taxes.

D. Elimination of duplicate facilities.

It is recognized by the Northern lines that extreme duplication of facilities and overcapacity exists within Official territory. The following statement of C&O President Tuohy before the Senate Subcommittee on Surface Transportation (January 17, 1958, page 631) aptly describes the situation in Official Territory:

> "The railroad industry is suffering from overcapacity. Many railroad lines and facilities are no longer needed in the light of any reasonable traffic expectations and the increased capacity resulting from technological improvements such as centralized traffic control and push-button yards. The public interest would be advanced and the financial stability of the railroads improved by the reduction or elimination of unneeded facilities."

Action is now being taken to eliminate unneeded facilities, but the results of this activity have been obscured in the Northern lines' accounts. According to NYC President

Perlman, "there is going to be 'a tremendous amount of retirements' of physical property which should have been retired before. For several years, he said, the road is going to have inflated operating expenses arising from this course" (Wall Street Journal, December 9, 1954).

Illustrative of the opportunity for joint action in this area is the statement of the Pennsylvania Railroad that consolidation with the New York Central would produce "very substantial savings, approximately $100 million annually" (Traffic World, January 31, 1959, p. 14). The New York Central, in breaking off negotiations for a corporate merger, urged that coordination of facilities be undertaken, nothing that $14 million could be saved annually through use of joint trackage and other facilities alone (Traffic World, January 31, 1959, p. 17, January 17, 1959, p. 26). The pending negotiations between the Erie and the Lackawanna Railroads promise similarly spectacular economies (Wall Street Journal, April 14, 1959).

An example of consolidation of duplicate facilities which has been accomplished since the present divisions were prescribed is found in the New York perishables terminal piers of the Pennsylvania and Erie Railroads. Cost studies for the separate facilities were before the Commission in prescribing the present divisions, 287 I.C.C. 497, 538-539, but the separate pier facilities were thereafter consolidated into a single operation, utilizing the excess capacity of the Pennsylvania Railroad (New York Times, May 1, 1955).

The Northern lines have been slow actually to realize the economies inherent in consolidation of duplicate facilities, but it is recognized that "railroad mergers that will improve service and reduce costs are bound to materialize," according to Pennsylvania Railroad's President Symes. (PRR Annual Report, 1958, p. 3.) It is ironic that the Northern lines, with such opportunities for savings, find it easier to join together in this proceeding to seek additional funds from their connections than they do to cooperate to

realize savings from elimination of duplicate facilities. In this connection, the Commission has ruled in divisions proceedings that "unnecessary or unproductive transportation facilities" may not be considered in determining divisions under Section 15(6). *Nevada-California-Oregon Divisions*, 73 I.C.C. 330, 335.

In summary, two facts stand out:

(1) The Northern lines, with all of their passenger business and 79% of their freight traffic entirely within Official territory, must find the solution to their problems within Official territory. In a comparable situation, the Commission stated in *New England Divisions*, 126 I.C.C. 579, 599, that roads may not seek increased divisions where they, "in disregard of the principle of self-help, unduly rely upon others to carry their burdens."

(2) This is a time of profound change within Official territory. Technological advances already made and being made have not as yet been reflected in, but have obscured the reported earnings. A new legislative climate and new traffic opportunities are only beginning to be realized. And we are authoritatively told by the Pennsylvania Railroad that consolidations to eliminate duplication of facilities are "bound to materialize" in view of the spectacular savings available in the North.

For these reasons, this is an especially inappropriate time to reopen and re-examine the present basis of divisions recently prescribed by the Commission. Prescription of a new permanent basis of divisions should be withheld until the changes now in progress can be reflected in the annual reports of the carriers and some degree of stability attained.

II.

CHANGES IN UNLOADING CHARGES HAVE GREATLY BENEFITED THE NORTHERN LINES.

In their Petition filed on November 1, 1956, the Northern lines relied strongly, as a ground for reopening this

Divisions proceeding, on the Commission's 1956 action cancelling unloading charges on perishables at New York and Philadelphia. (Paragraph V.) However, in their letter to the Secretary dated April 1, 1959, the Northern lines state:

> "In view of the decision of the Commission of September 9, 1958, in *Ex Parte 212* approving the establishment of new unloading charges on fruits and vegetables at New York and Philadelphia, the allegations contained in Paragraph V of the petition are hereby withdrawn."

In blandly withdrawing this portion of their Petition, the Northern lines fail to inform the Commission that, instead of merely neutralizing the point, the action in *Ex Parte 212* turns the situation entirely around. The changed circumstances as to unloading charges actually mean that the present divisions have become more favorable to the Northern lines than when originally prescribed, a situation offsetting other considerations now urged by the North. For this reason, the subject of unloading charges cannot simply be dropped from consideration as the Northern lines now seek to do.

As the Northern lines pointed out in their Petition for Reopening (Paragraph V) and Petition for Leave to File (Paragraph III), the present divisions were prescribed on the assumptions that unloading costs at certain stations were a part of the service covered by the joint line haul rate and, that the unloading charges prescribed in I. & S. No. 5500, 286 I.C.C. 119, would remain in effect. The significant feature of the decision in I. & S. 5500 was that the charges there prescribed were approximately *one-half* of the charges sought, because of the Commission's conclusion "that the cost of unloading should be borne partly by the shippers and partly by respondents." 286 I.C.C. 119, 140, 141. When the charges were cancelled by the Commission in 1956, 298 I.C.C. 637, the Northern lines urged this change in circumstances in their Petition herein as a basis for increased divisions for their account.

The unloading charges now in effect as a result of *Ex Parte 212* did not restore the status quo as of the time the present North-South Divisions were prescribed by merely reinstating the partial charge in effect at that time. *Ex Parte 212* caused a far greater change by completely severing the unloading service from the line-haul service covered by the joint rates subject to divisions. This appears from the treatment of the unloading services as an "integral part of the through rate" in I. & S. 5500 (See 298 I.C.C. 637, 639, 640-41, 658), and the contrasting treatment in *Ex Parte 212* wherein the Commission found that conditions had changed and that the unloading services, for perishables and non-perishables as well, could no longer be treated as a part of delivery under the line-haul rates. The Commission concluded that "the cost of these loading and unloading services should and must be borne, as nearly as may be, by the shippers and consignees for whom they are rendered." *Ex Parte 212,* 304 I.C.C. 289, 375.

Separate unloading charges accruing entirely to the Northern lines, approved in *Ex Parte 212,* were estimated as producing $9,400,000 per year (304 I.C.C. 289, 360). This is revenue over and above the amount yielded by the authorized increase of $1.00 per ton for loading or unloading domestic carload freight at other points and which it was estimated would yield $5,100,000 per year. Brief of Petitioning Railroads, Part III, pp. 139-140.

In summary, the present divisions were prescribed on the premise that unloading services were part of the joint line-haul rate and that the partial charge then in effect should be credited in considering these costs as part of the service under the joint rate being divided. When the partial charges were cancelled, the Northern lines urged this as an important reason for changing divisions in their favor. Now that unloading services are, as a result of *Ex Parte 212,* no longer a part of the services performed under the line-haul rates, the present divisions of such rates are, for this reason, unduly high for the Northern lines. This

change in circumstances, the importance of which the Northern lines emphasized when it worked against them, now works the other way. This important offsetting factor must be taken into consideration in evaluating any other contentions of the Northern lines that changes have occurred since the present divisions were prescribed.

In addition to the complete change in the situation as to unloading charges the Commission has approved additional tariff provisions which operate primarily to the benefit of the Northern lines.

These include the *Ex Parte 212* increase of 6 cents per 100 pounds in the rates on waterborne traffic, applicable only to rates which apply to or from shipside (304 I.C.C. 351), the increase to "accrue to the railroads performing the port terminal services or bearing the expense of such services." 304 I.C.C. 351, 356. Rates on waterborne traffic moving through the North Atlantic ports generally apply to or from shipside, whereas the rates on like traffic to or from Southern territory and moving through the South Atlantic and Gulf ports are generally non-shipside rates (304 I.C.C. 353-354). This is an important reason why the revenue of the Eastern Railroads from the 6-cent charge was estimated at $9,000,000 per year as compared with less than $1,000,000 for the Southern Railroads. 304 I.C.C. 354. The net effect of this change was, therefore, to increase the divisions of the Northern lines from the total charges assessed for the line-haul movement of waterborne traffic.

Further, under the heading "Diversion, Reconsignment and Other" in *Ex Parte 212,* the Commission authorized the Eastern Railroads to impose certain new and increased charges for diversions, reconsignments and other accessorial services. 304 I.C.C. 377-380; see also 302 I.C.C. 698-699. The amount of revenue which the Eastern Railroads will obtain from these new and increased charges cannot be determined exactly, but it will unquestionably be large. (See Brief of Petitioning Railroads, Part III, p.

176.) The Commission should know the effect upon Northern Railroads of its actions in *Ex parte 212* before considering reopening these cases.

III.

THE FACT THAT DOCKET NO. 29885 HAD BEEN REOPENED FOR FURTHER HEARING WITH RESPECT TO THE DIVISIONS OF JOINT INTER-TERRITORIAL RATES TO OR FROM POINTS ON FOUR SHORT OR WEAK LINES PROVIDES NO JUSTIFICATION FOR A GENERAL REOPENING.

In their Petition (Paragraph IV), the Northern lines state that "the Commission has already re-opened No. 29885 for further hearing with respect to the divisions" of four short or weak lines.

The facts are as follows: In its report on reconsideration, the Commission expressed "doubt whether the present record contains all the facts which should be currently considered in establishing a proper basis of divisions of joint rates between Official territory and points on their lines [Norfolk and Southern, the Atlantic and East Carolina, and the Beaufort & Morehead]". In order to develop the facts as to the special problems presented by these roads, the Commission decided that "No. 29885 will be assigned for further hearing on that issue." 289 I.C.C. 4, 8. The hearing to be held for the Atlantic and Danville was similarly limited to the special circumstances relating to that road. 291 I.C.C. 90, 91-92.

The fact that the situation with respect to these four lines was so different from that with respect to the Southern lines generally as to require reopening for *separate* hearings on the *special* problems of those small lines provides no basis whatever for the *general* reopening and retrial of the case sought by the Northern lines Petition herein.

IV.

CHANGES IN CONDITIONS AS REFLECTED IN STATISTICS OTHER THAN COST.

In Paragraph VI of their Petition, the Northern lines claim generally that they wish to present other evidence which has become available since the close of the record in Docket No. 29885. Since the nature of this evidence is not revealed, such a general assertion provides no ground whatever for reopening this proceeding.

Presumably, the Northern lines propose to present statistical data for years subsequent to 1951, the latest data before the Commission when it prescribed the present divisions. See Petition, page 11. The reason for the Northern lines' lack of specificity on the nature of these data is suggested by the following table showing changes in Net Railway Operating Income of the respective groups of roads since the record was closed:

Year	Southern Region	Percent	Official Territory (East Dist. and Poca. Region)	Percent
1951	$157,136,598	100	$382,280,143	100
1956	184,034,606	117	466,718,173	122
1957	155,255,698	99	385,277,842	101

Source: Annual Reports of the Carriers.

This comparison emphasizes the lack of any basis for general reopening in the Petition of the Northern lines.

This is particularly important where, under the divisions prescribed by the Commission, the Northern lines are presently obtaining nearly 8% in excess of a mileage prorate due to the construction of the prescribed integer scales in a manner unduly preferential to the Northern carriers with their shorter average haul. See Tr. C-2600, C-2603. The prescribed scales contain an allowance of 65 integers for the first 50-mile block and 12 integers per 50 miles thereafter (287 I. C. C. 497, 552). If 12 integers represent

50 miles of service, the prescribed scale assigns the equivalent of 270 miles of service for only 25 miles of average haul in the first mileage block, an allowance far in excess of that justified by terminal service.

The Northern lines' Petition is silent as to the ability of the Southern lines to respond to this further attempt to reduce earnings which are already too low. In fact, the rate of return of the Southern roads in 1957 was only 4.14% and, with the *Ex Parte 212* increases, was estimated at only 3.57% in 1958 (304 I.C.C. 289, 302). Rates of return at such a level are not only substandard and inadequate as a matter of fairness to the owners of the properties, but earnings at such a low level imperil the ability of the Southern lines to provide the service necessary to meet the transportation needs of the growing South. This is a matter of greatest concern to the carriers and to this Commission in administering Section 15(6) in light of the national transportation policy. It is not in the public interest that hard earned and inadequate revenues be taken from the necessitous to reward those who appear more aggressive in seeking increases in rates and divisions.

The divisions here at issue affect only 5% of the total revenues of the Northern lines. In contrast, the Southern lines are heavily dependent on the divisions revenue here involved, to the extent of 25% of their total freight revenues. This high degree of leverage makes it apparent that the degree of injury to the individual Southern lines from the claims of the Northern lines is many times greater than the degree of benefit that can possibly accrue to the respective Official Territory lines from the transfer of any given amount of revenue.

Under such circumstances, the Commission should not permit reopening of a divisions proceeding recently concluded when it is evident that the Northern lines have not exhausted their means of self-help and are seeking instead to cast upon their connections burdens which can only be dealt with within Official territory itself.

CONCLUSION.

In light of the importance to the Commission in its administration of the Act, and to the Southern lines, of the issues raised by the Northern Lines' Petition herein, it is submitted that oral argument before the Commission should be had on this Petition. Upon argument and consideration of the reasons set forth in the foregoing reply, the Petition of the Northern lines for general reopening, for further hearing and for modification of the order in these cases, should be denied.

Respectfully submitted,

(Subscription and Certificate of Service omitted in printing.)

Due date: May 1, 1959

Before the

Interstate Commerce Commission

(Title omitted in printing.)

PETITION OF SOUTHERN GOVERNORS' CONFERENCE FOR LEAVE TO INTERVENE AND TO ANSWER.

[May 14, 1959]

COMES NOW, your Petitioner, the Southern Governors' Conference, and respectfully shows that it has a direct interest in the matters in controversy in the above-styled proceedings and in the petition of the Eastern railroads, dated November 1, 1956, for general reopening of said proceedings for further hearings and for modification of prior orders in those proceedings. Your Petitioner desires to intervene in said proceedings for the purpose of answering said petition and participating in the proceedings if they are reopened, and as grounds for its proposed intervention, Petitioner shows:

I

The Southern Governors' Conference is composed of the Governors of the Southern States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia and the Governors of the border States of Arkansas, Oklahoma, Texas, West Virginia, Maryland and Delaware. The Southern Governors' Conference was formed primarily for the purpose of furthering the economic development of the Southern Region and has, since 1937, actively interested itself in freight rates applying on movemnets to, from and within Southern Territory. The Southern Governors' Conference has actively participated in a number of proceedings before your Commission wherein was involved transportation mat-

ters affecting the welfare of the citizens of the Southern States.

II

The railroads in the South, who are the defendants and respondents in these proceedings, operate a network of lines throughout our region. Those railroads provide the entire South with essential rail transportation services and facilities and, in addition to their services in that respect, are an important factor in the South's economy due to their substantial outlays for wages, taxes, materials and supplies and in their continuing programs to attract additional industry to the South.

III

Although for many years confined almost exclusively to the production of agricultural commodities, the new South of today produces, in addition to those basic agricultural commodities, large quantities of various forest products, products of mines and manufactured articles which are marketed not only within our own Southern Territory but also within the Official Territory States served by the Eastern railroad petitioners in these proceedings. Many of these commodities are of such character that their distribution is best effected by rail transportation and the producers and manufacturers within the South are accordingly still dependent in large measure for the marketing of their products in the East upon a sound rail transportation system which can provide the needed services at reasonable rates.

IV

For many years the Southern Governors' Conference led the fight against the inequitable freight rate barriers which had stifled the industrial growth of the South since the Civil War and only in 1952 did we finally gain the rate

parity which meant so much to the economic welfare of our region. The diversification of Southern industry and the expansion of the South's economy, already materially aided by the excellent network of rail lines operated by the defendants and respondents in these proceedings, was stimulated to a considerable degree by the attainment of this freight rate parity. The Southern Governors' Conference vigorously opposes any diminution in the revenues of the Southern carriers which would jeopardize the maintenance of the present rail services available to the South and preclude the expansion of the rail transportation facilities essential for the continued growth and welfare of our agriculture and industry. As was demonstrated in recently concluded or currently pending applications to our regulatory commissions for increases in intrastate rates and charges within our region, the railroads in the South are not in such financial condition as to be able to withstand the loss of the many millions of dollars in revenues here sought by the petitioning Eastern railroads without either serious adverse effect on the transportation services being rendered to the citizens of the South or the imposition on those citizens of a substantial further freight rate increase. Further, there is thinly disgused, in the instant proposal of the Eastern carriers for increase in their divisional factors above the parity of the present "equal-factor" basis, a resurrection of the freight rate differential this Conference was organized to combat—a revival which would force the Southern shippers and Southern railroads to subsidize the Eastern shippers and railroads to the great detriment and harm of our region.

V

The Southern Governors' Conference was not aware of the revival of these proceedings or of the importance of these proceedings to the railroads and the shippers of the South until recently so informed by those officials of our

respective Southern States charged with the duty of protecting the transportation interests of our citizens. The magnitude and importance of this case and the inequity of the Eastern lines' proposal has become readily apparent to the Southern Governors' Conference and the Conference has concluded to seek intervention in these proceedings for the purpose of rendering its assistance in the protection of the interests of the Southern user of rail transportation services.

VI

Your Petitioner, therefore, avers that it has a direct interest in these proceedings and should be permitted to intervene. Its intervention will not broaden the issues but will insure that the interests of the public of the States in the South will be adequately presented to your Commission.

WHEREFORE, your Petitioner, the Southern Governors' Conference, prays for leave to intervene in these proceedings in support of defendants and respondents and to be treated as a party to such proceedings. Petitioner further prays that it be granted the privilege of answering the Eastern railroads' petition of November 1, 1956, Petitioner's answer to be filed by May 29, 1959, the due date now set for such answers.

(Subscription and Certificate of Service omitted in printing.)

Dated at State Capitol
Atlanta, Georgia
May 14, 1959

Before the

Interstate Commerce Commission

(Title omitted in printing.)

PETITION OF SOUTHEASTERN ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS FOR LEAVE TO INTERVENE AND TO ANSWER.

[April 22, 1959]

COMES NOW, your Petitioner, the Southeastern Association of Railroad and Utilities Commissioners, and respectfully shows that it has a direct interest in the matters in controversy in the above-styled proceedings and in the petition of the Eastern railroads, dated November 1, 1956, for general reopening of said proceedings for further hearings and for modification of prior orders in those proceedings. Your Petitioner desires to intervene in said proceedings for the purpose of answering said petition and participating in the proceedings if they are reopened, and as grounds for its proposed intervention, Petitioner shows:

I

The Southeastern Association of Railroad and Utilities Commissioners is a voluntary non-profit association of the State regulatory commissions of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. The duties of the member commissions of this Association include, among other things, participation in proceedings before the Interstate Commerce Commission wherein the interests of citizens of their respective states appear to be involved. The Southeastern Association of Railroad and Utilities Commissioners represents its membership in proceedings before the Interstate Commerce Commission wherein is involved the interests of the member States as a whole.

II

The defendants and respondents in these proceedings operate extensive lines of railroad within and through the States comprising the membership of this Association. Those railroads in operating this network of lines throughout those States provide the entire area with essential rail transportation services and facilities and further contribute to the economic welfare of the South through their substantial payments of wages and taxes and their purchase of materials and supplies and in their promotion of further industrialization of the South by location of additional industries on their lines.

III

The member States of this Association produce large quantities of agricultural, forest, mine and manufactured products which must find markets not only within our Southern Territory but also within the Official Territory States served by the Eastern railroad petitioners in these proceedings. Although there has been some diversion to the trucks in the marketing of these commodities in these territories, the producers and manufacturers located within the South are still dependent in large measure for the marketing of their products in the East upon a sound rail transportation system which can provide the needed services at reasonable rates.

IV

The diversification of Southern industry and the growth of the South's agricultural and industrial economy has been possible only because of our excellent transportation system, including the network of rail lines operated by the defendants and respondents in these proceedings. In order to meet the transportation needs of our area the railroads in the South must have available to them revenues adequate to provide not only for the maintenance of their present services but for expansion of their transportation facilities

essential for the continued growth and welfare of our agriculture and industry. There has either been recently granted by, or is now pending before, the member States of this Association requests from the railroads in the South for increase in freight rates and charges—those requests averring that the financial condition of those railroads is so unfavorable at the present time as to necessitate serious retrenchments in their maintennace and equipment purchase programs and the resultant release of many employees formerly engaged in those duties. It is obvious that if the Southern railroads are required to contribute to the Eastern railroads the large amounts of revenues sought by those Eastern railroads in these proceedings, the financial condition of the Southern carriers would be so adversely affected as to require either serious impairment of their present services with further retrenchment in their maintenance and equipment programs or the imposition of a substantial additional freight rate increase on the shippers of the South.

V

For many years the South fought against the inequitable freight rate barriers which had stifled its industrial growth since the Civil War and only in 1952 did we finally achieve the rate parity which meant so much to the economic welfare of our region. The instant proposal of the Eastern carriers for increase in their divisional factors above the parity of the present "equal-factor" basis would revive in another guise this freight rate differential and force the Southern railroads and Southern shippers to subsidize the shippers and railroads of the East to the great detriment and harm of our region.

VI

The member Commissions of this Association discussed and planned intervention in these proceedings when the petition of the Eastern railroads was filed in 1956. However, as the record will indicate, the petition was promptly

followed by a request for indefinite deferral of action on such petition pending negotiations between the Eastern and Southern carriers for voluntary settlement of this divisional question. As the result, neither the Southeastern Association of Railroad and Utilities Commissioners collectively, nor its member States individually, intervened in these proceedings, hoping that the railroads involved could work out an amicable solution to their divisional problems. Apparently such was not to be, however, and this Association, upon learning of the filing of request for immediate processing of the petition of the Eastern railroads, considered the matter at its April 15-18, 1959 Spring Conference at Miami Beach, Florida and without dissenting vote concluded to seek intervention in these proceedings for the purpose of protecting the interests of the Southern user of rail transportation services.

VII

Your Petitioner, therefore, avers that it has a direct interest in these proceedings and should be permitted to intervene. Its intervention will not broaden the issues but will insure that the interest of the public of the States in the South will be adequately presented to your Commission.

WHEREFORE, your Petitioner, the Southeastern Association of Railroad and Utilities Commissioners, prays for leave to intervene in these proceedings in support of defendants and respondents and to be treated as a party to such proceedings. Because of the importance and complexity of the case Petitioner prays that it be granted at least 60 days in which to answer the Eastern railroads' petition of November 1, 1956.

Respectfully submitted

(Subscription and Certificate of Service omitted in printing.)

Dated at Atlanta Georgia
April 22, 1959

ORDER

Interstate Commerce Commission

No. 29885.

OFFICIAL-SOUTHERN DIVISIONS.

In The Matter of Divisions of Joint Rates Between Official and Southern Territories.

No. 29799.

The Akron, Canton & Youngstown Railroad Company, et al.

v.

Aberdeen and Rockfish Railroad Company, et al.

In the Matter of Petitions for Leave to Intervene.

PRESENT: Kenneth H. Tuggle, Chairman, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceedings; the petitions filed on behalf of the Southeastern Association of Railroad and Utilities Commissioners; the Southern Governors' Conference; Alabama Public Service Commission; Florida Railroad and Public Utilities Commission; the Georgia Public Service Commission; Kentucky Railroad Commission; The Louisiana Public Service Commission; Mississippi Public Service Commission; North Carolina Utilities Commission; The Public Service Commission of South Carolina and the Tennessee Public Service Commission for leave to intervene and the Eastern Railroads' reply to the petition of the Florida Railroad and Public Utilities Commission.

It is ordered, That the Southeastern Association of Railroad and Utilities Commissioners, the Southern Governors' Conference, Alabama Public Service Commission, Florida Railroad and Public Utilities Commission, the Georgia Public Service Commission, Kentucky Railroad Commission, The Louisiana Public Service Commission, Mississippi Public Service Commission, North Carolina Utilities Commission, The Public Service Commission of South Carolina, and the Tennessee Public Service Commission be, and they are hereby, permitted to intervene and be treated as parties to these proceedings, with the right to answer the Eastern railroads' petition of November 1, 1956, and to participate in all further proceedings therein.

It is further ordered, That a copy of this order be served upon each of the parties to these proceedings.

Dated at Washington, D. C., this 26th day of May, A. D. 1959.

By the Commission, Chairman Tuggle.

HAROLD D. MCCOY,
Secretary.

[SEAL]

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 20th day of July, A. D. 1959.

No. 29885.

OFFICIAL-SOUTHERN DIVISIONS.

In The Matter of Divisions of Joint Rates Between Official and Southern Territories.

No. 29799.

The Akron, Canton & Youngstown Railroad Company, et al.

v.

Aberdeen and Rockfish Railroad Company, et al.

It appearing, That on November 2, 1956, the Eastern Railroads filed a petition for leave to file petition for general reopening for further hearing and for modification of order and their petition for general reopening for further hearing and for modification of the order of January 12, 1953, as modified by order of May 26, 1953, requiring the establishment of divisions of joint rates prescribed between Official and Southern Territories; which petitions were held in abeyance at the request of the interested parties;

And it further appearing, Pursuant to the Eastern Railroads' request of April 1, 1959, the time for filing replies to said petition was fixed as May 1, 1959 and subsequently postponed to May 29, 1959.

Upon consideration of the record in these proceedings, the said petition of Eastern Railroads, replies of the Southern Railroads filed May 1, 1959, of the Florida Railroad and Public Utilities Commission filed June 1, 1959, and

of the Southern Governors' Conference and Southeastern Association of Railroad and Utilities Commissioners filed May 27, 1959, and it appearing that the Eastern Railroads have represented that they are prepared to present promptly their evidence in chief by verified statements;

It is ordered, That the petition for leave to file a petition for general reopening for further hearing and for modification of the order, be, and it is hereby, granted and the petition received and filed of record;

It is further ordered, That these proceedings be, and the same are hereby, reopened for further hearing at the time and place indicated in the following paragraph and at times to be hereinafter designated by the Commission;

And it is further ordered, That the Eastern Railroads submit their evidence in verified statement form on or before October 1, 1959, copies of which shall be forwarded as follows: three copies to the Secretary of the Interstate Commerce Commission, two copies to the Southern Railroads (unless a larger number is desired and request made therefor), and one copy to each intervener supporting the Southern Railroads (upon proper request therefor); and that the affiants submitting such verified statements shall be available for cross-examination at an oral hearing assigned on November 2, 1959, at 9:30 o'clock a.m., United States Standard Time, at the offices of the Interstate Commerce Commission, Washington, D. C., before Examiners Oren G. Barber and T. R. Roper.

By the Commission.

HAROLD D. MCCOY
Secretary

[SEAL]

VERIFIED STATEMENT NO. 1 OF L. E. BUTLER.

Due Date: October 1, 1959.

[1]

My name is L. E. Butler. I am Assistant Chairman of the Traffic Executive Association-Eastern Railroads with headquarters at 22 West Madison Street, Chicago 2, Illinois. I am also General Chairman of the Eastern Railroads Committee handling Official—Southern Divisions. I have been engaged in freight traffic matters for approximately forty-four years as an employee of individual railroads and traffic associations.

* * *

[20]

Traffic Pattern.

In order to demonstrate the percentage relationship of the number of cars and tons of freight handled within Official, within the South, and between Official and the South, I have prepared a statement showing that information. Exhibit No. D to Verified Statement No. 1 is a statement taken from the data contained in I.C.C. Bureau of Transport Economics and Statistics One percent Waybill Analyses as shown thereon.

The year 1947 was the first year that the Interstate Commerce Commission Bureau of Transport Economics and Statistics issued its one percent waybill analyses. This statement shows the percent that the cars and tons for subsequent years up to 1958 are of the 1947 cars and tons.

The change in the traffic pattern in recent years may be shown by using the tons for the year 1948 as 100 and determining the percentages the tons in the subsequent years are of the 1948 tons.

[21]

The following table, expressed in percentages, shows that information.

1948 = 100

	Official to Official	South to South	Between Official and South
1949	79.56	86.98	80.27
1950	86.68	102.36	98.52
1951	93.28	114.88	103.09
1952	85.99	113.11	102.98
1953	88.95	114.23	103.25
1954	75.29	113.30	91.91
1955	87.97	123.01	102.30
1956	92.49	137.06	111.49
1957	86.25	120.73	102.14
1958	68.81	122.63	91.78

It will be seen from the above table that so far as tons are concerned, within Official territory the percents for the years subsequent to 1948 are considerably less than on traffic within the South, while traffic between Official and the South, except for four years, exceeded that for the year 1948.

This showing demonstrates the increasing importance of this traffic to Official territory lines and indicates that their needed revenue must come out of their Southern inter-territorial traffic to the greatest possible extent that can be justified.

* * *

(Verification omitted in printing.)

I.C.C. DOCKET NO. 29885 ET AL.
EXHIBIT NO. D TO VERIFIED STATEMENT NO. 1
WITNESS L. E. BUTLER

STATEMENT SHOWING CARS AND TONS, OFFICIAL TO OFFICIAL, SOUTH TO SOUTH, AND BETWEEN OFFICIAL AND THE SOUTH FOR THE YEARS 1947 TO 1958

1947 = 100

TERRITORIAL MOVEMENT	1947		1948				1949				1950			
					Percent of 1947				Percent of 1947				Percent of 1947	
	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons
Off. to Off.	167,489	7,559,740	162,021	7,491,449	96.74	99.10	132,257	5,959,966	78.96	78.84	142,719	6,493,825	85.21	85.90
Sou. to Sou.	34,131	1,379,136	32,897	1,351,936	96.38	98.03	28,763	1,175,926	84.27	85.27	33,170	1,383,839	97.18	100.34
Off. to Sou.	6,409	179,385	6,300	177,442	98.30	98.92	5,254	138,228	81.98	77.06	6,122	158,520	95.52	88.37
Sou. to Off.	12,545	442,830	12,133	446,300	96.72	100.78	9,999	362,447	79.71	81.85	12,100	455,969	96.45	102.97
Between Off. and Sou.	18,954	622,215	18,433	623,742	97.25	100.20	15,253	500,675	80.48	80.47	18,222	614,509	96.14	98.76

	1947		1951				1952				1953			
					Percent of 1947				Percent of 1947				Percent of 1947	
	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons
Off. to Off.	167,489	7,559,740	149,961	6,987,888	89.53	92.44	138,035	6,442,063	82.41	85.22	143,038	6,663,564	85.40	88.15
Sou. to Sou.	34,131	1,379,136	36,243	1,553,161	106.19	112.62	35,328	1,529,157	103.51	110.88	35,579	1,544,276	104.24	111.97
Off. to Sou.	6,409	179,385	6,407	176,161	99.97	98.20	6,579	181,923	102.65	101.41	6,484	172,508	101.17	96.17
Sou. to Off.	12,545	442,830	12,412	466,878	98.94	105.43	12,069	460,435	96.21	103.98	12,241	471,506	97.58	106.48
Between Off. and Sou.	18,954	622,215	18,819	643,039	99.29	103.35	18,648	642,358	98.39	103.24	18,725	644,014	98.79	103.50

	1947		1954				1955				1956			
					Percent of 1947				Percent of 1947				Percent of 1947	
	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons
Off. to Off.	167,489	7,559,740	122,372	5,640,549	73.06	74.61	139,494	6,590,281	83.29	87.18	144,278	6,929,077	86.14	91.66
Sou. to Sou.	34,131	1,379,136	34,203	1,531,704	100.21	111.06	36,265	1,663,012	106.25	120.58	39,566	1,852,986	115.92	134.36
Off. to Sou.	6,409	179,385	6,022	156,843	93.96	87.43	6,339	167,814	98.91	93.55	6,627	189,430	103.40	105.60
Sou. to Off.	12,545	442,830	10,939	416,432	87.20	94.04	12,106	470,264	96.50	106.20	12,548	505,995	100.02	114.26
Between Off. and Sou.	18,954	622,215	16,961	573,275	89.49	92.13	18,445	638,078	97.31	102.55	19,175	695,425	101.17	111.77

1947 = 100

TERRITORIAL MOVEMENT	1947		1957		Percent of 1947		1958		Percent of 1947	
	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons
Off. to Off.	167,489	7,559,740	133,053	6,461,530	79.44	85.47	107,424	5,154,799	64.14	68.19
Sou. to Sou.	34,131	1,379,136	34,519	1,632,210	101.14	118.35	34,266	1,657,900	100.40	120.21
Off. to Sou.	6,409	179,385	6,282	185,271	98.02	103.28	5,511	171,094	85.99	95.38
Sou. to Off.	12,545	442,830	10,977	451,795	87.50	102.02	9,543	401,357	76.07	90.63
Between Off. and Sou.	18,954	622,215	17,259	637,066	91.06	102.39	15,054	572,451	79.42	92.00

SOURCE: I.C.C. Bureau of Transport Economics and Statistics One Percent Waybill Analyses.
1947 - Statements Nos. 495, 496, 4910, 4911, and 4927.
1948 - Statement No. 5028
1949 - Statement No. 5034
1950 - Statement No. 5131
1951 - Statement No. 5238
1952 - Statement No. 5340
1953 - Statement No. TD-1
1954 - Statement No. TD-1
1955 - Statement No. TD-1
1956 - Statement No. TD-1
1957 - Statement No. TD-1
1958 - Statement No. TD-1

VERIFIED STATEMENT NO. 3 OF J. L. HEYWOOD.

(Verified September 28, 1959).

[1]

My name is J. L. Heywood and my office is located at Six Penn Center Plaza, Philadelphia, Pennsylvania. My present position, which I have held for over seventeen years, is Assistant Comptroller of the Pennsylvania Railroad Company. I have been employed in the Accounting Department of the Pennsylvania Railroad Company for forty-four years.

My present duties include direct supervision over the compilation of statistics, cost studies and testimony for presentation before the Interstate Commerce Commission and other regulatory commissions. I have been engaged in the analysis and preparation of railroad cost studies since 1930, principally in connection with rate cases.

As Chairman of the Official Lines' Accounting Committee in this case I supervised and assisted in the compilation of the various statistical and cost exhibits which I now desire to present.

The first exhibit I wish to present consists of 31 pages including a "Table of Contents" and the cover page is entitled "Financial, Operating and Traffic Statistics."

For comparative purposes the Class I carriers are grouped as follows:

United States
Eastern District (Excluding Pocahontas Region)
Eastern District (Including Pocahontas Region)
Southern Region

[2]

An explanation of the above groupings is given on Page A of the exhibit. The groupings represent the present condition and reflect the mergers of subsidiaries and others that have taken place during the years covered by the ex-

hibit. For example the Alton R. R. was absorbed by the Gulf, Mobile & Ohio as of June 1, 1947. Prior to that date the Alton was in the Western District but subsequent to June 1, 1947 the results for the Alton are included with the Gulf, Mobile and Ohio in the Southern Region.

In addition to the groupings of Class I carriers previously described, I have also shown various statistics and results for the following carriers:

Baltimore & Ohio R.R. Co.
Chesapeake and Ohio Ry. Co.
New York Central R.R. Co.
New York, New Haven & Hartford R.R. Co.
Pennsylvania Railroad Co.
Atlantic Coast Line R.R. Co.
Illinois Central R.R. Co.
Louisville & Nashville R.R. Co.
Seaboard Air Line R.R. Co.
Southern Ry. Co.

Here again Page A indicates the carriers that have been merged and the periods for which the merged companies have been included in our compilations.

The sources of most of the material contained in this exhibit are the carriers' reports to the Interstate Commerce Commission or the Commission's reports which are compiled from

[3]

the carriers' individual reports.

Pages 1 to 14, inclusive, of the exhibit show the investment in Railway Property used in transportation service, revenues, expenses, net railway operating income, rate of return and net income for the years 1921 to 1958, inclusive, and the averages for the five years ending 1925, 1930, 1935, 1940, 1945, 1950, and 1955. As indicated in the footnote, the investment in railway property used in transportation service includes investment in Road and Equipment,

Account 708 Cash and Account 716 Materials and Supplies prior to 1957 and Account 701 Cash and Account 712 Materials and Supplies for 1957 and 1958. Column 2 shows the investment in railway property after accrued depreciation and amortization and is the base for the determination of the rate of return shown in column 10. The rates of return on depreciated investment have been summarized on page 21 for the individual railroads.

It will be noted that, while prior to 1940 the rate of return for the Southern Region was generally lower than either of the Eastern Groups, since 1941 the rate of return of the Southern Region has been in excess of the rate of return of both the Eastern District excluding and including the Pocahontas Region.

[4]

One of the reasons for the shift in relative earning power of these groups of carriers is the relatively greater increase in the total operating revenues of the Southern carriers than those of the Eastern carriers due, in part, to the great development of the South. The average of the total operating revenues for the Eastern District (excluding Pocahontas Region) (page 2) for the five years, 1951-1955, is 124.2% greater than for the five year average 1936-1940 and 153.3% greater than the annual average for 1931-1935. On the other hand, the Southern Region (page 4) increases 176.5% and 231.3% during the same periods. This unequal increase in total operating revenue has continued into 1958, which year shows a decrease of 12.6% under the 1951-1955 average for the Eastern District (excluding Pocahontas Region) with decrease of only 6.1% for the Southern Region.

The following summary based on pages 2 and 4 shows that the relative increases in freight revenue follows closely the pattern described above in connection with the total operating revenues.

Percentage Increase in Freight Revenue for Five Year Average 1951-1955

Increase over	*Eastern District (Excl. Poca. Reg.)*	*Southern Region*
1936-1940	128.9%	185.4%
1931-1935	167.9	245.3
	Decrease in Freight Revenue—1958	
1951-1955	13.3%	4.5%

[5]

Page 18 of my exhibit illustrates in another manner the fact that the freight revenue has increased substantially more in the South than in the East. On this page is shown the percentages of the total freight revenue for the United States that were received by the various territorial groups named. The period from 1928 to 1958 is covered. It will be noted that in 1928 the Eastern District excluding the Pocahontas Region had 41.66% of the total freight revenue of Class I carriers in the United States. This dropped to 41.54% in 1930 which was followed by minor decreases to 39.53% in 1942. From 1942 an irregular but consistent decline has taken place until 1958, when the Eastern District had only 32.67% of the U. S. freight revenue.

In contrast, the Southern Region had 13.25% of the total freight revenue in 1928. This had increased to 14.28% by 1942 but in 1958, the Southern Region received 14.56% of the total freight revenue. This is an increase of 1.31 points for the Southern Region compared with a decrease of 8.99 points for the Eastern District excluding Pocahontas Region. The Southern Region proportion of the United States in recent years is also higher in relation to the Eastern District than in the previous hearings in this case, while generally included statistics (not costs) to and including 1950.

The freight revenue for the years 1928 to 1958, inclusive, for the selected carriers as well as the percentage that the revenue of each carrier is of the total freight revenue of the United States Class I carriers is shown on pages 19 and 20.

[6]

Revenue ton miles for the years 1928 to 1958, inclusive, for the territorial groups are shown on page 15 along with indices based on both 1928 and 1950 as 100. This page demonstrates the expansion that has taken place in the revenue freight traffic in the Southern Region particularly during and since World War II. During the early 1930's this territory suffered reductions in revenue ton miles greater than the losses suffered by the Eastern District and the rest of the industry. However, by 1940 the Southern Region had regained the lost traffic as shown by an index of 84.2. By 1942, index of 154.8 (1928 = 100) is recorded for the Southern Region and the revenue ton miles of the Eastern District (excluding Pocahontas Region) was 139.8. During the war years the Southern Region index reached a high of 175.6 (1943) compared with revenue ton miles for 1928 and ever since has greatly exceeded 1928. On the other hand, during the war years, the Eastern District's index reached a high of 155.1 (1943) and after an 115.9 in 1956 has had indices of 107.7 and 89.9 for the years 1957 and 1958, respectively.

An examination of the indices of revenue ton miles for the individual carriers (pages 16 and 17) shows that, 1958 indices for the Southern lines range from 105.9 for the Louisville and Nashville to 287.9 for the Seaboard Air Line.

[7]

For the Eastern lines the 1958 indices read from a low of 79.0 for the New Haven to the 106.4 for the Baltimore & Ohio and 124.5 for the Chesapeake & Ohio.

Pages 22 to 24, inclusive, covering revenue tons originated and terminated, all show the same general pattern, previously noted, of changes in volume for the three territories and the individual carriers in the Eastern District and Southern Region. On an index basis, relative parity was maintained, with certain minor exceptions, for the period up to World War II. However, subsequent to 1940, the increases in the Southern Region have substantially exceeded any increases reported for the Eastern District.

Pages 25, 26 and 27 cover various operating statistical averages for the Class I Railroads in the Eastern District (including Pocahontas Region) and (excluding Pocahontas Region) and Southern Region and individual railroads.

Page 28 covers Return on Valuation (I.C.C. Elements of Value) for years 1947 to 1957. The figures are shown for the Eastern District (excluding Pocahontas Region), Eastern District (including Pocahontas Region) and Southern Region.

My next exhibit consists of 28 pages, a cover page and a table of contents. It is entitled "Rail Costs."

The costs included in this exhibit are based on the application of Rail Form A, 9-53 and 7-57 "Formula for Use in Determining Rail Freight Service Costs" prepared by the Cost

[8]

Finding Section, Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission.

The return on investment has been computed at the rate of 6 percent on a valuation base representing the book investment in road and equipment plus cash and material and supplies less recorded accrued depreciation and amortization.

The fully distributed costs appearing in my exhibit cover out of pocket and constant expenses plus 6 percent return on investment but do not include either Less-Carload or Passenger service deficit nor is return on the investment

assigned to the two last mentioned services included. Federal Income Taxes have also been excluded from the cost figures.

As indicated in the heading on each page of the exhibit, the line haul costs have been increased to reflect circuity. Therefore, the respective costs may be drawn directly from the exhibit for various short line hauls.

Page 1 sets forth the Form A terminal and line-haul unit cost factors for 28.9 tons in box cars and for 16.3 tons in refrigerator cars for the Eastern District and the Southern Region for the years there shown. Page 1a, as with other a-numbered pages of this exhibit, shows corresponding costs data for the Eastern District including Pocahontas Region.

[9]

Pages 2 to 7 inclusive are scales of fully distributed Form A costs for the Eastern District and Southern Region for 28.9 tons in box cars and 16.3 tons in refrigerator cars for the several years for which unit costs are shown on page 1. The scales on page 8 are the same as at page 6 except they have the Passenger and Less Carload Deficiencies included. The line-haul element in these scales has been increased to reflect circuity. The circuity factors for box cars are 13 percent for Eastern District and 9 percent for Southern Region, these were developed from Ex. A to V. S. No. 1 and for refrigerator cars the percents were 6 percent for Eastern District and 5 percent for Southern Region developed from Ex. B to V. S. No. 1.

Page 9 compares the percentages which Eastern District costs are of Southern Region costs for the several years at 100, 400, 700, and 1000 miles for both box and refrigerator car costs. As there indicated the Eastern costs are substantially higher than those for the Southern Region.

Page 10 compares the percentages which Eastern District costs are of the total Eastern District and Southern Region costs for the several years when applied to the aver-

age short-line hauls of the citrus fruit and fresh or green vegetable traffic and to all other traffic as such hauls were developed in Witness Butler's traffic study, Ex. A & B to V. S. No. 1.

[10]

Sheets 11 to 15 of this exhibit contain Form A cost data taken or derived from the Form A cost information currently prepared and issued by the Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission. Page 11 sets forth the terminal and line-haul unit cost factors for 28.9 tons in box cars and 16.3 tons in refrigerator cars for the Eastern District and Southern Region for the years 1947 to 1956, inclusive, each as adjusted to January 1 of the second year thereafter. Page 12 of this exhibit sets forth a comparison of the costs for the Eastern District and Southern Region at the average short-line hauls developed in Witness Butler's traffic study, Ex. A & B to V. S. No. 1, based upon the I.C.C. Form A factors set forth on the preceding page. Also shown is the percent of the total costs both East and South.

Page 13 of this exhibit sets forth the terminal and line-haul unit cost factors based on the Commission's data previously described for each of the years 1950 to 1956, inclusive, which differ from the unit cost factors shown in page 11 in that the adjustment to January 1 of the second year following has been omitted.

Page 14 of this exhibit is a comparison of the costs East and South at the average hauls similar to that set forth at page 12 but based upon the costs for the unadjusted years as shown at page 13.

[11]

Page 15 is a comparison of the percentages which Eastern District costs are of the total Eastern District and Southern Region costs under the Eastern carriers' Form A basis and under the I.C.C. basis at the short-line average

hauls taken from the Butler traffic study, Ex. A & B to V. S. No. 1. These comparisons are made only for the years 1950, 1952, 1954, 1956 and 1957. These are the years for which I have comparable figures available. As indicated by this comparison the results under the Eastern carriers Form A basis and under the I.C.C. basis are closely comparable. In this connection it should be remembered that the Eastern carriers' Form A costs are freight service costs without passenger or less carload deficits and are based upon a rate of return of 6 percent on net investment without allowance for income taxes, while the I.C.C. basis of costs includes passenger and less carload deficits and includes a rate of return at 4 percent on Commission Elements of Value after allowance for income tax.

Page 16 is a comparison of fully distributed freight service costs (excluding passenger and less carload deficits) as computed by me for the year 1956 basing the 6 percent return before income taxes on the I.C.C. Elements of Value for both 28.9 tons in box cars and 16.3 tons in refrigerator cars.

Sheet 17 shows Form A cost scales of composite rail costs for all cars for an average load of 28.9 tons for all traffic

[12]

(except citrus fruits and fresh or green vegetables—Northbound and coal and coke) for the Eastern District and Southern Region from the application of costs in Ex. C to V. S. No. 3.

My next Exhibit (Ex. C to V. S. No. 3), entitled "Revenues and Costs for Traffic Between Points in Official Territory and Points in Southern Territory", prices out the traffic in Witness Butler's traffic study (Ex. A to V. S. No. 1).

The first page of this exhibit shows the average service unit costs for each type of freight car for both the East-

ern District and the Southern Region. The line haul costs are stated in cents per car mile and per ton mile and the terminal costs are stated in cents per loaded car and per ton originated or terminated. The service unit costs are based on the application of the Commission's Form A cost formula described more fully in connection with the exhibit containing cost scales. As indicated on this page the costs used are 1956. If 1957 costs were used, the costs for the Eastern District roads would be even higher in relation to the Southern Region costs than 1956. I believe that this will be true also on the basis of 1958 costs.

Since the traffic moving between the Official Territory and Southern Territory would normally move through in the same car, the same tare weights were used in each territory for the various types of car. The tare weights used were the weights shown for the United States on page 10 of I.C.C. Statement 2-58 based on studies made by the Cost Finding Section.

[13]

On the other hand, the movement of the empty car before or after the loaded move would vary in the different territories depending on the car supply and other conditions that may exist in each territory. Therefore, the ratio of empty to loaded car miles used in developing the comparative unit costs (page 1) were the ratios found to exist in the respective territory. The ratios for all types of freight cars were based on the seven day study the data for which were furnished in response to the Commission's order dated July 16, 1957. (See page 13 I.C.C. Statement No. 2-58.)

The next eight pages (2 to 9) show the method followed in computing the composite costs, both line haul and terminal, for the different commodity groupings for use in the following pages of the exhibit. As indicated by footnotes the type of car is based on Mr. Butler's Ex. A to V. S. No. 1 and the basic unit costs are from page 1 of the exhibit.

The following pages, starting with page 10, show a comparison of the revenues as settled with the costs for both the Eastern District and the Southern Region. On these pages an item of cost covering Loss and Damage is shown. The Loss and Damage cost is based on the separation of claim payments for the United States by commodity groups and assigned on the basis of tons originated based on work papers for I.C.C.

[14]

Statement No. 2-58. The total for each commodity group was apportioned between the two groups of carriers on basis of the ton miles in each territory. Clerical expenses in connection with claim work was assigned by use of ratios. The cars, tons and revenue as settled on each of these sheets are from Witness Butler's Ex. A to V. S. No. 1.

Page 10 covers Products of Agriculture, (except citrus fruits and fresh or green vegetables, not frozen—Northbound), and I will explain this sheet in some detail as being representative of the following pages. After the number of cars and tons is shown the total out of pocket and constant costs, including 6% return on the net investment, for the Eastern District and Southern Region and a total of both. Next is shown the percentage of the total costs represented by each of the two territorial groups. This indicates that the costs for the Eastern Lines amount to 55.96 percent and those of the Southern Lines to 44.04 percent of the total. The cost of 6 percent return on the net investment follows and is deducted from the total costs leaving costs excluding Return. Revenue as settled is from the traffic exhibit previously referred to and divides 50.23 percent East and 49.77 percent South. On this basis the Eastern Carriers have an income of $157,613 out of revenue of $820,193 whereas the Southern Lines have an income of $290,971 out of $812,555 revenue. The next three lines

[15]

show that the incomes before return, if the revenue were apportioned on basis of costs, would be $913,686 and $719,062 for the East and South, respectively.

The next page (page 11) covers Products of Agriculture-Southbound and shows that whereas the Eastern District costs amount to 59.27 percent of the total costs, Eastern District receives only 50.21 percent of the total revenue as settled. This results in an income before return on investment of $81,737 for the Eastern District with the Southern Region receiving a rate of return of 26.5 percent.

I would like to point out that certain pages such as pages 12, 15, 18, etc. show that they are summaries of preceding pages. In these cases the basic figures of costs and revenues have been accumulated from the designated pages. One of the summary pages (page 28) covers all the Northbound traffic with page 29 covering all the Southbound traffic. The next page (page 30) covers all traffic both Northbound and Southbound. Here again the percentage of the costs borne by the Eastern Lines of 48.78 percent is greater than the proportion of revenue (45.44%) received by them. It can also be seen that while the Southern Lines received 26.5 percent Return on Net Investment, the Eastern carriers received only 18.2 percent.

[16]

At page 31 of this exhibit I have inserted a revised page which shows a distribution of the revenue on the basis of total costs as distinguished from the showing at the bottom of page 30 which accumulates the revenue from the several blocks of traffic on the basis of the relative costs for those respective blocks.

My next exhibit, Ex. D to V. S. No. 3 prices out the traffic in Witness Butler's Ex. B to V. S. No. 1, using the same unit cost factors as are shown at page 1 of my

previous exhibit No. C to V. S. No. 3. As will be noted from page 2, which shows the total of all traffic both Northbound and Southbound, the Eastern percentage of costs is 34.62 percent.

Exhibits C and D price out the traffic involved on Eastern District costs rather than on costs including those of the Pocahontas Region as Pocahontas Region costs reflect a special situation which is generally recognized as not indicative of the costs to Official territory lines of handling such traffic.

(Verification omitted in printing.)



1924	10,427,620,974	9,656,362,285	2,902,338,873	2,109,669,539	549,013,878	243,655,456	2,241,554,704	149,994,420	459,993,3
1925	10,661,654,146	9,826,644,783	3,014,599,001	2,213,595,955	543,853,400	257,149,646	2,261,166,082	160,785,008	546,166,9
Avge.1921-1925	10,074,091,502	9,360,767,409	2,892,120,487	2,096,075,762	554,505,637	241,539,088	2,290,192,580	141,037,925	413,767,1
1926	10,969,901,349	10,064,661,352	3,190,049,568	2,376,694,036	546,212,996	267,142,536	2,351,800,032	181,103,303	605,397,9
1927	11,201,844,126	10,224,680,730	3,036,170,226	2,254,451,037	523,050,887	258,668,302	2,276,227,910	174,208,838	531,558,5
1928	11,463,031,868	10,400,678,884	2,993,603,575	2,245,403,278	492,349,305	255,850,992	2,171,125,791	183,247,585	583,130,0
1929	11,751,554,484	10,633,632,321	3,119,553,755	2,348,320,894	483,193,598	288,039,263	2,240,003,164	186,650,534	634,641,7
1930	12,076,197,850	10,859,801,613	2,620,405,956	1,969,412,065	416,780,088	234,213,803	1,953,157,594	184,803,873	438,491,1
Avge.1926-1930	11,492,506,735	10,436,694,980	2,991,956,616	2,238,856,262	492,317,375	260,782,979	2,198,462,898	178,002,827	558,643,8
1931	12,125,473,743	10,826,119,613	2,092,121,223	1,571,828,742	326,456,064	193,836,417	1,606,677,986	145,398,909	271,812,6
1932	12,143,122,242	10,782,755,979	1,597,427,656	1,212,758,272	231,106,191	153,563,193	1,181,966,598	135,387,835	217,119,5
1933	12,066,103,001	10,672,186,025	1,583,684,635	1,243,538,898	202,804,287	137,341,450	1,115,062,069	123,478,098	281,831,9
1934	12,075,789,232	10,657,353,605	1,662,367,201	1,308,233,319	212,730,248	141,403,634	1,203,915,944	121,321,512	273,381,5
1935	12,073,318,022	10,654,172,622	1,750,381,357	1,390,997,442	214,234,625	145,149,290	1,260,477,092	120,538,806	309,980,1
Avge.1931-1935	12,096,761,248	10,718,517,569	1,737,196,414	1,345,471,334	237,466,282	154,258,798	1,273,619,937	129,225,032	270,825,1
1936	12,124,480,174	10,693,868,309	2,043,338,800	1,642,613,062	240,223,264	160,502,474	1,428,843,514	168,475,452	386,223,9
1937	12,172,482,108	10,627,221,864	2,063,667,537	1,645,787,175	251,865,000	166,015,362	1,503,792,658	172,487,331	333,062,6
1938	12,131,010,374	10,539,961,091	1,685,400,530	1,314,762,055	231,500,614	139,137,861	1,262,487,055	170,806,044	195,126,1
1939	12,145,722,285	10,520,217,134	1,968,176,935	1,574,359,400	239,948,328	153,869,207	1,395,644,734	180,485,914	331,120,7
1940	12,300,793,206	10,634,484,504	2,152,455,101	1,754,418,059	235,332,864	162,704,178	1,506,578,768	209,586,340	376,023,6
Avge.1936-1940	12,174,897,629	10,603,150,580	1,982,607,780	1,586,387,950	239,774,013	156,445,817	1,419,469,346	180,388,216	324,311,4
1941	12,331,908,081	10,540,464,331	2,642,982,063	2,185,817,623	277,877,773	179,286,667	1,801,691,352	290,060,362	488,644,2
1942	12,359,168,335	10,413,875,113	3,438,793,853	2,720,240,785	499,998,687	218,554,381	2,200,953,328	550,208,975	611,584,5
1943	12,652,281,400	10,528,061,933	3,972,141,292	2,992,694,783	718,741,282	260,705,227	2,616,349,320	727,177,989	558,915,3
1944	12,675,331,333	10,332,156,129	4,083,141,711	3,034,705,390	781,406,327	267,029,994	2,894,903,824	657,201,503	455,399,1
1945	12,797,593,536	9,945,825,673	3,765,751,255	2,746,871,732	755,606,142	263,273,381	3,165,481,202	196,549,104	341,696,9
Avge.1941-1945	12,563,256,537	10,352,076,636	3,580,562,034	2,736,066,062	606,726,042	237,769,930	2,535,875,805	484,239,586	491,248,0
1946	12,907,343,487	9,942,488,322	3,403,081,801	2,554,157,237	613,535,065	235,389,499	2,926,538,299	210,157,809	209,467,5
1947	13,272,609,100	10,191,186,223	3,956,029,410	3,149,663,676	512,467,084	293,898,650	3,200,355,233	387,081,296	304,425,6
1948	13,708,869,558	10,546,964,153	4,407,855,054	3,568,629,960	519,586,375	319,638,719	3,485,654,268	434,696,296	429,560,1
1949	13,885,341,957	10,684,051,237	3,795,156,773	3,031,756,436	474,734,946	288,665,391	3,127,262,188	335,825,307	265,412,9
1950	14,102,072,033	10,835,559,259	4,184,726,006	3,374,542,107	448,878,297	361,305,602	3,263,172,769	463,084,800	390,784,2
Avge.1946-1950	13,575,247,227	10,440,049,839	3,949,369,809	3,135,749,883	513,840,353	299,779,573	3,200,596,551	366,169,102	319,930,1
1951	14,519,064,047	11,196,267,729	4,628,367,333	3,758,895,961	483,251,683	386,219,689	3,683,407,593	484,893,648	382,280,1
1952	14,921,999,092	11,553,147,163	4,573,905,324	3,695,768,628	485,965,674	392,171,022	3,614,687,913	458,145,738	439,119,8
1953	14,993,031,673	11,625,970,795	4,632,818,597	3,782,203,760	458,672,615	391,942,222	3,650,278,247	433,255,845	465,322,5
1954	14,940,583,319	11,508,189,277	3,959,941,434	3,179,882,185	425,280,542	354,778,707	3,212,985,883	309,027,785	334,609,4
1955	14,930,542,701	11,475,112,491	4,398,351,577	3,616,086,006	413,608,884	368,656,687	3,390,638,875	417,869,121	481,454,3
Avge.1951-1955	14,861,044,166	11,471,737,491	4,438,676,853	3,606,567,308	453,355,880	378,753,665	3,510,399,702	420,638,427	420,557,2
1956	15,168,407,023	11,632,453,674	4,678,202,339	3,867,888,020	422,971,597	387,342,722	3,631,039,106	470,476,900	466,718,1
1957	15,450,479,358	11,807,324,082	4,651,818,189	3,859,737,901	414,203,756	377,876,532	3,699,422,485	448,742,898	385,277,8
1958	15,402,889,572	11,656,815,566	3,975,779,910	3,217,516,159	378,043,295	380,220,456	3,228,626,557	368,571,215	234,292,8

Def. - Deficit

(A) - Includes Investment in R.&E., R.&S., Acct. 716 and Cash Acct. 708 Prior to 1957
Includes Investment in R.&E., M.&S., Acct. 712 and Cash Acct. 701 For 1957 and 1958

Revenues, Expenses and Net Income

Railways of Class I in Eastern District (Including Pocahontas Region)

Years 1921 to 1958

Year	Investment in Railway Property Used in Transportation Service: Total (A)	Investment in Railway Property Used in Transportation Service: After Accrued Depreciation and Amortization	Operating Revenues: Total	Operating Revenues: Freight	Operating Revenues: Passenger	Operating Revenues: All Other	Total Operating Expenses	Taxes	Net: Amo
	1	2	3	4	5	6	7	8	9
1921	$9,574,149,512	$8,969,452,307	$2,650,878,863	$1,878,584,132	$565,352,016	$206,942,715	$2,231,031,332	$119,260,315	$264,6
1922	9,647,513,103	8,991,888,529	2,720,490,081	1,943,416,878	539,309,113	237,764,090	2,213,627,969	127,124,479	332,8
1923	10,059,529,775	9,359,489,139	3,172,295,617	2,335,112,303	574,999,778	262,183,536	2,503,582,813	148,025,402	465,2
1924	10,427,620,974	9,656,362,285	2,902,338,873	2,109,669,539	549,013,878	243,655,456	2,241,554,704	149,994,420	459,9
1925	10,661,654,146	9,826,644,783	3,014,599,001	2,213,595,955	543,853,400	257,149,646	2,261,166,082	160,785,008	546,1
Avge.1921-1925	10,074,093,502	9,360,767,409	2,892,120,487	2,096,075,762	554,505,637	241,539,088	2,290,192,580	141,037,925	413,7
1926	10,969,901,349	10,064,681,352	3,190,049,568	2,376,694,036	546,212,996	267,142,536	2,351,800,032	181,103,303	605,3
1927	11,201,844,126	10,224,680,730	3,036,170,226	2,254,451,037	523,050,887	258,668,302	2,276,227,910	174,208,838	531,9
1928	11,463,033,868	10,400,678,884	2,993,603,575	2,245,403,278	492,349,305	255,850,992	2,171,125,791	183,247,585	583,1
1929	11,751,556,484	10,633,632,321	3,119,553,755	2,348,320,894	483,193,598	288,039,263	2,240,003,164	186,650,534	634,6
1930	12,076,197,850	10,859,801,613	2,620,405,956	1,969,412,065	416,780,088	234,213,803	1,953,157,594	164,803,873	438,4
Avge.1926-1930	11,492,506,735	10,436,694,980	2,991,956,616	2,238,856,262	492,317,375	260,782,979	2,198,462,898	178,002,827	558,6
1931	12,125,473,743	10,826,119,613	2,092,121,223	1,571,828,742	326,456,064	193,836,417	1,606,677,986	145,398,909	271,8
1932	12,143,122,242	10,782,755,979	1,597,427,656	1,212,758,272	231,106,191	153,563,193	1,181,966,598	135,387,835	217,1
1933	12,066,103,001	10,672,186,025	1,583,684,635	1,243,538,898	202,804,287	137,341,450	1,115,062,069	123,478,098	281,8
1934	12,075,789,232	10,657,353,605	1,662,367,201	1,308,233,319	212,730,248	141,403,634	1,203,915,944	121,321,512	273,1
1935	12,073,318,022	10,654,172,622	1,750,381,357	1,390,997,442	214,234,625	145,149,290	1,260,477,092	120,538,806	309,9
Avge.1931-1935	12,096,761,248	10,718,517,569	1,737,196,414	1,345,471,334	237,466,282	154,258,798	1,273,619,937	129,225,032	270,6
1936	12,124,480,174	10,693,868,309	2,043,338,800	1,642,613,062	240,223,264	160,502,474	1,428,843,514	168,475,452	386,2
1937	12,172,482,108	10,627,221,864	2,063,667,537	1,645,787,175	251,865,000	166,015,362	1,503,792,658	172,487,331	333,1
1938	12,131,010,374	10,539,961,091	1,685,400,530	1,314,762,055	231,500,614	139,137,861	1,262,487,055	170,806,044	195,8
1939	12,145,722,285	10,520,217,134	1,968,176,935	1,574,359,400	239,948,328	153,869,207	1,395,644,734	180,485,914	331,1
1940	12,300,793,206	10,634,484,504	2,152,455,101	1,754,418,059	235,332,864	162,704,178	1,506,578,768	209,586,340	376,6
Avge.1936-1940	12,174,897,629	10,603,150,580	1,982,607,780	1,586,387,950	239,774,013	156,445,817	1,419,469,346	180,388,216	324,1
1941	12,331,908,081	10,540,464,331	2,642,982,063	2,185,817,623	277,877,773	179,286,667	1,801,691,352	290,060,362	48[illegible]
1942	12,359,168,335	10,413,875,113	3,438,793,853	2,720,240,785	499,998,687	218,554,381	2,200,953,328	550,2[illegible]975	611,1
1943	12,652,281,400	10,528,061,933	3,972,141,292	2,992,694,783	718,741,282	260,705,227	2,616,349,320	727,177,989	558,1
1944	12,675,331,333	10,332,156,129	4,083,141,711	3,034,705,390	781,406,327	267,029,994	2,894,903,824	657,201,503	455,1
1945	12,797,593,536	9,945,825,673	3,765,751,255	2,746,871,732	755,606,142	263,273,381	3,165,481,202	196,549,104	341,1
Avge.1941-1945	12,563,256,537	10,352,076,636	3,580,562,034	2,736,066,062	606,726,042	237,769,930	2,535,875,805	484,239,586	491,1
1946	12,907,343,487	9,942,488,322	3,403,081,801	2,554,157,237	613,535,065	235,389,499	2,926,538,299	210,157,809	209,1
1947	13,272,609,100	10,191,186,223	3,956,029,410	3,149,663,676	512,467,084	293,898,650	3,200,355,233	387,081,296	304,1
1948	13,708,869,558	10,546,964,153	4,407,855,054	3,568,629,960	519,586,375	319,638,719	3,485,654,268	434,696,296	429,1
1949	13,885,341,957	10,684,051,237	3,795,156,773	3,031,756,436	474,734,946	288,665,391	3,127,262,188	335,825,307	265,1
1950	14,102,072,033	10,835,559,259	4,184,726,006	3,374,542,107	448,878,297	361,305,602	3,263,172,769	463,084,800	390,1
Avge.1946-1950	13,575,247,227	10,440,049,839	3,949,369,809	3,135,749,883	513,840,353	299,779,573	3,200,596,551	366,169,102	319,1
1951	14,519,064,047	11,196,267,729	4,628,367,333	3,758,895,961	483,251,683	386,219,689	3,683,407,593	484,893,648	382,1
1952	14,921,999,092	11,553,147,163	4,573,905,324	3,695,768,628	485,965,674	392,171,022	3,614,687,913	458,145,738	439,1
1953	14,993,031,673	11,625,970,795	4,632,818,597	3,782,203,760	458,672,615	391,942,222	3,650,278,247	433,255,845	465,1
1954	14,940,583,319	11,508,189,277	3,959,941,434	3,179,882,185	425,280,342	354,778,707	3,212,985,883	380,027,785	[illegible]

Revenues, Expenses and Net Income

Railways of Class I in Eastern District (Including Pocahontas Region)

Years 1921 to 1958

Railway Property Investment Service After Accrued Depreciation Amortization 2	Operating Revenues				Total Operating Expenses 7	Taxes 8	Net Railway Operating Income		Net Income 11
	Total 3	Freight 4	Passenger 5	All Other 6			Amount 9	Rate of Return After Depreciation and Amortization 10	
$3,969,452,307	$2,650,878,863	$1,878,584,132	$565,352,016	$206,942,715	$2,231,031,332	$119,260,315	$264,620,910	2.95%	$134,445,206
3,991,888,529	2,720,490,081	1,943,416,878	539,309,113	237,764,090	2,213,627,969	127,124,479	332,808,352	3.70	150,160,990
9,359,489,139	3,172,295,617	2,335,112,303	574,999,778	262,183,536	2,503,582,813	148,025,402	465,246,116	4.97	280,123,952
9,656,362,285	2,902,338,873	2,109,669,539	549,013,878	243,655,456	2,241,554,704	149,994,420	459,993,361	4.76	261,748,583
9,826,644,783	3,014,599,001	2,213,595,955	543,853,400	257,149,646	2,261,166,082	160,785,008	546,166,946	5.56	41,829,996
9,360,767,409	2,892,120,487	2,096,075,762	554,505,637	241,539,088	2,290,192,580	141,037,925	413,767,119	4.42	233,661,746
0,064,681,352	3,190,049,568	2,376,694,036	546,212,996	267,142,536	2,351,800,032	181,103,303	605,397,918	6.02	411,597,006
0,224,680,730	3,036,170,226	2,254,451,037	523,050,887	258,668,302	2,276,227,910	174,208,838	531,558,512	5.20	351,627,954
0,400,678,884	2,993,603,575	2,245,403,278	492,349,305	255,850,992	2,171,125,791	183,247,585	583,130,074	5.61	401,536,042
0,633,632,321	3,119,553,755	2,348,320,894	483,193,598	288,039,263	2,240,003,164	186,650,534	634,641,708	5.97	486,977,747
0,859,801,613	2,620,405,956	1,969,412,065	416,780,088	234,213,803	1,953,157,594	164,803,873	438,491,110	4.04	280,628,826
0,436,694,980	2,991,956,616	2,238,856,262	492,317,375	260,782,979	2,198,462,898	178,002,827	558,643,864	5.35	386,473,515
0,826,119,613	2,092,121,223	1,571,828,742	326,456,064	193,836,417	1,606,677,986	145,398,909	271,812,631	2.51	82,362,619
0,782,755,979	1,597,427,656	1,212,758,272	231,106,191	153,563,193	1,181,966,598	135,387,835	217,119,582	2.01	Def. 4,671,272
0,672,186,025	1,583,684,635	1,243,538,898	202,804,287	137,341,450	1,115,062,069	123,478,098	281,831,909	2.64	51,814,802
0,657,353,605	1,662,367,201	1,308,233,319	212,730,248	141,403,634	1,203,915,944	121,321,512	273,381,595	2.57	47,381,055
0,654,172,622	1,750,381,357	1,390,997,442	214,234,625	145,149,290	1,260,477,092	120,538,806	309,980,146	2.91	80,618,323
0,718,517,569	1,737,196,414	1,345,471,334	237,466,282	154,258,798	1,273,619,937	129,225,032	270,825,172	2.53	51,501,105
0,693,868,309	2,043,338,800	1,642,613,062	240,223,264	160,502,474	1,428,843,514	168,475,452	386,223,901	3.61	162,683,604
0,627,221,864	2,063,667,537	1,645,787,175	251,865,000	166,015,362	1,503,792,658	172,487,331	333,062,661	3.13	115,425,747
0,539,961,091	1,685,400,530	1,314,762,055	231,500,614	139,137,861	1,262,487,055	170,806,044	195,126,195	1.85	Def. 32,491,967
0,520,217,134	1,968,176,935	1,574,359,400	239,948,328	153,869,207	1,395,644,734	180,485,914	331,120,749	3.15	110,405,436
0,634,484,504	2,152,455,101	1,754,418,059	235,332,864	162,704,178	1,506,578,768	209,586,340	376,023,677	3.54	163,206,419
0,603,150,580	1,982,607,780	1,586,387,950	239,774,013	156,445,817	1,419,469,346	180,388,216	324,311,437	3.06	103,845,847
1,540,464,331	2,642,982,063	2,185,817,623	277,877,773	179,286,667	1,801,691,352	290,060,362	488,644,263	4.64	277,694,913
1,413,875,113	3,438,793,853	2,720,240,785	499,998,687	218,554,381	2,200,953,328	550,208,975	611,584,564	5.87	368,734,235
1,528,061,933	3,972,141,292	2,992,694,783	718,741,282	260,705,227	2,616,349,320	727,177,989	558,915,388	5.31	352,568,671
1,332,156,129	4,083,141,711	3,034,705,390	781,406,327	267,029,994	2,894,903,824	657,201,503	455,399,125	4.41	266,207,808
1,945,825,673	3,765,751,255	2,746,871,732	755,606,142	263,273,381	3,165,481,202	196,549,104	341,696,935	3.44	164,655,807
1,352,076,636	3,580,562,034	2,736,066,062	606,726,042	237,769,930	2,535,875,805	484,239,586	491,248,055	4.75	285,972,286
1,942,488,322	3,403,081,801	2,554,157,237	613,535,065	235,389,499	2,926,538,299	210,157,809	209,467,537	2.11	57,529,457
2,191,186,223	3,956,029,410	3,149,663,676	512,467,084	293,898,650	3,200,355,233	387,081,296	304,425,660	2.99	161,177,896
2,546,964,153	4,407,855,054	3,568,629,960	519,586,375	319,638,719	3,485,654,268	434,696,296	429,560,140	4.07	259,451,736
2,684,051,237	3,795,156,773	3,031,756,436	474,734,946	288,665,391	3,127,262,188	335,825,307	265,412,997	2.48	125,620,787
2,835,559,259	4,184,726,006	3,374,542,107	448,878,297	361,305,602	3,263,172,769	463,084,800	390,784,209	3.61	255,337,146
2,440,049,839	3,949,369,809	3,135,749,883	513,840,353	299,779,573	3,200,596,551	366,169,102	319,930,109	3.06	171,823,404
2,196,267,729	4,628,367,333	3,758,895,961	483,251,683	386,219,689	3,683,407,593	484,893,648	382,280,143	3.41	
2,553,147,163	4,573,905,324	3,695,768,628	485,965,674	392,171,022	3,611,487,813				

8,991,888,529	[illegible]	$1,878,584,132	$565,352,016	$206,942,715	$2,231,031,332	$119,260,315	$264,620,910	2.95%		$134,445,206
9,359,489,139	2,720,490,081	1,943,416,878	539,309,113	237,764,090	2,215,627,969	127,124,479	332,808,352	3.70		150,160,990
9,656,362,285	3,172,295,617	2,335,112,303	578,999,778	262,183,536	2,503,582,813	148,025,402	465,246,116	4.97		280,123,952
9,826,644,783	2,902,338,873	2,109,669,539	549,013,878	243,655,456	2,241,554,704	149,994,420	459,993,361	4.76		261,748,583
	3,014,599,001	2,213,595,955	543,853,400	257,149,646	2,261,166,082	160,785,008	546,166,946	5.56		341,829,996
9,360,767,409	2,892,120,487	2,096,075,762	554,505,637	241,539,088	2,290,192,580	141,037,925	413,767,119	4.42		233,661,746
0,064,681,352	3,190,049,568	2,376,694,036	548,212,996	267,142,536	2,351,800,032	181,103,303	605,397,918	6.02		411,597,006
0,224,680,730	3,036,170,226	2,254,451,037	523,050,887	258,668,302	2,276,227,910	174,208,838	531,558,512	5.20		351,627,954
0,400,678,884	2,993,603,575	2,245,403,278	492,349,305	255,850,992	2,171,125,791	183,247,585	583,130,074	5.61		401,536,042
0,633,632,321	3,119,553,755	2,348,320,894	483,193,598	288,039,263	2,240,003,164	186,650,534	634,641,708	5.97		486,977,747
0,859,801,613	2,620,405,956	1,969,412,065	416,780,088	234,213,803	1,953,157,594	164,803,873	438,491,110	4.04		280,628,826
0,436,694,980	2,991,956,616	2,238,856,262	492,317,375	260,782,979	2,198,462,898	178,002,827	558,643,864	5.35		386,473,515
0,826,119,613	2,092,121,223	1,571,828,742	326,456,064	193,836,417	1,606,677,986	145,398,909	271,812,631	2.51		82,362,619
0,782,755,979	1,597,427,656	1,212,758,272	231,106,191	153,563,193	1,181,966,598	135,387,835	217,119,582	2.01	Def.	4,671,272
0,672,186,025	1,583,684,635	1,243,538,898	202,804,287	137,341,450	1,115,062,069	123,478,098	281,831,909	2.64		51,814,802
0,657,353,605	1,662,367,201	1,308,233,319	212,730,248	141,403,634	1,203,915,944	121,321,512	273,381,595	2.57		47,381,055
0,654,172,622	1,750,381,357	1,390,997,442	214,234,625	145,149,290	1,260,477,092	120,538,806	309,980,146	2.91		80,618,323
0,718,517,569	1,737,196,414	1,345,471,334	237,466,282	154,258,798	1,273,619,937	129,225,032	270,825,172	2.53		51,501,105
0,693,868,309	2,043,338,800	1,642,613,062	240,223,264	160,502,474	1,428,843,514	168,475,452	386,223,901	3.61		162,683,604
0,627,221,864	2,063,667,537	1,645,787,175	251,865,000	166,015,362	1,503,792,658	172,487,331	333,062,661	3.13		115,425,747
0,539,961,091	1,685,400,530	1,314,762,055	231,500,614	139,137,861	1,262,487,055	170,806,044	195,126,195	1.85	Def.	32,491,967
0,520,217,134	1,968,176,935	1,574,359,400	239,948,328	153,869,207	1,395,644,734	180,485,914	331,120,749	3.15		110,405,436
0,634,484,504	2,152,455,101	1,754,418,059	235,332,864	162,704,178	1,506,578,768	209,586,340	376,023,677	3.54		163,206,419
0,603,150,580	1,982,607,780	1,586,387,950	239,774,013	156,445,817	1,419,469,346	180,388,216	324,311,437	3.06		103,845,847
0,540,464,331	2,642,982,063	2,185,817,623	277,877,773	179,286,667	1,801,691,352	290,060,362	488,644,263	4.64		277,694,913
0,413,875,113	3,438,793,853	2,720,240,785	499,998,687	218,554,381	2,200,952,328	550,208,975	611,584,564	5.87		368,734,235
0,528,061,933	3,972,141,292	2,992,694,783	718,741,282	260,705,227	2,616,349,320	727,177,989	558,915,388	5.31		352,568,671
0,332,156,129	4,083,141,711	3,034,705,390	781,406,327	267,029,994	2,894,903,824	657,201,503	455,399,125	4.41		266,207,808
0,945,825,673	3,765,751,255	2,746,871,732	755,606,142	263,273,381	3,165,481,202	196,549,104	341,696,935	3.44		164,655,807
0,352,076,636	3,580,562,034	2,736,066,062	606,726,042	237,769,930	2,535,875,805	484,239,586	491,248,055	4.75		285,972,286
0,942,488,322	3,403,081,801	2,554,157,237	613,535,065	235,389,499	2,926,538,299	210,157,809	209,467,537	2.11		57,529,457
0,191,186,223	3,956,029,410	3,149,663,676	512,467,084	293,898,650	3,200,355,233	387,081,296	304,425,660	2.99		161,177,896
0,546,964,153	4,407,855,054	3,568,629,960	519,586,375	319,638,719	3,485,654,268	434,696,296	429,560,140	4.07		259,451,736
0,684,051,237	3,795,156,773	3,031,756,436	474,734,946	288,665,391	3,127,262,188	335,825,307	265,412,997	2.48		125,620,787
0,835,559,259	4,184,726,006	3,374,542,107	448,878,297	361,305,602	3,263,172,769	463,084,800	390,784,209	3.61		255,337,146
0,440,049,839	3,949,369,809	3,135,749,883	513,840,353	299,779,573	3,200,596,551	366,169,102	319,930,109	3.06		171,823,404
0,196,267,729	4,628,367,333	3,758,895,961	483,251,683	386,219,689	3,683,407,593	484,893,648	382,280,143	3.41		234,970,141
0,553,147,163	4,573,905,324	3,695,768,628	485,965,674	392,171,022	3,614,687,913	458,145,738	439,119,817	3.80		277,383,311
0,625,970,795	4,632,818,597	3,782,203,760	458,672,615	391,942,222	3,650,278,247	433,255,845	465,322,505	4.00		293,433,369
0,508,189,277	3,959,941,434	3,179,882,185	425,280,542	354,778,707	3,212,985,883	309,027,785	334,609,438	2.91		198,207,112
0,475,112,491	4,398,351,577	3,616,086,006	413,608,884	368,656,687	3,390,638,875	417,869,121	481,454,332	4.20		349,288,194
0,471,737,491	4,438,676,853	3,606,567,308	453,355,880	378,753,665	3,510,399,702	420,638,427	420,557,247	3.66		270,656,425
0,632,453,674	4,678,202,339	3,867,888,020	422,971,597	387,342,722	3,631,039,106	470,476,900	466,718,173	4.01		340,510,714
0,807,324,082	4,651,818,189	3,859,737,901	414,203,756	377,876,532	3,699,422,485	448,742,898	385,277,842	3.26		256,562,609
0,656,815,566	3,975,779,910	3,217,516,159	378,043,295	380,220,456	3,228,626,557	368,571,215	234,292,823	2.01		140,747,996

0., Acct. 716 and Cash Acct. 708 Prior to 1957
0., Acct. 712 and Cash Acct. 701 For 1957 and 1958

- Revenues, Expenses and Net Income

Railways of Class I in the Southern Region

Years 1921 to 1958

Year	Investment in Railway Property Used in Transportation Service: Total (A)	Investment in Railway Property Used in Transportation Service: After Accrued Depreciation and Amortization	Operating Revenues: Total	Operating Revenues: Freight	Operating Revenues: Passenger	Operating Revenues: All Other	Total Operating Expenses	Taxes	Net Railway Operating Income: Amount	Net Railway Operating Income: Rate of Return after Depreciation and Amortization		Net Income
	1	2	3	4	5	6	7	8	9	10		11
1921	$2,701,472,744	$2,524,648,252	$719,873,079	$513,726,810	$153,669,924	$52,476,345	$619,064,910	$31,300,821	$60,163,571	2.38%		$6,100,022
1922	2,750,367,908	2,567,466,152	742,801,014	540,899,163	146,175,521	55,726,330	581,588,440	38,837,048	111,567,790	4.35		53,524,050
1923	2,905,061,258	2,718,564,562	845,949,350	619,765,875	164,761,695	61,421,780	656,210,668	43,802,237	135,655,030	4.99		79,168,947
1924	3,018,424,950	2,818,357,754	823,062,611	605,740,222	155,106,199	62,216,190	622,096,092	46,504,779	147,319,914	5.23		85,596,189
1925	3,160,574,370	2,945,776,592	882,210,422	652,529,532	164,836,937	64,843,953	643,367,218	52,563,017	172,731,599	5.86		112,547,982
Avge.1921-1925	2,907,180,246	2,714,962,662	802,779,295	586,532,320	156,910,055	59,336,920	624,465,466	42,601,580	125,487,582	4.62		67,391,438
1926	3,320,320,556	3,087,582,084	907,645,518	682,461,712	158,566,270	66,617,536	671,750,377	55,208,381	167,045,061	5.41		104,587,934
1927	3,396,533,086	3,142,005,992	841,512,150	646,526,676	133,470,132	61,515,342	640,906,177	51,876,986	139,222,120	4.43		75,590,339
1928	3,453,158,142	3,178,928,576	800,354,628	621,343,474	118,296,618	60,714,536	604,511,953	52,143,311	136,296,131	4.29		70,391,418
1929	3,485,017,014	3,190,306,466	796,053,208	620,009,929	108,739,548	67,303,731	601,070,834	52,490,159	135,913,386	4.26		71,858,139
1930	3,499,367,657	3,182,637,210	665,893,369	526,150,541	85,651,470	54,091,358	523,515,315	44,369,304	88,469,929	2.78		26,250,474
Avge.1926-1930	3,430,879,291	3,156,292,066	802,291,774	619,298,466	120,944,808	62,048,500	608,350,931	51,217,628	133,389,328	4.23		69,735,661
1931	3,403,278,310	3,077,246,340	534,265,196	429,600,486	60,193,973	44,470,737	439,933,552	38,239,758	44,570,153	1.45	Def.	25,418,699
1932	3,382,078,696	3,036,982,819	391,871,810	317,763,287	38,908,933	35,199,590	322,967,790	33,098,083	26,289,626	0.87	Def.	49,886,190
1933	3,327,418,229	2,979,861,273	401,842,627	331,674,892	35,403,693	34,764,042	300,449,853	28,963,151	61,324,831	2.06	Def.	16,091,329
1934	3,290,671,572	2,936,631,250	421,401,795	342,662,035	40,186,144	38,553,616	325,613,467	27,887,438	54,741,843	1.86	Def.	20,873,048
1935	3,264,755,290	2,917,932,659	443,620,671	361,243,784	41,764,061	40,612,826	354,199,614	28,906,812	48,885,721	1.68	Def.	26,878,419
Avge.1931-1935	3,333,640,419	2,989,730,868	438,600,420	356,588,897	43,291,361	38,720,162	348,632,855	31,419,048	47,202,435	1.58	Def.	27,829,533
1936	3,257,352,644	2,910,948,172	517,321,549	424,563,211	49,524,722	43,233,616	383,751,939	38,012,453	80,924,117	2.78		9,799,177
1937	3,238,925,180	2,891,099,021	533,477,709	433,583,679	54,984,192	44,909,838	403,471,332	40,326,746	74,872,069	2.59		5,590,641
1938	3,255,447,727	2,893,260,218	486,709,770	397,147,802	48,432,816	41,129,152	369,561,002	43,121,616	60,516,886	2.09	Def.	11,182,017
1939	3,264,868,600	2,910,018,738	528,654,165	437,562,442	48,437,267	42,654,456	390,648,082	44,955,689	80,513,426	2.77		10,756,903
1940	3,266,371,593	2,899,316,997	561,751,071	464,363,485	53,639,106	43,748,480	417,842,896	49,724,654	81,955,884	2.83		14,001,665
Avge.1936-1940	3,256,593,149	2,900,928,629	525,582,853	431,444,124	51,003,621	43,135,108	393,055,050	43,228,232	75,756,476	2.61		5,793,274
1941	3,356,655,514	2,971,705,046	718,488,723	593,484,607	76,110,045	48,894,071	487,781,516	77,684,374	140,666,151	4.73		75,037,837
1942	3,430,697,083	3,016,201,128	1,084,636,628	848,579,287	174,201,818	61,855,523	642,720,241	196,507,540	221,368,237	7.34		128,214,355
1943	3,545,860,567	3,074,312,595	1,330,933,290	960,441,101	291,716,260	78,775,929	776,610,344	323,976,498	201,978,259	6.57		133,346,729
1944	3,610,606,035	3,074,807,924	1,371,203,250	981,927,558	304,141,192	85,134,500	864,536,988	314,077,144	167,630,002	5.45		99,866,138
1945	3,680,800,732	2,997,774,940	1,265,047,395	909,170,388	271,849,358	84,027,649	979,864,265	145,317,631	120,636,477	4.02		49,759,943
Avge.1941-1945	3,524,923,986	3,026,960,327	1,154,061,857	858,720,588	223,603,735	71,737,534	750,302,671	211,512,637	170,455,825	5.63		97,245,020
1946	3,641,984,600	2,902,128,201	1,090,435,107	840,171,010	176,674,572	73,589,525	907,338,995	75,042,731	93,177,929	3.21		36,175,623
1947	3,768,856,946	2,993,769,902	1,194,770,209	974,182,930	127,774,672	92,812,607	949,416,273	129,351,398	103,771,467	3.47		56,128,221
1948	3,889,967,265	3,081,984,870	1,317,818,468	1,094,487,016	125,404,692	97,926,760	1,025,570,647	145,165,537	138,971,102	4.51		94,296,020
1949	3,942,119,840	3,118,403,563	1,184,858,807	982,077,478	110,903,709	91,877,620	943,476,623	126,675,468	105,948,145	3.40		62,769,326
1950	4,077,412,588	3,231,664,652	1,316,646,943	1,098,228,959	102,355,613	116,062,371	959,558,327	180,604,348	168,713,066	5.22		128,291,932
Avge.1946-1950	3,864,068,248	3,065,590,238	1,220,905,907	997,829,479	128,622,652	94,453,776	957,072,173	131,367,896	122,116,342	3.98		75,532,224
1951	4,288,865,487	3,404,261,105	1,455,358,317	1,224,544,214	116,721,059	114,093,044	1,093,597,459	188,286,504	157,136,598	4.62		110,703,085
1952	4,389,004,851	3,510,128,932	1,513,172,547	1,275,812,562	116,681,558	120,678,427	1,108,593,612	210,010,353	182,267,076	5.19		140,503,715
1953	4,492,987,220	3,588,815,830	1,516,342,497	1,289,299,837	108,219,700	118,822,960	1,101,437,454	203,815,182	193,622,245	5.40		151,190,299
1954	4,525,518,068	3,594,152,848	1,362,774,639	1,153,955,744	95,396,365	113,422,526	1,035,678,919	148,490,401	161,024,627	4.48		118,353,278
1955	4,601,724,297	3,634,383,882	1,417,644,869	1,212,784,795	91,968,414	112,891,660	1,031,968,884	171,970,573	197,102,589	5.42		153,804,719
Avge.1951-1955	4,459,619,984	3,546,348,519	1,453,058,573	1,231,279,431	105,797,419	115,981,723	1,074,255,265	184,514,603	178,230,627	5.03		134,911,019
1956	4,724,329,379	3,704,767,995	1,489,598,998	1,280,900,293	94,742,344	113,956,361	1,113,223,445	181,295,338	184,034,606	4.97		145,988,687
1957	4,854,436,219	3,789,998,225	1,462,786,621	1,261,250,170	93,435,605	108,100,846	1,136,243,432	158,190,846	155,255,698	4.10		117,665,300
1958	4,895,586,691	3,786,950,096	1,363,965,392	1,175,318,198	82,097,799	106,549,395	1,072,251,062	133,390,613	139,525,494	3.68		98,746,816

Def. - Deficit

(A) - Includes Investment in R.&E., M.&S., Acct. 716 and Cash Acct. 708 Prior to 1957
Includes Investment in R.&E., M.&S., Acct. 712 and Cash Acct. 701 For 1957 and 1958

REVENUE TON MILES
(THOUSANDS)
Years 1928 to 1958

Year	United States	Eastern District Including Pocahontas	Eastern District Excluding Pocahontas	Southern Region	Percent of United States (1928 to 1958) Eastern District Including Pocahontas	Eastern District Excluding Pocahontas	Southern Region	Index - 1928 = 100.0 United States	Eastern District Including Pocahontas	Eastern District Excluding Pocahontas	Southern Region	Index 1950 = 100.0 United States	Eastern District Including Pocahontas	Eastern District Excluding Pocahontas
1928	432,915,185	219,705,047	177,134,111	57,784,150	50.75	40.92	13.35	100.0	100.0	100.0	100.0			
1929	447,321,561	231,419,933	185,862,385	57,089,152	51.73	41.55	12.76	103.3	105.3	104.9	98.8			
1930	383,449,588	197,309,220	156,936,733	48,720,761	51.46	40.93	12.71	88.6	89.8	88.6	84.3			
1931	309,224,879	160,505,519	126,497,467	39,031,789	51.91	40.91	12.62	71.4	73.1	71.4	67.5			
1932	233,977,009	124,836,188	96,738,485	29,165,158	53.35	41.35	12.46	54.0	56.8	54.6	50.5			
1933	249,223,180	133,455,103	102,508,644	30,942,035	53.55	41.13	12.42	57.6	60.7	57.9	53.5			
1934	268,710,507	142,706,406	109,997,025	32,900,841	53.11	40.94	12.24	62.1	65.0	62.1	56.9			
1935	282,036,932	147,655,366	114,179,362	35,204,471	52.35	40.48	12.48	65.1	67.2	64.5	60.9			
1936	339,245,826	175,360,458	135,378,811	42,449,828	51.69	39.91	12.51	78.4	79.8	76.4	73.5			
1937	360,620,269	183,486,565	142,786,281	45,319,926	50.88	39.59	12.57	83.3	83.5	80.6	78.4			
1938	290,084,371	141,240,463	108,808,793	39,219,612	48.69	37.51	13.52	67.0	64.3	61.4	67.9			
1939	333,438,412	169,023,737	131,305,896	43,800,067	50.69	39.38	13.14	77.0	76.9	74.1	75.8			
1940	373,253,197	191,204,960	147,896,892	48,671,563	51.23	39.62	13.04	86.2	87.0	83.5	84.2			
1941	475,072,001	236,485,348	188,217,617	62,728,951	49.78	39.62	13.20	109.7	107.6	106.3	108.6			
1942	637,983,503	301,422,938	247,698,648	89,457,212	47.25	38.83	14.02	147.4	137.2	139.8	154.8			
1943	727,075,495	332,948,891	274,709,635	101,469,131	45.79	37.78	13.96	167.9	151.5	155.1	175.6			
1944	737,246,444	330,014,345	270,124,128	100,678,673	44.76	36.64	13.66	170.3	150.2	152.5	174.2			
1945	681,000,757	296,457,902	240,278,244	91,855,860	43.53	35.28	13.49	157.3	134.9	135.6	159.0			
1946	591,982,472	263,614,957	210,977,690	84,184,932	44.53	35.64	14.22	136.7	120.0	119.1	145.7			
1947	654,728,304	294,966,918	229,283,351	89,082,924	45.05	35.02	13.61	151.2	134.3	129.4	154.2			
1948	637,916,742	283,261,152	221,163,528	87,429,479	44.40	34.67	13.71	147.4	128.9	124.9	151.3			
1949	526,500,360	220,616,678	176,290,632	73,574,359	41.90	33.48	13.97	121.6	100.4	99.5	127.3			
1950	588,577,756	249,486,163	198,354,262	83,961,917	42.39	33.70	14.27	136.0	113.6	112.0	145.3	100.0	100.0	100.0
1951	646,620,439	275,239,008	212,736,203	90,724,738	42.57	32.90	14.03	149.4	125.3	120.1	157.0	109.9	110.3	107.3
1952	614,753,676	251,669,838	195,935,579	88,796,050	40.94	31.87	14.44	142.0	114.5	110.6	153.7	104.4	100.9	98.8
1953	605,813,437	247,353,079	196,361,245	87,211,089	40.83	32.41	14.40	139.9	112.6	110.9	150.9	102.9	99.1	99.0
1954	549,258,800	215,125,368	169,088,498	82,601,035	39.17	30.78	15.04	126.9	97.9	95.5	142.9	93.3	86.2	85.2
1955	623,614,866	256,701,304	195,978,420	90,444,291	41.16	31.43	14.50	144.1	116.8	110.6	156.5	106.0	102.9	98.8
1956	647,077,041	272,691,199	205,221,968	93,914,726	42.14	31.72	14.51	149.5	124.1	115.9	162.5	109.9	109.3	103.5
1957	618,195,181	260,405,186	190,759,556	89,166,854	42.12	30.86	14.42	142.8	118.5	107.7	154.3	105.0	104.4	96.2
1958	551,543,628	213,060,047	159,188,461	83,661,847	38.63	28.86	15.17	127.4	97.0	89.9	144.8	93.7	85.4	80.3

FREIGHT REVENUE

Years 1928 to 1958

Year	United States	Eastern District Including Pocahontas	Eastern District Excluding Pocahontas	Southern Region	Percent of United States (1928 to 1958) Eastern District Including Pocahontas	Eastern District Excluding Pocahontas	Southern Region	Index - 1928 = 100.0 United States	Eastern District Including Pocahontas	Eastern District Excluding Pocahontas	Southern Region	Index - 1950 = 100.0 United States	Eastern District Including Pocahontas	Eastern District Excluding Pocahontas	Southern Region
1928	$4,691,147,326	$2,245,403,278	$1,954,457,704	$621,343,474	47.86	41.66	13.25	100.0	100.0	100.0	100.0				
1929	4,825,622,121	2,348,320,894	2,036,988,389	620,009,929	48.66	42.21	12.85	102.9	104.6	104.2	99.8				
1930	4,083,241,558	1,969,412,065	1,696,296,000	526,150,541	48.23	41.54	12.89	87.0	87.7	86.8	84.7				
1931	3,254,667,938	1,571,828,742	1,344,330,349	429,600,486	48.29	41.30	13.20	69.4	70.0	68.8	69.1				
1932	2,450,829,130	1,212,758,272	1,026,882,493	317,763,287	49.48	41.90	12.97	52.2	54.0	52.5	51.1				
1933	2,492,678,146	1,243,538,898	1,042,266,208	331,674,892	49.89	41.81	13.30	53.1	55.4	53.3	53.4				
1934	2,633,339,103	1,308,233,319	1,097,770,287	342,662,035	49.68	41.69	13.01	56.1	58.3	56.2	55.1				
1935	2,790,551,400	1,390,997,442	1,165,929,796	361,243,784	49.85	41.78	12.94	59.5	61.9	59.7	58.1				
1936	3,308,540,696	1,642,613,062	1,374,751,373	424,563,211	49.65	41.55	12.83	70.5	73.2	70.3	68.3				
1937	3,377,908,424	1,645,787,175	1,384,012,411	433,583,679	48.72	40.97	12.84	72.0	73.3	70.8	69.8				
1938	2,858,077,292	1,314,762,055	1,096,751,039	397,147,802	46.00	38.37	13.90	60.9	58.6	56.1	63.9				
1939	3,251,096,182	1,574,359,400	1,321,189,193	437,562,442	48.42	40.64	13.46	69.3	70.1	67.6	70.4				
1940	3,537,149,646	1,754,418,059	1,469,180,355	464,363,485	49.60	41.53	13.13	75.4	78.1	75.2	74.7				
1941	4,447,568,333	2,185,817,623	1,861,707,026	593,484,607	49.15	41.86	13.34	94.8	97.3	95.3	95.5				
1942	5,944,345,074	2,720,240,785	2,349,921,060	848,579,287	45.76	39.53	14.28	126.7	121.1	120.2	136.6				
1943	6,782,463,423	2,992,694,783	2,590,526,442	960,441,101	44.12	38.20	14.16	144.6	133.3	132.5	154.6				
1944	6,998,614,851	3,034,705,390	2,616,249,961	981,927,558	43.36	37.38	14.03	149.2	135.2	133.9	158.0				
1945	6,533,767,008	2,746,871,732	2,359,247,568	909,170,388	42.04	36.11	13.91	139.3	122.3	120.7	146.3				
1946	5,786,556,397	2,554,157,237	2,183,737,935	840,171,010	44.14	37.74	14.52	123.4	113.8	111.7	135.2				
1947	7,041,184,941	3,149,663,676	2,661,600,773	974,182,930	44.73	37.80	13.84	150.1	140.3	136.2	156.8				
1948	7,976,284,714	3,568,629,960	3,035,316,702	1,094,487,016	44.74	38.06	13.72	170.0	158.9	155.3	176.1				
1949	7,048,240,388	3,031,756,436	2,601,052,232	982,077,478	43.01	36.90	13.94	150.2	135.0	133.1	158.1				
1950	7,817,263,141	3,374,542,107	2,874,912,902	1,098,228,959	43.17	36.78	14.05	166.6	150.3	147.1	176.8	100.0	100.0	100.0	100.0
1951	8,634,100,781	3,758,895,961	3,162,445,512	1,224,544,214	43.54	36.63	14.18	184.1	167.4	161.8	197.1	110.4	111.4	110.0	111.5
1952	8,788,634,769	3,695,768,628	3,123,350,793	1,275,812,562	42.05	35.54	14.52	187.3	164.6	159.8	205.3	112.4	109.5	108.6	116.2
1953	8,950,521,641	3,782,203,760	3,231,242,601	1,289,299,837	42.26	36.10	14.40	190.8	168.4	165.3	207.5	114.5	112.1	112.4	117.4
1954	7,797,884,940	3,179,882,185	2,687,450,627	1,153,955,744	40.78	34.46	14.80	166.2	141.6	137.5	185.7	99.8	94.2	93.5	105.1
1955	8,538,286,192	3,616,086,006	3,006,707,197	1,212,784,795	42.35	35.21	14.21	182.0	161.0	153.8	195.2	109.2	107.2	104.6	110.4
1956	8,951,423,025	3,867,888,020	3,181,853,952	1,280,900,293	43.21	35.55	14.31	190.8	172.3	162.8	206.2	114.5	114.6	110.7	116.6
1957	8,932,297,914	3,859,737,901	3,143,788,061	1,261,250,170	43.21	35.20	14.12	190.4	171.9	160.9	203.0	114.3	114.4	109.4	114.8
* 1958	8,070,784,404	3,217,516,159	2,636,384,626	1,175,318,198	39.87	32.67	14.56	172.0	143.3	134.9	189.2	103.2	95.3	91.7	107.0

* From Association of American Railroads Monthly Report Ser. No. 592 (Dec. 1958)

Revenue Tons Originated and Terminated

Years 1928 to 1958

Year	United States		Eastern District (Excluding Pocahontas)		Eastern District (Including Pocahontas)		Southern Region	
	Originated 1	Terminated 2	Originated 3	Terminated 4	Originated 5	Terminated 6	Originated 7	Terminated 8
1928	1,285,942,976	1,284,916,338	534,952,666	646,154,784	658,041,978	713,463,574	187,304,858	154,706,179
1929	1,339,091,007	1,305,463,144	565,226,679	686,564,806	697,984,515	755,368,899	179,729,462	147,530,495
1930	1,153,196,636	1,126,334,891	489,012,517	584,170,563	605,331,836	648,234,669	157,319,360	131,458,012
1931	894,185,637	877,462,600	381,498,919	446,499,721	477,753,150	502,397,924	124,176,361	102,771,215
1932	646,222,818	636,980,581	282,676,978	324,669,930	362,142,518	368,915,966	88,943,080	73,400,241
1933	698,942,511	681,295,144	301,399,769	355,059,347	388,677,059	404,509,766	92,221,363	78,588,094
1934	765,295,920	745,087,980	339,481,877	393,019,118	432,687,204	447,062,929	99,246,665	84,497,676
1935	789,626,714	773,682,633	343,520,154	407,129,923	439,379,654	462,672,356	104,141,724	87,149,151
1936	958,830,389	933,059,665	410,797,902	496,538,311	525,472,148	561,152,055	126,275,441	105,009,739
1937	1,015,586,028	982,322,381	424,914,254	521,404,491	541,629,858	587,061,702	134,218,957	112,552,124
1938	771,862,020	763,922,479	312,481,626	374,984,771	404,426,786	426,681,758	113,368,927	97,928,604
1939	901,669,335	879,561,598	377,610,888	462,200,068	483,814,616	521,967,648	124,272,480	105,727,329
1940	1,009,420,663	980,936,646	423,268,080	528,856,685	546,161,303	598,946,122	140,073,146	120,363,176
1941	1,227,650,428	1,196,873,958	514,895,530	639,023,915	650,979,002	723,720,514	175,478,359	154,124,585
1942	1,421,187,134	1,376,618,081	556,147,419	718,284,799	705,319,873	800,386,770	216,540,625	186,846,876
1943	1,481,224,672	1,387,541,968	584,764,685	727,305,433	738,008,221	793,459,405	218,830,979	189,353,261
1944	1,491,491,233	1,382,757,527	600,548,031	725,136,383	754,876,491	798,787,725	214,244,655	183,905,194
1945	1,424,913,308	1,329,875,027	564,120,849	671,075,650	707,467,407	744,210,003	210,196,949	182,181,438
1946	1,366,616,636	1,279,806,329	544,675,285	628,991,858	687,261,511	702,946,133	211,310,392	185,313,177
1947	1,537,545,786	1,409,364,069	606,025,886	689,889,299	776,043,631	772,954,182	229,453,708	201,592,110
1948	1,506,877,997	1,376,987,134	584,288,661	674,014,564	748,638,743	749,036,612	229,197,883	202,985,050
1949	1,226,503,096	1,138,142,255	458,544,266	532,442,992	575,936,605	591,736,268	188,180,115	172,375,038
1950	1,354,196,270	1,243,591,976	502,239,418	587,935,427	643,455,031	648,867,866	225,851,548	194,193,622
1951	1,477,401,523	1,370,679,940	538,002,245	637,515,740	699,744,609	728,850,254	244,349,215	214,510,887
1952	1,382,604,157	1,293,133,057	488,104,270	578,715,927	632,281,011	657,851,321	241,601,482	213,583,370
1953	1,384,301,445	1,283,186,311	491,586,438	591,912,143	630,460,704	664,711,988	238,474,563	210,999,906
1954	1,223,968,751	1,149,125,204	412,289,105	485,789,797	535,420,166	555,388,121	228,784,817	204,024,996
1955	1,396,339,221	1,301,015,776	477,921,130	571,992,159	631,707,343	665,664,114	246,227,796	217,880,996
1956	1,447,421,824	1,365,841,928	497,919,739	589,401,964	664,872,090	696,643,819	269,232,426	240,760,138
1957	1,380,326,792	1,292,464,787	463,350,892	548,030,177	629,491,150	660,286,513	253,796,211	226,547,140
1958	1,190,267,542	1,136,006,157	366,093,095	414,036,879	497,694,601	503,086,936	238,270,502	220,546,899

Index - 1928 - 100.0

Year	United States		Eastern District Excl.Pocahontas		Eastern District Incl.Pocahontas		Southern Region	
	Originated 9	Terminated 10	Originated 11	Terminated 12	Originated 13	Terminated 14	Originated 15	Terminated 16
1928	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1929	104.1	101.6	105.7	106.3	106.1	105.9	96.0	95.4
1930	89.7	87.7	91.4	90.4	92.0	90.9	84.0	85.0
1931	69.5	68.3	71.3	69.1	72.6	70.4	66.3	66.4
1932	50.3	49.6	52.8	50.2	55.0	51.7	47.5	47.4
1933	54.4	53.0	56.3	54.9	59.1	56.7	49.2	50.8
1934	59.5	58.0	63.5	60.8	65.8	62.7	53.0	54.6
1935	61.4	60.2	64.2	63.0	66.8	64.8	55.6	56.3
1936	74.6	72.6	76.8	76.8	79.9	78.7	67.4	67.9
1937	79.0	76.5	79.4	80.7	82.3	82.3	71.7	72.8
1938	60.0	59.5	58.4	58.0	61.5	59.8	60.5	63.3
1939	70.1	68.5	70.6	71.5	73.5	73.2	66.3	68.3
1940	78.5	76.3	79.1	81.8	83.0	83.9	74.8	77.8
1941	95.5	93.1	96.3	98.9	98.9	101.4	93.7	99.6
1942	110.5	107.1	104.0	111.2	107.2	112.2	115.6	120.8
1943	115.2	108.0	109.3	112.6	112.2	111.2	116.8	122.4
1944	116.0	107.6	112.3	112.2	114.7	112.0	114.4	118.9
1945	110.8	103.5	105.5	103.9	107.5	104.3	112.2	117.8
1946	106.3	99.6	101.8	97.3	104.4	98.5	112.8	119.8
1947	119.6	109.7	113.3	106.8	117.9	108.3	122.5	130.3
1948	117.2	107.2	109.2	104.3	113.8	105.0	125.0	131.2
1949	95.4	88.6	85.7	82.4	87.5	82.9	104.5	111.4
1950	105.3	96.8	93.9	91.0	97.8	90.9	120.6	125.5
1951	114.9	106.7	100.6	98.7	106.3	102.2	130.5	138.7
1952	107.5	100.6	91.2	89.6	96.1	92.2	129.0	138.1
1953	107.6	99.9	91.9	91.6	95.8	93.2	127.3	136.4
1954	95.2	89.4	77.1	75.2	81.4	77.8	122.1	131.9
1955	108.6	101.3	89.3	88.5	96.0	93.3	131.5	140.8
1956	112.6	106.3	93.1	91.2	101.0	97.6	143.7	155.6
1957	107.3	100.6	86.6	84.8	95.7	92.5	135.5	146.4
1958	92.6	88.4	68.4	64.1	75.6	70.5	127.2	142.6

Index - 1950 - 100.0

Year	United States		Eastern District Excl.Pocahontas		Eastern District Incl.Pocahontas		Southern Region	
	Originated 17	Terminated 18	Originated 19	Terminated 20	Originated 21	Terminated 22	Originated 23	Terminated 24
1950	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1951	109.1	110.2	107.1	108.4	108.7	112.3	108.2	110.5
1952	102.1	104.0	97.2	98.4	98.3	101.4	107.0	110.6
1953	102.2	103.2	97.9	100.7	98.0	102.4	105.6	108.7
1954	90.4	92.4	82.1	82.6	83.2	85.6	101.3	105.1
1955	103.1	104.6	95.2	97.3	98.2	102.6	109.0	112.8
1956	106.9	109.8	99.1	100.2	103.3	107.4	119.2	124.0
1957	101.9	103.9	92.3	93.2	97.8	101.8	112.4	117.3
1958	87.9	91.3	72.9	70.4	77.3	77.5	105.5	113.6

Operating Statistics
Years 1940-1950 to 1958

Year	Total Net Ton-Miles Revenue & Non-Revenue (billions)	Net Ton-Miles, Revenue and Non-Revenue, Per Mile of Road Per Day	Freight Car-Miles Per Serviceable Freight Car-Day	Net Ton-Miles, Revenue and Non-Revenue Per Serviceable Freight Car-Day	Net Tons Per Loaded Car	Net Ton-Revenue and Non-Revenue, Per Train	Loaded Cars Per Train	Total Cars Per Train	Freight Train Speed, Miles Per Hour	Gross Ton-Miles (Excluding Locomotives, etc.) Per Freight Train Hour	Freight Locomotives Miles per Serviceable Road Freight Locomotive Day	Gross Ton Miles Per Train Mile	Percentage of Unserviceable Freight Cars	Percentage of Unserviceable Road Freight Locomotives	Average Yard and Train Switching Locomotive Miles Per 100 Loaded Freight Car Miles
Eastern District (Including Pocahontas Region)															
1940	199.4	9,009	33.4	639	31.3	1,104	35.2	57.8	15.1	36,678	95.4	2,465	9.61	28.7	2.18
1950	259.5	11,647	37.8	855	34.8	1,398	40.1	61.8	15.3	43,413	113.6	2,885	8.82	22.2	2.09
1951	284.9	12,809	38.3	904	36.4	1,493	41.0	63.2	15.5	45,935	118.9	3,013	5.91	20.4	2.06
1952	259.2	11,657	37.7	853	35.6	1,469	41.2	64.9	16.2	48,547	120.3	3,040	6.71	19.2	2.05
1953	253.9	11,489	37.3	824	35.0	1,451	41.5	65.8	16.7	50,308	126.5	3,054	6.32	16.9	2.07
1954	219.7	9,956	34.6	726	34.1	1,384	40.6	65.9	17.2	51,627	134.2	2,995	8.34	17.1	2.03
1955	261.8	11,892	39.3	879	35.4	1,501	42.4	67.0	17.0	52,534	145.6	3,149	7.13	18.4	1.97
1956	277.7	12,939	39.5	913	36.9	1,574	42.6	68.0	16.8	53,810	144.0	3,253	4.24	14.5	1.98
1957	265.0	12,401	38.4	870	37.4	1,608	43.0	71.0	17.0	56,221	132.5	3,357	4.94	10.4	1.99
1958	217.0	10,207	41.0	738	30.8	1,557	50.5	86.4	17.4	57,170	123.5	3,324	9.75	7.7	1.66
Eastern District (Excluding Pocahontas Region)															
1940	157.7	7,901	32.3	579	29.0	986	34.0	55.0	15.2	34,242	97.1	2,292	10.59	30.3	2.35
1950	206.4	10,680	36.3	791	32.9	1,300	39.5	59.7	15.2	40,899	114.2	2,747	9.29	22.3	2.23
1951	220.4	11,425	36.0	814	34.0	1,364	40.1	60.4	15.4	42,749	117.7	2,831	6.16	19.5	2.23
1952	202.0	10,475	36.2	781	33.3	1,345	40.3	62.3	16.1	45,386	121.2	2,866	7.24	18.8	2.21
1953	201.6	10,527	36.6	771	33.0	1,344	40.8	63.8	16.4	47,515	128.3	2,911	6.85	16.1	2.20
1954	172.6	9,030	34.3	683	31.9	1,280	40.1	64.3	17.1	48,942	135.5	2,866	9.21	16.1	2.16
1955	199.9	10,485	37.9	802	32.9	1,369	41.7	64.7	16.8	49,089	147.6	2,974	7.96	17.9	2.11
1956	208.9	11,248	37.7	823	34.1	1,430	41.9	65.5	16.5	49,944	149.2	3,062	4.82	15.0	2.03
1957	194.2	10,504	36.8	781	34.1	1,431	41.9	67.5	16.8	51,411	140.8	3,116	5.79	10.8	1.93
1958	161.3	8,773	42.4	683	27.2	1,384	50.9	86.0	17.3	52,768	134.5	3,097	11.16	8.8	1.81
Southern Region															
1940	53.9	3,780	42.4	693	20.2	644	24.7	39.3	17.5	27,192	92.4	1,568	7.13	18.6	
1950	89.7	6,518	48.8	1,026	31.6	1,051	33.2	50.0	17.1	38,217	106.6	2,257	4.65	17.8	
1951	95.8	6,996	49.9	1,071	32.3	1,117	34.5	52.0	17.0	40,076	107.0	2,371	3.86	17.1	
1952	93.5	6,836	47.6	1,001	32.3	1,160	35.9	55.2	17.2	42,475	115.3	2,492	3.43	10.9	
1953	91.4	6,745	46.4	960	32.1	1,199	37.3	58.0	17.6	45,430	121.0	2,601	2.96	7.9	
1954	86.2	6,371	44.5	899	32.2	1,233	38.3	61.1	17.8	47,960	112.9	2,708	3.37	7.4	
1955	94.1	6,957	48.5	1,023	32.8	1,352	41.2	64.1	17.5	50,402	117.6	2,898	3.63	10.8	
1956	97.4	7,161	49.5	1,063	33.7	1,368	40.6	63.8	17.7	51,259	144.7	2,910	3.36	10.2	
1957	92.1	6,794	46.9	979	34.0	1,375	40.4	65.8	17.9	52,785	167.6	2,968	3.74	7.8	
1958	86.1	6,319	43.2	886	34.6	1,417	41.0	69.0	17.7	54,527	163.6	3,092	4.34	11.0	

Return on Valuation

(I.C.C. Elements of Value)

Year	Eastern District (Excluding Pocahontas)			Eastern District (Including Pocahontas)			Southern Region		
	Net Investment	Net Railway Operating Income	% Return	Net Investment	Net Railway Operating Income	% Return	Net Investment	Net Railway Operating Income	% Return
1947	$8,582,384,706	$215,802,690	2.51	$9,681,354,071	$304,425,660	3.14	$2,876,487,764	$103,771,467	3.61
1948	8,811,597,426	334,479,346	3.80	9,989,750,996	429,560,140	4.30	2,969,720,189	138,971,102	4.68
1949	8,895,500,036	211,921,001	2.38	10,140,036,118	265,412,997	2.62	3,058,862,110	105,948,145	3.46
1950	9,112,754,779	303,466,936	3.33	10,346,242,463	390,784,209	3.78	3,153,617,106	168,713,066	5.35
1951	9,497,470,892	290,475,942	3.06	10,796,173,106	382,280,143	3.54	3,338,265,615	157,136,598	4.71
1952	9,703,667,068	341,101,069	3.52	11,092,937,676	439,119,817	3.96	3,414,512,206	182,267,076	5.34
1953	9,802,275,237	367,136,282	3.75	11,239,923,016	465,322,505	4.14	3,516,456,925	193,622,245	5.51
1954	9,635,273,584	245,155,190	2.54	11,067,462,850	334,609,438	3.02	3,524,496,914	161,024,627	4.57
1955	9,618,452,334	358,295,153	3.73	11,067,304,753	481,454,332	4.35	3,560,260,635	197,102,589	5.54
1956	9,699,516,959	328,211,952	3.38	11,260,773,651	466,718,173	4.14	3,625,643,616	184,034,606	5.07
1957	9,770,076,569	240,389,994	2.46	11,452,160,724	385,277,842	3.36	3,769,865,006	155,255,698	4.11

Unit Cost Factors

	Service Unit	General Traffic Except Coal and Coke (28.9 Tons - Box Car) Eastern District including Pocahontas Region	General Traffic Except Coal and Coke (28.9 Tons - Box Car) Southern Region	Citrus Fruits and Fresh or Green Vegetables, Not Frozen - Northbound (16.3 Tons - Refrigerator Car) Eastern District including Pocahontas Region	Citrus Fruits and Fresh or Green Vegetables, Not Frozen - Northbound (16.3 Tons - Refrigerator Car) Southern Region
1948					
Terminal	Hundredweight	3.5¢	2.5¢	5.1¢	3.6¢
Line Haul	Hundredweight mile	0.045902	0.042832	0.084191	0.081594
1950					
Terminal	Hundredweight	3.9	2.6	5.7	3.8
Line Haul	Hundredweight mile	0.051539	0.043765	0.095290	0.087426
1952					
Terminal	Hundredweight	4.9	3.2	6.9	4.6
Line Haul	Hundredweight mile	0.054049	0.046796	0.098969	0.090947
1954					
Terminal	Hundredweight	5.3	3.4	7.5	4.8
Line Haul	Hundredweight mile	0.055840	0.046611	0.114479	0.103654
1956					
Terminal	Hundredweight	5.2	3.4	7.4	4.9
Line Haul	Hundredweight mile	0.053238	0.046435	0.111937	0.102081
1957					
Terminal	Hundredweight	5.8	3.9	8.1	5.5
Line Haul	Hundredweight mile	0.056528	0.049236	0.119445	0.108152

The above unit cost factors are the basis for the cost scales on the following six pages. The cost factors result from the application of Rail Form A "Formula for use in Determining Rail Freight Service Costs" as more fully described on the respective page showing the cost scale for each year.

Comparison of Rail Costs - Year 1948

Fully Distributed Costs* Excluding Passenger and Less Carload Deficiencies Increased to Reflect Circuity

Miles	28.9 Ton Average Load - Box Cars			16.3 Ton Average Load - Refrigerator Cars		
	Eastern District including Pocahontas Region	Southern Region	% East of South	Eastern District including Pocahontas Region	Southern Region	% East of South
50	5.8¢	4.6¢	126%	9.3¢	7.7¢	121%
100	8.1	6.8	119	13.5	11.8	114
150	10.4	8.9	117	17.7	15.8	112
200	12.7	11.1	114	21.9	19.9	110
250	15.0	13.2	114	26.1	24.0	109
300	17.3	15.3	113	30.4	28.1	108
350	19.6	17.5	112	34.6	32.2	107
400	21.9	19.6	112	38.8	36.2	107
450	24.2	21.8	111	43.0	40.3	107
500	26.5	23.9	111	47.2	44.4	106
550	28.7	26.1	110	51.4	48.5	106
600	31.0	28.2	110	55.6	52.6	106
650	33.3	30.3	110	59.8	56.6	106
700	35.6	32.5	110	64.0	60.7	105
750	37.9	34.6	110	68.2	64.8	105
800	40.2	36.8	109	72.5	68.9	105
850	42.5	38.9	109	76.7	73.0	105
900	44.8	41.0	109	80.9	77.0	105
950	47.1	43.2	109	85.1	81.1	105
1000	49.4	45.3	109	89.3	85.2	105
1050	51.7	47.5	109	93.5	89.3	105
1100	54.0	49.6	109	97.7	93.4	105
1150	56.3	51.8	109	101.9	97.4	105
1200	58.6	53.9	109	106.1	101.5	105
1250	60.9	56.0	109	110.3	105.6	104
1300	63.2	58.2	109	114.5	109.7	104
1350	65.5	60.3	109	118.8	113.8	104
1400	67.8	62.5	108	123.0	117.8	104
1450	70.1	64.6	109	127.2	121.9	104
1500	72.4	66.7	109	131.4	126.0	104
1550	74.6	68.9	108	135.6	130.1	104
1600	76.9	71.0	108	139.8	134.2	104

* Out of Pocket and Constant Costs Including 6% Return on Investment based on Application of Rail Form A "Formula for use in Determining Rail Freight Service Costs" Prepared by the Cost Finding Section, Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission.

Loss and Damage Not Included.

Comparison of Rail Costs - Year 1950

Fully Distributed Costs* Excluding Passenger and Less Carload Deficiencies Increased to Reflect Circuity

	28.9 Ton Average Load - Box Cars			16.3 Ton Average Load - Refrigerator Cars		
Miles	Eastern District including Pocahontas Region	Southern Region	% East of South	Eastern District including Pocahontas Region	Southern Region	% East of South
50	6.5¢	4.8¢	135%	10.5¢	8.2¢	128%
100	9.1	7.0	130	15.2	12.5	122
150	11.6	9.2	126	20.0	16.9	118
200	14.2	11.4	125	24.8	21.3	116
250	16.8	13.5	124	29.5	25.7	115
300	19.4	15.7	124	34.3	30.0	114
350	21.9	17.9	122	39.1	34.4	114
400	24.5	20.1	122	43.8	38.8	113
450	27.1	22.3	122	48.6	43.1	113
500	29.7	24.5	121	53.3	47.5	112
550	32.2	26.7	121	58.1	51.9	112
600	34.8	28.9	120	62.9	56.3	112
650	37.4	31.0	121	67.6	60.6	112
700	40.0	33.2	120	72.4	65.0	111
750	42.6	35.4	120	77.2	69.4	111
800	45.1	37.6	120	81.9	73.7	111
850	47.7	39.8	120	86.7	78.1	111
900	50.3	42.0	120	91.5	82.5	111
950	52.9	44.2	120	96.2	86.9	111
1000	55.4	46.4	119	101.0	91.2	111
1050	58.0	48.6	119	105.8	95.6	111
1100	60.6	50.7	120	110.5	100.0	111
1150	63.2	52.9	119	115.3	104.3	111
1200	65.7	55.1	119	120.0	108.7	110
1250	68.3	57.3	119	124.8	113.1	110
1300	70.9	59.5	119	129.6	117.5	110
1350	73.5	61.7	119	134.3	121.8	110
1400	76.1	63.9	119	139.1	126.2	110
1450	78.6	66.1	119	143.9	130.6	110
1500	81.2	68.2	119	148.6	134.9	110
1550	83.8	70.4	119	153.4	139.3	110
1600	86.4	72.6	119	158.2	143.7	110

* Out of Pocket and Constant Costs including 6% Return on Investment based on Application of Rail Form A "Formula for use in Determining Rail Freight Service Costs" Prepared by the Cost Finding Section, Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission.

Loss and Damage Not Included.

Comparison of Rail Costs - Year 1952
Fully Distributed Costs* Excluding Passenger and Less Carload Deficiencies Increased to Reflect Circuity

Miles	28.9 Ton Average Load - Box Cars			16.3 Ton Average Load - Refrigerator Cars		
	Eastern District including Pocahontas Region	Southern Region	% East of South	Eastern District including Pocahontas Region	Southern Region	% East of South
50	7.6¢	5.5¢	138%	11.8¢	9.1¢	130%
100	10.3	7.9	130	16.8	13.7	123
150	13.0	10.2	127	21.7	18.2	119
200	15.7	12.6	125	26.7	22.8	117
250	18.4	14.9	123	31.6	27.3	116
300	21.1	17.2	123	36.6	31.9	115
350	23.8	19.6	121	41.5	36.4	114
400	26.5	21.9	121	46.5	41.0	113
450	29.2	24.3	120	51.4	45.5	113
500	31.9	26.6	120	56.4	50.1	113
550	34.6	28.9	120	61.3	54.6	112
600	37.3	31.3	119	66.3	59.2	112
650	40.0	33.6	119	71.2	63.7	112
700	42.7	36.0	119	76.2	68.3	112
750	45.4	38.3	119	81.1	72.8	111
800	48.1	40.6	118	86.1	77.4	111
850	50.8	43.0	118	91.0	81.9	111
900	53.5	45.3	118	96.0	86.5	111
950	56.2	47.7	118	100.9	91.0	111
1000	58.9	50.0	118	105.9	95.5	111
1050	61.7	52.3	118	110.8	100.1	111
1100	64.4	54.7	118	115.8	104.6	111
1150	67.1	57.0	118	120.7	109.2	111
1200	69.8	59.4	118	125.7	113.7	111
1250	72.5	61.7	118	130.6	118.3	110
1300	75.2	64.0	118	135.6	122.8	110
1350	77.9	66.4	117	140.5	127.4	110
1400	80.6	68.7	117	145.5	131.9	110
1450	83.3	71.1	117	150.4	136.5	110
1500	86.0	73.4	117	155.4	141.0	110
1550	88.7	75.7	117	160.3	145.6	110
1600	91.4	78.1	117	165.3	150.1	110

* Out of Pocket and Constant Costs including 6% Return on Investment based on Application of Rail Form A "Formula for use in Determining Rail Freight Service Costs" Prepared by the Cost Finding Section, Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission.

Loss and Damage Not Included.

Comparison of Rail Costs - Year 1954

Fully Distributed Costs* Excluding Passenger and Less Carload Deficiencies Increased to Reflect Circuity

	28.9 Ton Average Load - Box Cars			16.3 Ton Average Load - Refrigerator Cars		
Miles	Eastern District including Pocahontas Region	Southern Region	% East of South	Eastern District including Pocahontas Region	Southern Region	% East of South
50	8.1¢	5.7¢	142%	13.2¢	10.0¢	132%
100	10.9	8.1	135	18.9	15.2	124
150	13.7	10.4	132	24.7	20.3	122
200	16.5	12.7	130	30.4	25.5	119
250	19.3	15.1	128	36.1	30.7	118
300	22.1	17.4	127	41.8	35.9	116
350	24.8	19.7	126	47.6	41.1	116
400	27.6	22.0	125	53.3	46.3	115
450	30.4	24.4	125	59.0	51.4	115
500	33.2	26.7	124	64.7	56.6	114
550	36.0	29.0	124	70.5	61.8	114
600	38.8	31.4	124	76.2	67.0	114
650	41.6	33.7	123	81.9	72.2	113
700	44.4	36.0	123	87.6	77.4	113
750	47.2	38.4	123	93.4	82.5	113
800	50.0	40.7	123	99.1	87.7	113
850	52.8	43.0	123	104.8	92.9	113
900	55.6	45.3	123	110.5	98.1	113
950	58.3	47.7	122	116.3	103.3	113
1000	61.1	50.0	122	122.0	108.5	112
1050	63.9	52.3	122	127.7	113.6	112
1100	66.7	54.7	122	133.4	118.8	112
1150	69.5	57.0	122	139.2	124.0	112
1200	72.3	59.3	122	144.9	129.2	112
1250	75.1	61.7	122	150.6	134.4	112
1300	77.9	64.0	122	156.3	139.6	112
1350	80.7	66.3	122	162.0	144.7	112
1400	83.5	68.7	122	167.8	149.9	112
1450	86.3	71.0	122	173.5	155.1	112
1500	89.1	73.3	122	179.2	160.3	112
1550	91.9	75.6	122	184.9	165.5	112
1600	94.6	78.0	121	190.7	170.6	112

* Out of Pocket and Constant Costs including 6% Return on Investment based on Application of Rail Form A "Formula for use in Determining Rail Freight Service Costs" Prepared by the Cost Finding Section, Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission.

Loss and Damage Not Included.

Comparison of Rail Costs - Year 1956

Fully Distributed Costs* Excluding Passenger and Less Carload Deficiencies Increased to Reflect Circuity

Miles	28.9 Ton Average Load - Box Cars			16.3 Ton Average Load - Refrigerator Cars		
	Eastern District including Pocahontas Region	Southern Region	% East of South	Eastern District including Pocahontas Region	Southern Region	% East of South
50	7.9¢	5.7¢	139%	13.0¢	10.0¢	130%
100	10.5	8.0	131	18.6	15.1	123
150	13.2	10.4	127	24.2	20.2	120
200	15.8	12.7	124	29.8	25.3	118
250	18.5	15.0	123	35.4	30.4	116
300	21.2	17.3	123	41.0	35.5	115
350	23.8	19.7	121	46.6	40.6	115
400	26.5	22.0	120	52.2	45.7	114
450	29.2	24.3	120	57.8	50.8	114
500	31.8	26.6	120	63.4	55.9	113
550	34.5	28.9	119	69.0	61.0	113
600	37.1	31.3	119	74.6	66.1	113
650	39.8	33.6	118	80.2	71.3	112
700	42.5	35.9	118	85.8	76.4	112
750	45.1	38.2	118	91.4	81.5	112
800	47.8	40.5	118	96.9	86.6	112
850	50.5	42.9	118	102.5	91.7	112
900	53.1	45.2	117	108.1	96.8	112
950	55.8	47.5	117	113.7	101.9	112
1000	58.4	49.8	117	119.3	107.0	111
1050	61.1	52.2	117	124.9	112.1	111
1100	63.8	54.5	117	130.5	117.2	111
1150	66.4	56.8	117	136.1	122.3	111
1200	69.1	59.1	117	141.7	127.4	111
1250	71.7	61.4	117	147.3	132.5	111
1300	74.4	63.8	117	152.9	137.6	111
1350	77.1	66.1	117	158.5	142.7	111
1400	79.7	68.4	117	164.1	147.8	111
1450	82.4	70.7	117	169.7	152.9	111
1500	85.1	73.1	116	175.3	158.0	111
1550	87.7	75.4	116	180.9	163.1	111
1600	90.4	77.7	116	186.5	168.2	111

* Out of Pocket and Constant Costs including 6% Return on Investment based on Application of Rail Form A "Formula for use in Determining Rail Freight Service Costs" Prepared by the Cost Finding Section, Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission.

Loss and Damage Not Included.

Comparison of Rail Costs - Year 1957

Fully Distributed Costs* Excluding Passenger and Less Carload Deficiencies Increased to Reflect Circuity

	28.9 Ton Average Load - Box Cars			16.3 Ton Average Load - Refrigerator Cars		
Miles	Eastern District including Pocahontas Region	Southern Region	% East of South	Eastern District including Pocahontas Region	Southern Region	% East of South
50	8.6¢	6.4¢	134%	14.1¢	10.9¢	129%
100	11.5	8.8	131	20.0	16.3	123
150	14.3	11.3	127	26.0	21.7	120
200	17.1	13.7	125	32.0	27.1	118
250	19.9	16.2	123	38.0	32.5	117
300	22.8	18.7	122	43.9	37.9	116
350	25.6	21.1	121	49.9	43.4	115
400	28.4	23.6	120	55.9	48.8	115
450	31.2	26.1	120	61.9	54.2	114
500	34.1	28.5	120	67.8	59.6	114
550	36.9	31.0	119	73.8	65.0	114
600	39.7	33.4	119	79.8	70.4	113
650	42.5	35.9	118	85.7	75.8	113
700	45.4	38.4	118	91.7	81.2	113
750	48.2	40.8	118	97.7	86.6	113
800	51.0	43.3	118	103.7	92.0	113
850	53.8	45.8	117	109.6	97.4	113
900	56.7	48.2	118	115.6	102.8	112
950	59.5	50.7	117	121.6	108.2	112
1000	62.3	53.1	117	127.5	113.7	112
1050	65.2	55.6	117	133.5	119.1	112
1100	68.0	58.1	117	139.5	124.5	112
1150	70.8	60.5	117	145.5	129.9	112
1200	73.6	63.0	117	151.4	135.3	112
1250	76.5	65.4	117	157.4	140.7	112
1300	79.3	67.9	117	163.4	146.1	112
1350	82.1	70.4	117	169.4	151.5	112
1400	84.9	72.8	117	175.3	156.9	112
1450	87.8	75.3	117	181.3	162.3	112
1500	90.6	77.8	116	187.3	167.7	112
1550	93.4	80.2	116	193.2	173.1	112
1600	96.2	82.7	116	199.2	178.5	112

* Out of Pocket and Constant Costs including 6% Return on Investment based on Application of Rail Form A "Formula for use in Determining Rail Freight Service Costs" Prepared by the Cost Finding Section, Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission.

Loss and Damage Not Included.

Comparison of Costs at Average Haul

	Cost Per Hundredweight			Percent of Total	
	Eastern District	Southern Region	Total	Eastern District	Southern Region
		28.9 Ton Load - Box Cars			
Average Haul - Miles	347	464			
Out-of-Pocket					
1950	17.9¢	17.0¢	34.9¢	51.3¢	48.7¢
1951	19.4	18.7	38.1	50.9	49.1
1952	20.4	19.5	39.9	51.1	48.9
1953	20.7	19.6	40.3	51.4	48.6
1954	20.9	19.5	40.4	51.7	48.3
1955	20.1	19.0	39.1	51.4	48.6
1956	21.2	19.8	41.0	51.7	48.3
1957	23.1	21.3	44.4	52.0	48.0
Fully Distributed					
1950	26.0	26.1	52.1	49.9	50.1
1951	27.7	28.1	55.8	49.6	50.4
1952	29.1	28.9	58.0	50.2	49.8
1953	29.4	29.3	58.7	50.1	49.9
1954	30.1	29.4	59.5	50.6	49.4
1955	28.2	27.8	56.0	50.4	49.6
1956	29.6	28.8	58.4	50.7	49.3
1957	32.3	31.1	63.4	50.9	49.1
		16.3 Ton Load - Refrigerator Cars			
Average Haul - Miles	358	860			
Out-of-Pocket					
1950	35.0	66.9	101.9	34.3	65.7
1951	37.2	70.7	107.9	34.5	65.5
1952	38.8	71.7	110.5	35.1	64.9
1953	42.7	81.8	124.5	34.3	65.7
1954	43.3	81.8	125.1	34.6	65.4
1955	42.4	79.8	122.2	34.7	65.3
1956	46.7	84.2	130.9	35.7	64.3
1957	50.8	89.7	140.5	36.2	63.8
Fully Distributed					
1950	42.8	82.4	125.2	34.2	65.8
1951	45.3	86.6	131.9	34.3	65.7
1952	47.3	87.8	135.1	35.0	65.0
1953	51.2	98.4	149.6	34.2	65.8
1954	52.3	98.9	151.2	34.6	65.4
1955	50.4	94.8	145.2	34.7	65.3
1956	54.9	99.5	154.4	35.6	64.4
1957	59.8	106.3	166.1	36.0	64.0

Source: Based on I.C.C. Statements 2-52; 4-53; 2-54; 2-55; 5-56; 1-57; 2-58; 5-58.
Average weight trains - excluding loss and damage claim payments.
Line Haul increased to reflect circuity.

Comparison of Rail Costs - Year 1957

Fully Distributed Costs* Including Passenger and Less Carload Deficiencies Increased to Reflect Circuity

Miles	28.9 Ton Average Load - Box Cars			16.3 Ton Average Load - Refrigerator Cars		
	Eastern District including Pocahontas Region	Southern Region	% East of South	Eastern District including Pocahontas Region	Southern Region	% East of South
50	9.4¢	7.1¢	132%	14.9¢	11.6¢	128%
100	12.6	9.9	127	21.1	17.3	122
150	15.7	12.7	124	27.4	23.1	119
200	18.8	15.5	121	33.6	28.8	117
250	21.9	18.2	120	39.9	34.5	116
300	25.1	21.0	120	46.1	40.2	115
350	28.2	23.8	118	52.4	46.0	114
400	31.3	26.6	118	58.6	51.7	113
450	34.4	29.4	117	64.9	57.4	113
500	37.6	32.2	117	71.1	63.1	113
550	40.7	35.0	116	77.4	68.8	113
600	43.8	37.8	116	83.6	74.6	112
650	46.9	40.5	116	89.9	80.3	112
700	50.1	43.3	116	96.1	86.0	112
750	53.2	46.1	115	102.4	91.7	112
800	56.3	48.9	115	108.6	97.4	111
850	59.4	51.7	115	114.9	103.2	111
900	62.6	54.5	115	121.2	108.9	111
950	65.7	57.3	115	127.4	114.6	111
1000	68.8	60.1	114	133.7	120.3	111
1050	71.9	62.8	114	139.9	126.1	111
1100	75.1	65.6	114	146.2	131.8	111
1150	78.2	68.4	114	152.4	137.5	111
1200	81.3	71.2	114	158.7	143.2	111
1250	84.4	74.0	114	164.9	148.9	111
1300	87.6	76.8	114	171.2	154.7	111
1350	90.7	79.6	114	177.4	160.4	111
1400	93.8	82.4	114	183.7	166.1	111
1450	96.9	85.1	114	189.9	171.8	111
1500	100.1	87.9	114	196.2	177.6	110
1550	103.2	90.7	114	202.4	183.3	110
1600	106.3	93.5	114	208.7	189.0	110

* Out of Pocket and Constant Costs including 6% Return on Investment based on Application of Rail Form A "Formula for use in Determining Rail Freight Service Costs" Prepared by the Cost Finding Section, Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission.

Loss and Damage Not Included.

Percentages Eastern District Including Pocahontas Region Costs

Are of Southern Region Costs

Miles	100	400	700	1000
	28.9 Tons - Box Cars			
1948	119%	112%	110%	109%
1950	130	122	120	119
1952	130	121	119	118
1954	135	125	123	122
1956	131	120	118	117
1957	131	120	118	117
	16.3 Tons - Refrigerator Cars			
1948	114	107	105	105
1950	122	113	111	111
1952	123	113	112	111
1954	124	115	113	112
1956	123	114	112	111
1957	123	115	113	112

Source:

Comparison of Rail Costs - Pages 6-a to 11-a, inclusive.

Percentages Eastern District Including Pocahontas Region Costs are
of
Total Eastern District Including Pocahontas Region and Southern Region Costs

	General Traffic (Except Coal and Coke)	Citrus Fruits and Fresh or Green Vegetables Not Frozen-Northbound
Average Load	28.9 Tons	16.3 Tons
Type of Car	Box	Refrigerator
Average Haul-East	347 Miles	358 Miles
Average Haul-South	464 "	860 "
1948	46.4%	32.3%
1950	48.8	33.5
1952	48.8	33.8
1954	49.7	34.1
1956	48.8	33.9
1957	48.8	34.1

Eastern District Including Pocahontas Region and Southern Region Costs for the respective average hauls were based on the Unit Cost Factors shown on page 1, herein, and the above percentages developed therefrom.

Unit Cost Factors

	Service Unit	28.9 Ton Load - Box Cars				16.3 Ton Load - Refrigerator Cars			
		Eastern District		Southern Region		Eastern District		Southern Region	
		Out-of-Pocket	Fully Distributed	Out-of-Pocket	Fully Distributed	Out-of-Pocket	Fully Distributed	Out-of-Pocket	Fully Distributed
1947 Adjusted to 1/1/49									
Terminal	Hundredweight	3.357	4.332	2.205	3.063	5.321	6.296	3.541	4.399
Line Haul	Hundredweight mile	0.038364	0.054206	0.032744	0.049693	0.081228	0.096089	0.075212	0.091539
1948 Adjusted to 1/1/50									
Terminal	Hundredweight	3.327	4.295	2.102	2.950	5.372	6.340	3.408	4.256
Line Haul	Hundredweight mile	0.039098	0.054805	0.032329	0.049399	0.081249	0.095983	0.073563	0.090006
1949 Adjusted to 1/1/51									
Terminal	Hundredweight	3.722	5.046	2.377	3.428	5.858	7.182	3.749	4.800
Line Haul	Hundredweight mile	0.037776	0.059687	0.034880	0.055884	0.077486	0.098039	0.079307	0.099540
1950 Adjusted to 1/1/52									
Terminal	Hundredweight	4.206	5.662	2.485	3.495	6.439	7.895	3.940	4.951
Line Haul	Hundredweight mile	0.045437	0.067958	0.035752	0.056190	0.088754	0.109880	0.080357	0.100044
1951 Adjusted to 1/1/53									
Terminal	Hundredweight	4.455	5.846	2.691	3.656	6.686	8.077	4.148	5.113
Line Haul	Hundredweight mile	0.045064	0.066094	0.036177	0.054446	0.088383	0.108109	0.079769	0.097367
1952 Adjusted to 1/1/54									
Terminal	Hundredweight	4.835	6.313	2.871	3.870	7.259	8.736	4.312	5.311
Line Haul	Hundredweight mile	0.046669	0.068433	0.037213	0.056026	0.096661	0.117077	0.086426	0.104549
1953 Adjusted to 1/1/55									
Terminal	Hundredweight	4.846	6.279	2.917	3.935	7.198	8.631	4.313	5.331
Line Haul	Hundredweight mile	0.046364	0.067653	0.036570	0.055710	0.101092	0.121063	0.091854	0.110292
1954 Adjusted to 1/1/56									
Terminal	Hundredweight	5.383	7.100	3.073	4.175	7.911	9.628	4.503	5.605
Line Haul	Hundredweight mile	0.047641	0.071529	0.037322	0.058173	0.103615	0.126023	0.093282	0.113369
1955 Adjusted to 1/1/57									
Terminal	Hundredweight	5.316	6.893	3.136	4.165	7.858	9.435	4.647	5.676
Line Haul	Hundredweight mile	0.048059	0.069687	0.037812	0.056691	0.105534	0.125822	0.093324	0.111510
1956 Adjusted to 1/1/58									
Terminal	Hundredweight	5.594	7.198	3.200	4.214	8.349	9.953	4.869	5.884
Line Haul	Hundredweight mile	0.049822	0.071100	0.03900	0.057726	0.118890	0.138849	0.101010	0.119049

Source: Based on I.C.C. Statements 3-49; 2-50; 1-51; 2-52; 4-53; 2-54; 2-55; 5-56; 1-57; 2-58;.
Average weight trains - excluding Loss and Damage Claim Payments.
Line Haul increased to reflect circuity.

Comparison of Costs at Average Haul

	Cost Per Hundredweight			Percent of Total	
	Eastern District	Southern Region	Total	Eastern District	Southern Region
28.9 Ton Load - Box Cars					
Average Haul - Miles	347	464			
Out-of-Pocket					
1947 adjusted to 1/1/49	16.7¢	17.4¢	34.1¢	49.0%	51.0%
1948 " " 1/1/50	16.9	17.1	34.0	49.7	50.3
1949 " " 1/1/51	16.8	18.6	35.4	47.5	52.5
1950 " " 1/1/52	20.0	19.1	39.1	51.2	48.8
1951 " " 1/1/53	20.1	19.5	39.6	50.8	49.2
1952 " " 1/1/54	21.0	20.1	41.1	51.1	48.9
1953 " " 1/1/55	20.9	19.9	40.8	51.2	48.8
1954 " " 1/1/56	21.9	20.4	42.3	51.8	48.2
1955 " " 1/1/57	22.0	20.7	42.7	51.5	48.5
1956 " " 1/1/58	22.9	21.3	44.2	51.8	48.2
Fully Distributed					
1947 adjusted to 1/1/49	23.1	26.1	49.2	47.0	53.0
1948 " " 1/1/50	23.3	25.9	49.2	47.4	52.6
1949 " " 1/1/51	25.8	29.4	55.2	46.7	53.3
1950 " " 1/1/52	29.2	29.6	58.8	49.7	50.3
1951 " " 1/1/53	28.8	28.9	57.7	49.9	50.1
1952 " " 1/1/54	30.1	29.9	60.0	50.2	49.8
1953 " " 1/1/55	29.8	29.8	59.6	50.0	50.0
1954 " " 1/1/56	31.9	31.2	63.1	50.6	49.4
1955 " " 1/1/57	31.1	30.5	61.6	50.5	49.5
1956 " " 1/1/58	31.9	31.0	62.9	50.7	49.3
16.3 Ton Load - Refrigerator Cars					
Average Haul - Miles	358	860			
Out-of-Pocket					
1947 adjusted to 1/1/49	34.4	68.2	102.6	33.5	66.5
1948 " " 1/1/50	34.5	66.7	101.2	34.1	65.9
1949 " " 1/1/51	33.6	72.0	105.6	31.8	68.2
1950 " " 1/1/52	38.2	73.0	111.2	34.4	65.6
1951 " " 1/1/53	38.3	72.7	111.0	34.5	65.5
1952 " " 1/1/54	41.9	78.6	120.5	34.8	65.2
1953 " " 1/1/55	43.4	83.3	126.7	34.3	65.7
1954 " " 1/1/56	45.0	84.7	129.7	34.7	65.3
1955 " " 1/1/57	45.6	84.9	130.5	34.9	65.1
1956 " " 1/1/58	50.9	91.7	142.6	35.7	64.3
Fully Distributed					
1947 adjusted to 1/1/49	40.7	83.1	123.8	32.9	67.1
1948 " " 1/1/50	40.7	81.7	122.4	33.3	66.7
1949 " " 1/1/51	42.3	90.4	132.7	31.9	68.1
1950 " " 1/1/52	47.2	91.0	138.2	34.2	65.8
1951 " " 1/1/53	46.8	88.8	135.6	34.5	65.5
1952 " " 1/1/54	50.7	95.2	145.9	34.7	65.3
1953 " " 1/1/55	52.0	100.2	152.2	34.2	65.8
1954 " " 1/1/56	54.7	103.1	157.8	34.7	65.3
1955 " " 1/1/57	54.5	101.6	156.1	34.9	65.1
1956 " " 1/1/58	59.7	108.3	168.0	35.5	64.5

Source: Based on I.C.C. Statements 3-49; 2-50; 1-51; 2-52; 4-53; 2-54; 2-55; 5-56; 1-57; 2-58.
Average weight trains - excluding loss and damage claim payment.
Line Haul increased to reflect circuity.

Unit Cost Factors

	Service Unit	28.9 Ton Load - Box Cars				16.3 Ton Load - Refrigerator Cars			
		Eastern District		Southern Region		Eastern District		Southern Region	
		Out-of-Pocket	Fully Distributed	Out-of-Pocket	Fully Distributed	Out-of-Pocket	Fully Distributed	Out-of-Pocket	Fully Distributed
1950									
Terminal	Hundredweight	3.770	5.033	2.215	3.113	5.771	7.034	3.514	4.412
Line Haul	Hundredweight mile	0.040725	0.060342	0.031861	0.049497	0.081556	0.099958	0.073721	0.090710
1951									
Terminal	Hundredweight	4.291	5.630	2.590	3.548	6.437	7.775	3.988	4.946
Line Haul	Hundredweight mile	0.043415	0.063698	0.034815	0.052930	0.085871	0.104898	0.077522	0.094973
1952									
Terminal	Hundredweight	4.693	6.117	2.775	3.739	7.035	8.460	4.158	5.122
Line Haul	Hundredweight mile	0.045290	0.066342	0.035992	0.054206	0.088722	0.108470	0.078582	0.096128
1953									
Terminal	Hundredweight	4.783	6.193	2.873	3.873	7.101	8.510	4.243	5.243
Line Haul	Hundredweight mile	0.045765	0.066738	0.036014	0.054849	0.099470	0.119144	0.090195	0.108339
1954									
Terminal	Hundredweight	5.131	6.703	2.930	3.942	7.523	9.096	4.277	5.289
Line Haul	Hundredweight mile	0.045437	0.067529	0.035610	0.054969	0.100032	0.120755	0.090185	0.108833
1955									
Terminal	Hundredweight	4.846	6.249	2.877	3.788	7.134	8.538	4.238	5.149
Line Haul	Hundredweight mile	0.043878	0.063359	0.034760	0.051742	0.098612	0.116886	0.087896	0.104255
1956									
Terminal	Hundredweight	5.179	6.674	2.966	3.898	7.703	9.198	4.496	5.428
Line Haul	Hundredweight mile	0.046206	0.066195	0.036264	0.053704	0.108979	0.127730	0.092642	0.109442
1957									
Terminal	Hundredweight	5.796	7.440	3.436	4.485	8.513	10.158	5.054	6.102
Line Haul	Hundredweight mile	0.049810	0.071631	0.038564.	0.057312	0.118126	0.138595	0.098480	0.116540

Source: Based on I.C.C. Statements 2-52; 4-53; 2-54; 2-55; 5-56; 1-57; 2-58; 5-58.
Average weight trains - excluding loss and damage claim payments.
Line Haul increased to reflect circuity.

Percentages Eastern District Cost are

of

Total Eastern District and Southern Region Costs

	Eastern Carriers Form A Basis 1/		I.C.C. Basis 2/	
	General Traffic (Except Coal and Coke)	Citrus Fruits and Fresh or Green Vegetables Not Frozen - Northbound	General Traffic (Except Coal and Coke)	Citrus Fruits and Fresh or Green Vegetables Not Frozen - Northbound
Average Load	28.9 Tons	16.3 Tons	28.9 Tons	16.3 Tons
Type of Car	Box	Refrigerator	Box	Refrigerator
Average Haul - East	347 Miles	358 Miles	347 Miles	358 Miles
Average Haul - South	464 "	860 "	464 "	860 "
1950	50.1%	34.2%	49.9%	34.2%
1952	50.1	34.7	50.2	35.0
1954	51.0	34.7	50.6	34.6
1956	50.5	35.0	50.7	35.6
1957	50.8	35.5	50.9	36.0

1/ From Page 10, herein.
2/ From Page 14, herein.

Comparison of Rail Costs - Year 1956
(Interstate Commerce Commission Elements of Value)
Fully Distributed Costs* Excluding Passenger and Less Carload Deficiencies Increased to Reflect Circuity

	28.9 Ton Load - Box Cars			16.3 Ton Load - Refrigerator Cars		
Miles	Eastern District including Pocahontas Region	Southern Region	% East of South	Eastern District including Pocahontas Region	Southern Region	% East of South
50	7.9¢	5.7¢	139%	13.0¢	10.0¢	130%
100	10.5	8.0	131	18.6	15.1	123
150	13.2	10.3	128	24.2	20.2	120
200	15.8	12.7	124	29.7	25.3	117
250	18.5	15.0	123	35.3	30.4	116
300	21.1	17.3	122	40.9	35.5	115
350	23.8	19.6	121	46.5	40.6	115
400	26.4	21.9	121	52.1	45.7	114
450	29.1	24.2	120	57.7	50.8	114
500	31.7	26.6	119	63.2	55.9	113
550	34.4	28.9	119	68.8	61.0	113
600	37.0	31.2	119	74.4	66.1	113
650	39.7	33.5	119	80.0	71.2	112
700	42.3	35.8	118	85.6	76.3	112
750	45.0	38.1	118	91.2	81.4	112
800	47.6	40.4	118	96.8	86.5	112
850	50.3	42.8	118	102.3	91.5	112
900	52.9	45.1	117	107.9	96.6	112
950	55.6	47.4	117	113.5	101.7	112
1000	58.2	49.7	117	119.1	106.8	112
1050	60.9	52.0	117	124.7	111.9	111
1100	63.5	54.3	117	130.3	117.0	111
1150	66.2	56.7	117	135.8	122.1	111
1200	68.8	59.0	117	141.4	127.2	111
1250	71.5	61.3	117	147.0	132.3	111
1300	74.1	63.6	117	152.6	137.4	111
1350	76.8	65.9	117	158.2	142.5	111
1400	79.4	68.2	116	163.8	147.6	111
1450	82.1	70.5	116	169.3	152.7	111
1500	84.7	72.9	116	174.9	157.8	111
1550	87.4	75.2	116	180.5	162.9	111
1600	90.0	77.5	116	186.1	168.0	111

* Out of Pocket and Constant Costs including 6% Return on Investment based on Application of Rail Form A "Formula for use in Determining Rail Freight Service Costs" Prepared by the Cost Finding Section, Bureau of Accounts, Cost Finding and Valuation of the Interstate Commerce Commission.

Loss and Damage Not Included.

[1]

VERIFIED STATEMENT NO. 4 OF JAMES M. SYMES.

(Dated October 1, 1959.)

My name is James M. Symes. I have been associated with the railroad industry for over forty years, mostly in the Operating Department. I am now President of The Pennsylvania Railroad Company.

That part of the National Transportation System which is represented by the Eastern railroads is being severely damaged by a lack of sufficient revenue. This injury manifests itself in such important respects as the following:

1. Inability to make sufficient expenditures for the proper maintenance of these railroads.
2. Inability to make essential expenditures for capital improvements.
3. Insufficient earnings to compensate their stockholders properly and to maintain the value of the capital invested in the properties.

These and other facts relating to the insufficiency of the earnings of the Eastern railroads and the effect thereof on the public interest in a sound transportation system in the most populous part of the country will be illustrated by the facts which are set forth below in this statement and in the accompanying exhibit.

The lines of The Pennsylvania Railroad Company cover a large part of the northeastern section of the United States. We have East-West lines from the eastern seaboard to Chicago and St. Louis and a number of important North-South lines, including those which serve the Ohio River crossings at Louisville and Cincinnati, and the line which runs from Potomac Yard, near Washington, D. C.,

[2]

to New York. We have a line as far north as the Straits of Mackinac, and as far south as Norfolk, Virginia. We also, of course, have a large number of other lines, serving most of the important points and a great many smaller towns and cities in the thirteen states and the District of Columbia, through which the lines of our railroad run. In serving this large and populous area, we encounter most of the conditions which are met by the Eastern railroads in general.

Page 1 of my exhibit summarizes the income and rate of return of The Pennsylvania Railroad Company in past years and demonstrates the unfavorable trends in the earnings of that company. Net income has seriously declined and is at an extremely low level. The rate of return has been reduced, correspondingly, to levels that are far below reasonable. This unfavorable earnings experience of the Pennsylvania has been shared by Eastern railroads in general.

Pages 3 through 7 of my exhibit show the annual gross capital expenditures for road and equipment since 1925, stated in terms of both current and 1957 constant dollars, first for all U. S. Class I Railroads and then separately for Eastern District, Eastern District including Pocahontas, and Southern carriers, and individually for the Pennsylvania Railroad. These pages reflect the fact that, because of their much lower net income and rate of return, the Eastern railroads have been seriously handicapped in their ability to devote funds to capital improvements as compared to the carriers of the Southern District.

[3]

If we take only the recent years, say from 1950 on, it will be found that the Southern roads have fared far better in this respect than the Eastern roads. The same is true if

we go as far back as 1940. The capital expenditures of the 5-year period 1925 through 1929 are employed as an average base for the construction of indices. Those were prosperous years in which the railroads made large capital expenditures. In 1958, the railroads of the Eastern District made capital expenditures that were only 54.3% of the average dollars spent for capital expenditures between 1925 and 1929. The Southern roads, however, were able to spend 19% more in 1958 than in the 1925-29 period. Having in mind the tremendous depreciation in the value of the dollar since the base period, the exhibit also states the expenditures in terms of dollars of constant value. On this basis, the Eastern District lines spent only 22.2% as much in 1958 as in the period from 1925 to 1929, while the Southern lines spent over 50% as much as they spent in the earlier period.

I show on Sheet 7 of my exhibit similar expenditures by the Pennsylvania Railroad. It can be seen that the trend for that company has been generally the same as that of the Eastern District as a whole.

Expenditures for capital improvements can be made only from funds that are available therefor, generated both within the company and, as to some improvements, from outside sources, all in

[4]

the light of the many demands on those funds and the ability of the company involved to meet its various requirements.

Pages 8 and 9 of the exhibit show the comparative situation of the Eastern and Southern lines with regard to equipment maintenance. The weakened earnings position of the Eastern railroads has made it necessary that they reduce expenditures for the maintenance of their freight cars to such an extent that, as of August 1, 1959, 14.3% of the cars owned by the railroads of the Eastern and Allegheny Districts (using the Association of American Railroads' classification) were undergoing or awaiting repairs (Page 8). As further shown on page 8 of my exhibit, for the Eastern

Allegheny and Pocahontas Districts together, the figure was 12.1%. For the railroads of the Southern District, it was only 5.3%. A reference to the exhibit will disclose that throughout the entire period since January, 1950, the bad order situation was substantially worse on the Eastern roads than on the roads of the Southern District.

The necessity of conserving cash at the expense of maintenance is manifested, of course, even in the figures of the Southern roads. Thus, their bad order percentage rose from 3.7% in October, 1957, to 4.8% in October, 1958. The Eastern percentage, however, rose from 7.0% to 14.7% and, including the Pocahontas, it rose from 5.7% to 12.3% in the same period. Attention is also directed to the more severe and prolonged effects of the relatively brief economic recessions of 1954 and 1958 upon car maintenance on the Eastern carriers

[5]

as contrasted with the much less severe effect of such business slumps upon the Southern District railroads.

What I have said with respect to freight cars is true also of locomotive maintenance. This is demonstrated by page 9 of my exhibit. Considering diesel units alone, the bad order ratio of the Eastern lines rose steadily over the years shown and stood at 6.3% (6.2%, including Pocahontas) as of July 1, 1959. This is to be compared with 3.1% for the Southern District on the same date. Combining the figures for both diesel and electric locomotives, we find that in the East (including the Pocahontas Region) 6.7% of the units were in or awaiting shop repairs as of July 1, 1959; while in the South the percentage was again only 3.1%.

The problem of recurring car shortages during the postwar period has been a serious one for the railroads, the shippers and the Commission. There is no question but that the public interest in a sound, strong National Transportation System adequate to meet the requirements both

of the peacetime economy and national defense is seriously impaired by a lack of sufficient cars, in good order, when they are needed. But if certain railroads must continue to exist on a marginal basis, as the Eastern railroads have existed in recent years, there is no choice but to perpetuate the policy which has been pursued in the past and which has resulted in a steady increase in the number of bad order cars, accentuated during each period of recession. It is a simple matter of basic economics that, without the

[6]

necessary funds, cars cannot be kept in proper repair. And this, of course, is equally true of locomotives.

The same fundamental principles apply also to the maintenance of fixed properties. Here again, the properties of the Eastern lines have suffered far more than those of the railroads of the Southern Region. This is illustrated by pages 10 to 13 of my exhibit, which show replacement of crossties and rail in recent years. Reference to page 12 will show that, using as a base the years 1950 to 1953, which were fairly normal years for maintenance, new rail laid in replacement by the Eastern District lines was reduced from an index of 100 to about 57% in the next two years, slightly under 50% in 1956, 48.7% in 1957, and down to 21.2% in 1958. Inclusion of the Pocahontas lines does not substantially change the ratios. The lines of the Southern Region, however, were able to keep the tons of new rail laid in 1954 and 1955 at 101.2% and 91%, respectively, and in 1957 at 80.7%, of those laid in the '50 to '53 period, and they fell but to 49.8% in 1958. The lowest index figure of the Southern lines for the nine years shown was 49.8% in 1958, as compared with 20.5% in that year for the Eastern District roads, including Pocahontas.

These pages of the exhibit also express the foregoing crosstie and rail replacement figures in relation to gross ton miles and miles of track maintained. The relative situation

THE PENNSYLVANIA RAILROAD COMPANY

INVESTMENT, NET RAILWAY OPERATING INCOME, RATE OF RETURN AND NET INCOME

YEARS 1925 - 1958
(Index 1925-29 = 100)

Year (1)	Investment in Property Used in Railway Transportation Service (a) Amount (2)	Index (3)	Net Railway Operating Income Amount (4)	Index (5)	Rate of Return on Investment Percent (6)	Index (7)	Net Income Amount (8)	Index (9)
1925	$1,979,644,335	95.7	$100,114,471	89.2	5.06%	93.5	$ 62,375,183	81.6
1926	2,042,959,888	98.8	106,432,757	94.9	5.21	96.3	67,774,263	88.6
1927	2,075,635,729	100.3	103,977,303	92.7	5.01	92.6	68,217,256	89.2
1928	2,091,416,437	101.1	117,297,686	104.5	5.61	103.7	82,460,942	107.8
1929	2,153,551,760	104.1	133,139,626	118.7	6.18	114.2	101,487,062	132.7
5-Year Average	2,068,641,628	100.0	112,192,369	100.0	5.41	100.0	76,462,941	100.0
1930	2,244,836,488	108.5	92,181,557	82.2	4.11	76.0	68,952,718	90.2
1931	2,272,413,186	109.9	51,055,806	45.5	2.25	41.6	19,941,498	26.1
1932	2,271,859,377	109.8	49,132,038	43.8	2.16	39.9	13,573,536	17.8
1933	2,224,290,720	107.5	61,976,859	55.2	2.79	51.6	19,281,169	25.2
1934	2,247,418,675	108.6	61,317,016	54.7	2.73	50.5	21,633,965	28.3
1935	2,274,540,186	110.0	70,394,641	62.7	3.09	57.1	23,849,798	31.2
1936	2,289,307,952	110.7	84,180,593	75.0	3.68	68.0	44,559,514	58.3
1937	2,262,654,967	109.4	73,000,926	65.1	3.23	59.7	27,278,638	35.7
1938	2,249,705,756	108.8	57,332,898	51.1	2.55	47.1	11,046,100	14.4
1939	2,236,542,207	108.1	77,304,328	68.9	3.46	64.0	32,032,525	41.9
1940	2,241,142,583	108.3	86,499,486	77.1	3.86	71.3	46,238,250	60.5
1941	2,269,232,603	109.7	97,102,488	86.5	4.28	79.1	52,383,958	68.5
1942	2,277,863,103	110.1	145,278,344	129.5	6.38	117.9	101,468,793	132.7
1943	2,330,121,454	112.6	127,546,411	113.7	5.47	101.1	85,418,484	111.7
1944	2,280,475,555	110.2	108,972,066	97.1	4.78	88.4	64,720,431	84.6
1945	2,218,307,804	107.2	87,180,539	77.7	3.93	72.6	49,008,238	64.1
1946	2,183,238,806	105.5	25,917,224	23.1	1.19	22.0	Def. 8,530,317	-
1947	2,235,754,071	108.1	32,311,073	28.8	1.45	26.8	7,285,125	9.5
1948	2,313,558,917	111.8	69,293,118	61.8	3.00	55.5	34,429,934	45.0
1949	2,304,221,819	111.4	37,177,720	33.1	1.61	29.8	12,474,627	16.3
1950	2,314,586,147	111.9	57,873,351	51.6	2.50	46.2	38,420,677	50.2
1951	2,428,865,762	117.4	59,519,986	53.1	2.45	45.3	26,697,717	34.9
1952	2,512,434,491	121.5	74,930,335	66.8	2.98	55.1	36,981,364	48.4
1953	2,507,262,425	121.2	74,796,413	66.7	2.98	55.1	38,875,228	50.8
1954	2,453,322,228	118.6	48,061,181	42.8	1.96	36.2	18,552,235	24.3
1955	2,407,032,395	116.4	68,966,603	61.5	2.87	53.0	41,183,533	53.9
1956	2,434,356,125	117.7	67,120,957	59.8	2.76	51.0	41,545,435	54.3
1957	2,403,384,061	116.2	43,154,031	38.5	1.80	33.3	19,056,885	24.9
1958	2,378,113,816	115.0	11,738,011	10.5	0.49	9.1	3,544,073	4.6

(a) Less recorded depreciation. Includes leased property. Includes materials and supplies and cash.

SOURCE: P.R.R. Annual Reports

Research Department - PRR
September 23, 1959

CLASS I RAILROADS

GROSS CAPITAL EXPENDITURES FOR ROAD AND EQUIPMENT

YEARS 1925-1958
(Index 1925-29 = 100)
(Thousands)

Year (1)	Current Dollars: Equipment Amount (2)	Equipment Index (3)	Roadway & Structures Amount (4)	Roadway & Structures Index (5)	Total Amount (6)	Total Index (7)	Constant 1957 Dollars: Equipment Amount (8)	Equipment Index (9)	Roadway & Structures Amount (10)	Roadway & Structures Index (11)	Total Amount (12)	Total Index (13)
1925	$338,114	109.5	$410,077	85.8	$748,191	95.1	$811,474	112.6	$914,472	84.4	$1,725,946	95.7
1926	371,922	120.4	513,164	107.3	885,086	112.5	885,174	122.8	1,139,224	105.2	2,024,398	112.2
1927	288,701	93.5	482,851	101.0	771,552	98.0	652,464	90.5	1,091,243	100.8	1,743,707	96.7
1928	224,301	72.6	452,364	94.6	676,665	86.0	538,322	74.7	1,040,437	96.1	1,578,759	87.5
1929	321,306	104.0	532,415	111.3	853,721	108.5	716,512	99.4	1,229,879	113.6	1,946,391	107.9
5 Year Average	308,869	100.0	478,174	100.0	787,043	100.0	720,789	100.0	1,083,051	100.0	1,803,840	100.0
1930	328,269	106.3	544,339	113.8	872,608	110.9	741,888	102.9	1,322,744	122.1	2,064,632	114.5
1931	73,105	23.7	288,807	60.4	361,912	46.0	179,107	24.8	748,010	69.1	927,117	51.4
1932	36,371	11.8	130,823	27.4	167,194	21.2	98,565	13.7	368,921	34.1	467,486	25.9
1933	15,454	5.0	88,493	18.5	103,947	13.2	41,571	5.8	257,515	23.8	299,086	16.6
1934	92,005	29.8	120,707	25.2	212,712	27.0	227,252	31.5	340,394	31.4	567,646	31.5
1935	79,335	25.7	108,967	22.8	188,302	23.9	182,470	25.3	307,287	28.4	489,757	27.2
1936	159,104	51.5	139,887	29.3	298,991	38.0	357,984	49.7	388,886	35.9	747,870	41.5
1937	322,877	104.5	186,916	39.1	509,793	64.8	681,270	94.5	487,851	45.0	1,169,121	64.8
1938	115,408	37.4	111,529	23.3	226,937	28.8	242,357	33.6	298,898	27.6	541,255	30.0
1939	133,388	43.2	128,641	26.9	262,029	33.3	274,779	38.1	347,331	32.0	622,110	34.5
1940	271,906	88.0	157,241	32.9	429,147	54.5	530,217	73.6	415,116	32.1	945,333	52.4
1941	367,568	119.0	175,453	36.7	543,021	69.0	683,676	94.9	429,860	39.7	1,113,536	61.7
1942	349,374	113.1	185,523	38.8	534,897	68.0	586,948	81.4	391,453	36.1	978,401	54.2
1943	255,981	82.9	198,301	41.5	454,282	57.7	414,689	57.5	394,619	36.4	809,308	44.9
1944	328,231	106.3	231,881	48.5	560,112	71.2	531,734	73.8	459,124	42.4	990,858	54.9
1945	314,779	101.9	248,201	51.9	562,980	71.5	509,942	70.7	466,618	43.1	976,560	54.1
1946	319,017	103.3	242,940	50.8	561,957	71.4	446,624	62.0	415,427	38.4	862,051	47.8
1947	565,901	183.2	298,788	62.5	864,689	109.9	746,989	103.6	451,170	41.7	1,198,159	66.4
1948	917,449	297.0	356,035	74.5	1,273,484	161.8	1,146,811	159.1	487,768	45.0	1,634,579	90.6
1949	981,320	317.7	330,880	69.2	1,312,200	166.7	1,177,584	163.4	453,306	41.9	1,630,890	90.4
1950	779,399	252.3	286,443	59.9	1,065,842	135.4	989,837	137.3	383,834	35.4	1,373,671	76.2
1951	1,050,849	340.2	363,146	75.9	1,413,995	179.7	1,303,053	180.3	453,933	41.9	1,756,986	97.4
1952	935,090	302.7	405,822	84.9	1,340,912	170.4	1,150,161	159.6	486,986	45.5	1,637,147	90.8
1953	857,893	277.8	401,904	84.0	1,259,797	160.1	1,003,735	139.3	466,209	43.0	1,469,944	81.5
1954	498,726	161.5	321,520	67.2	820,246	104.2	588,497	81.6	372,963	34.4	961,460	53.3
1955	568,202	184.0	341,319	71.4	909,521	115.6	664,796	92.2	382,277	35.3	1,047,073	58.0
1956	821,357	265.9	406,500	85.0	1,227,857	156.0	870,638	120.8	426,825	39.4	1,297,463	71.9
1957	1,007,749	326.3	386,956	80.9	1,394,705	177.2	1,007,749	139.8	386,956	35.7	1,394,705	77.3
1958	479,680	155.3	258,358	54.0	738,038	93.8	E 465,290	64.6	E 255,774	23.6	E 721,064	40.0

E - Estimated

Source: Cols. (2,4 & 6) - Bureau of Railroad Economics, Association of American Railroads.
Cols. (8 & 10) - Based on I.C.C. "Railroad Construction Indices." Indices for United States excluding Alaska and Hawaii.

Research Department - PRR
September 16, 1959

of the Eastern and Southern roads, however, is unchanged by comparison in this manner. The exhibit also shows (page 13) that the Southern roads

[7]

did far better in the installation of fit (second hand) rail than did the Eastern lines.

Exhibit pages 10 to 13 also show the rail and tie renewal figures for the Pennsylvania Railroad. Although somewhat low, the years 1950 through 1953 may be taken as reasonably normal years for us in the laying of new rail and in tie renewals. As the exhibit shows, we were able to install in 1958 only 14.1% of the new rail installed in the '50 to '53 period, and in 1959 our program calls for only 11.75%. Similarly in 1958 we were able to renew only 42% of the average number of ties that were renewed in the 4-year period—1950 through 1953—while for 1959 our program calls for only 35.28%.

We are now endeavoring to cope, to the extent possible, with the freight car problem through a program which involves the assumption of additional obligations in large amount. During the 14-month period, beginning with January 1, 1959, the Pennsylvania is carrying forward a freight car program involving 23,500 new cars in replacement of a like number which are being scrapped.

The financing of this car program has been arranged through conditional sales and long-term leases—mostly the latter. The cost of the equipment is approximately $215 million and the carrying charges (including both debt and lease obligations) will average about $16 million annually. In addition to this, we had planned to spend in 1959 $53,500,000 on our regular freight car maintenance program, but unfortunately have had to cut that program

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down because of the effect of the steel strike on our earnings.

The effect of this program will be a large increase in serviceable cars but, even when it is completed, about 15% of our equipment will still be unserviceable. And the program is being accomplished by adding $16 million of annual carrying charges which must be met regularly, on specific dates.

I should like to point out that it would have been impossible to make the capital improvements that we have made in the postwar period, including the period since the last hearings in this case, without large sums of money that were made available by the sale of assets which we had held for many years, assets such as the Hotel Pennsylvania in New York, our stock in the Pennsylvania Greyhound Company, valuable real estate in Pittsburgh and Philadelphia, water companies and other like assets. The sale of these assets provided us with $110,800,000 in the period from 1948 through 1958. Obviously, a railroad cannot long—and should not have to—rely upon these sources of funds in substitution for funds which, to a very large extent, should come from earnings.

The traffic originated by the Eastern lines is subject to much more severe fluctuations than that of the Southern lines. This is shown by the figures and charts on pages 14 to 17 of my exhibit, which relate to freight revenue and cars of revenue freight loaded by weeks in the years 1957, 1958 and 1959. Taking the effect of the

[9]

current steel strike on carloadings as an example, the figures show that, comparing the last five weeks shown (i.e., the weeks ending August 15 through September 12, inclusive) with the five weeks immediately preceding the week in which the steel strike began (i.e., the weeks ending June 13 through July 11, inclusive), the carloadings of the Eastern District lines show a decline of 29.2%, those of the East including Pocahontas 23.7%, but those of the Southern Region increased 2.9%.

Our margin of profit is so thin that when these large downward fluctuations come it is necessary to reduce expenditures wherever possible. This, in nearly all instances, means substantial reductions in maintenance expenses. Time after time, during the postwar period, it has been necessary for us to curtail maintenance programs, with the result that when business comes back there is a car shortage. Our total force reduction on the Pennsylvania, because of the present steel strike, comes to 9400 employes. Our situation is not an isolated one in this regard. It is typical of the Eastern railroads in general.

On page 18 of my exhibit I have compared the present situation of stockholders who invested $5,000 in each of three principal Eastern lines in 1925 with that of stockholders who made a like investment in three principal Southern lines in that year, both sets of carriers being important in the North-South traffic. Neither group includes any railroad which went through bankruptcy. A glance at the exhibit will show how much better off are the stockholders who invested in the Southern group of railroads.

[10]

Thus, the value of the stock purchased in the Eastern lines for a total of $15,000 has declined to $5,736.62. The present value is only 38.2% of the amount invested. But the $15,000 invested in the Southern roads has a present value of $24,821.97, an increase of 65.5% over the amount invested. (The average market price for the eight months of 1959 is here used as present value.)

The dividends received from the investment in the Eastern roads would have been reduced from $999.05 (in the period from 1925 through 1929) to a low of $116.15 in the last five years, and a high of $417.14 in the later period. In contrast, the dividends received from the investment in the Southern roads would have increased from $846.43 in the base period to a low of $892.10 and a high of $1,245.60 in the last five years. In 1958 the investment in the East-

ern roads would have returned dividends equal to only 11.6% of the dividends received in the base period. In the same year, the investment in the Southern roads would have returned 147.2% of the dividends received in the base period.

The exhibit also shows what would be the result of including figures for the Chesapeake & Ohio, as representing the Pocahontas Region. Even including that carrier with the Eastern District roads, the relative situation of the one who invested in the Southern lines would be far better than the one who invested in the other carriers.

The Pennsylvania Railroad has paid a dividend in every

[11]

year since 1848. The payments in each of those years are shown on page 19 of my exhibit. I call attention to the fact that in recent years the payments have been far lower—generally less than half as much—than the amounts previously paid. In 1958, the dividend was only 25 cents per share, the lowest of any year since we began paying dividends in 1848.

In addition to those Eastern railroads that did not pay any dividends on their common stock in 1957, 1958 or to date in 1959, a large number of railroads which did pay dividends in 1957 passed them or materially reduced them in 1958. This is shown on page 20 of my exhibit, from which it will be seen that 20 Eastern railroads either reduced or passed their dividends last year.

It is most important to the Pennsylvania Railroad that any increase in divisions justly due to it shall be promptly determined so that the money to be produced thereby will begin to accrue to it for the many needs which it has for such funds in the public interest. One of these needs is to meet heavy maturities which are due between now and 1965, inclusive. These are tabulated on pages 21 to 23 of my exhibit. Those pages show that, between the end of

1958 and the end of 1978, the Pennsylvania's maturities, with interest to be paid thereon, amount to over $1,095,000,000. The funds that would accrue to us through the increased divisions to which we believe we are justly entitled would

[12]

be a real and substantial help in meeting these large maturities. And equally important, of course, such divisions would contribute needed funds for maintenance of equipment and roadway and the undertaking of capital improvements, all of which would enable the Pennsylvania Railroad and other Eastern carriers to improve their transportation service in the public interest.

(Verification omitted in printing.)

EASTERN DISTRICT EXCLUDING POCAHONTAS REGION

GROSS CAPITAL EXPENDITURES FOR ROAD AND EQUIPMENT

YEARS 1925-1958
(Index 1925-29 = 100)
(Thousands)

	Current Dollars						Constant 1957 Dollars					
	Equipment		Roadway & Structures		Total		Equipment		Roadway & Structures		Total	
Year	Amount	Index	Amount	Index	Amount	Index	Amount	Index	Amount	Index	Amount	Index
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1925	$120,434	93.5	$142,662	69.1	$263,096	78.5	$302,289	96.2	$328,123	67.9	$630,412	79.0
1926	160,316	124.4	182,169	88.2	342,485	102.1	400,790	127.5	420,810	87.0	821,600	103.0
1927	140,053	108.7	216,189	104.7	356,242	106.3	333,326	106.0	501,558	103.7	834,884	104.6
1928	75,489	58.6	213,903	103.6	289,392	86.3	189,477	60.3	506,950	104.9	696,427	87.3
1929	147,857	114.8	277,315	134.3	425,172	126.8	345,985	110.1	660,010	136.5	1,005,995	126.1
5 - Year Average	128,830	100.0	206,448	100.0	335,277	100.0	314,373	100.0	483,490	100.0	797,863	100.0
1930	136,413	105.9	284,243	137.7	420,656	125.5	321,935	102.4	710,608	147.0	1,032,543	129.4
1931	42,799	33.2	134,627	65.2	177,426	52.9	109,993	35.0	364,839	75.5	474,832	59.5
1932	26,662	20.7	72,293	35.0	98,955	29.5	75,720	24.1	212,541	44.0	288,261	36.1
1933	10,467	8.1	41,510	20.1	51,977	15.5	29,622	9.4	124,945	25.8	154,567	19.4
1934	53,663	41.7	72,333	35.0	125,996	37.6	137,914	43.9	211,212	43.7	349,186	43.8
1935	43,231	33.6	45,203	21.9	88,434	26.4	103,754	33.0	131,089	27.1	234,843	29.4
1936	70,052	54.4	55,242	26.8	125,294	37.4	165,323	52.6	157,440	32.6	322,763	40.5
1937	97,306	75.5	89,368	43.3	186,674	55.7	215,046	68.4	237,719	49.2	452,765	56.7
1938	28,749	22.3	41,415	20.0	70,164	20.9	63,535	20.2	113,063	23.4	176,598	22.1
1939	43,479	33.7	43,742	21.2	87,221	26.0	93,480	29.7	119,416	24.7	212,896	26.7
1940	107,346	83.3	66,862	32.4	174,208	52.0	218,986	69.7	177,853	36.8	396,839	49.7
1941	127,925	99.3	62,482	30.3	190,407	56.8	248,175	78.9	154,331	31.9	402,506	50.4
1942	121,605	94.4	69,749	33.8	191,354	57.0	214,025	68.1	151,355	31.3	365,380	45.8
1943	88,775	68.9	70,799	34.3	159,574	47.6	150,030	47.7	142,306	29.4	292,336	36.6
1944	108,357	84.1	65,913	31.9	174,270	52.0	183,123	59.3	131,826	27.3	314,949	39.5
1945	141,170	109.6	64,452	31.2	205,622	61.3	238,577	75.9	121,814	26.0	360,391	45.2
1946	116,235	90.2	73,090	35.4	189,325	56.5	169,703	54.0	124,253	25.7	293,956	36.8
1947	220,070	170.8	93,099	45.1	313,169	93.4	303,697	96.6	139,649	28.9	443,346	55.6
1948	361,179	280.4	107,144	51.9	468,322	139.7	469,533	149.4	145,716	30.1	615,249	77.1
1949	319,881	248.0	97,868	47.4	417,349	124.5	399,351	127.0	133,100	27.5	532,451	66.7
1950	260,317	202.6	89,368	43.3	349,685	104.3	338,412	107.6	119,753	24.8	458,165	57.4
1951	387,311	300.6	130,154	63.0	517,465	154.3	488,012	155.0	161,391	33.4	649,403	81.4
1952	395,283	306.8	131,022	63.5	526,305	157.0	482,245	153.4	155,916	32.2	638,161	80.0
1953	257,577	200.0	125,376	60.7	382,953	114.2	298,789	95.0	145,436	30.1	444,225	55.7
1954	110,888	86.0	99,273	48.1	210,161	62.7	131,957	42.0	115,157	23.8	247,114	31.0
1955	162,882	126.4	106,610	51.6	269,492	80.4	190,572	60.6	119,403	24.7	309,975	31.0
1956	268,581	208.5	119,777	54.0	388,358	115.8	284,696	90.6	125,766	26.0	410,462	51.4
1957	305,942	237.5	125,369	60.7	431,311	128.6	305,942	97.3	125,369	25.9	431,311	54.1
1958	113,594	88.2	68,428	33.1	182,022	54.3	E 110,186	35.0	E 67,059	13.9	E 177,245	22.8

E - Estimated

Source: Cols. (2, 4 & 6) - Bureau of Railroad Economics, Association of American Railroads.
Cols. (8 & 10) - Based on I.C.C. "Railroad Construction Indices." Indices for Region III were used as being typical of the Eastern District, excluding Pocahontas Region.

Research Department - PRR
September 16, 1959

EASTERN DISTRICT INCLUDING POCAHONTAS REGION

GROSS CAPITAL EXPENDITURES FOR ROAD AND EQUIPMENT

YEARS 1925-1958
(Index 1925-29 = 100)
(Thousands)

Year	Current Dollars						Constant 1957 Dollars					
	Equipment		Roadway & Structures		Total		Equipment		Roadway & Structures		Total	
	Amount	Index	Amount	Index	Amount	Index	Amount	Index	Amount	Index	Amount	Index
	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1925	$144,416	99.8	$167,490	72.9	$311,906	83.3	$362,484	102.6	$385,227	71.6	$747,711	83.9
1926	171,997	118.8	208,448	90.3	380,445	101.6	429,992	121.7	481,515	89.5	911,507	102.3
1927	150,591	104.0	236,918	103.1	387,509	103.5	356,407	101.4	549,650	102.2	908,057	101.9
1928	88,791	61.3	228,554	99.5	317,345	84.7	222,865	63.1	541,673	100.7	764,538	85.8
1929	168,076	116.1	307,246	133.7	475,322	126.9	393,298	111.3	731,245	136.0	1,124,543	126.2
5 - Year Average	144,774	100.0	229,731	100.0	374,505	100.0	353,409	100.0	537,862	100.0	891,271	100.0
1930	175,606	121.3	314,512	136.9	490,118	130.9	414,430	117.3	786,280	146.2	1,200,710	126.2
1931	48,188	33.3	155,798	67.8	203,986	54.5	123,843	35.0	422,213	78.5	546,056	61.3
1932	27,756	19.2	88,334	38.5	116,090	31.0	78,827	22.3	259,702	48.3	338,529	38.0
1933	10,728	7.4	56,755	24.7	67,483	18.0	30,360	8.6	170,833	31.8	201,193	22.6
1934	71,515	49.4	81,106	35.3	152,621	40.8	183,794	52.0	236,830	44.0	420,624	47.2
1935	54,585	37.7	58,971	25.7	113,556	30.3	131,004	37.1	171,016	31.8	302,020	33.9
1936	96,207	66.5	69,783	30.4	165,990	44.3	227,049	64.2	198,882	37.0	425,931	47.8
1937	121,619	84.0	97,962	42.6	219,581	58.6	268,778	76.1	260,579	48.4	529,357	59.4
1938	36,465	25.2	48,282	21.0	84,747	22.6	80,587	22.8	131,810	24.5	212,397	23.8
1939	59,915	41.4	53,336	23.2	113,251	30.2	128,817	36.4	145,607	27.1	274,424	30.8
1940	128,889	89.0	80,844	35.2	209,733	56.0	262,934	74.4	215,045	40.0	477,979	53.6
1941	149,968	103.6	77,483	33.7	227,451	60.7	290,938	82.3	191,383	35.6	482,321	54.1
1942	147,891	102.2	83,857	36.5	231,748	61.9	260,228	73.6	181,970	33.8	442,198	49.6
1943	107,658	74.4	81,545	35.5	189,203	50.5	181,942	51.5	163,905	30.5	345,847	38.8
1944	138,028	95.3	80,685	35.1	218,713	58.4	233,267	66.0	161,370	30.0	394,637	44.3
1945	159,044	109.9	89,123	38.8	248,167	66.3	268,784	76.1	168,442	31.3	437,226	49.1
1946	129,298	89.3	100,485	43.7	229,783	61.4	188,775	53.4	170,825	31.8	359,600	40.3
1947	241,394	166.7	136,137	59.3	377,531	100.8	333,124	94.3	204,206	38.0	537,330	60.3
1948	434,229	299.9	165,603	72.1	599,832	160.2	564,490	159.7	225,220	41.9	789,718	88.6
1949	392,281	271.0	137,001	59.6	529,282	141.3	490,351	138.7	186,321	34.6	676,672	75.9
1950	319,186	220.5	108,773	47.3	427,959	114.3	414,942	117.4	145,756	27.1	560,698	62.9
1951	467,449	320.8	153,222	66.7	620,671	165.7	588,986	166.7	189,995	35.3	778,981	87.4
1952	490,050	338.5	156,899	68.3	646,949	172.7	597,861	169.2	186,710	34.7	784,571	88.0
1953	323,978	223.8	150,271	65.4	474,249	126.6	375,814	106.3	174,314	32.4	550,128	61.7
1954	132,282	91.4	117,663	51.2	249,945	66.7	157,415	44.5	136,489	25.4	293,904	33.0
1955	202,126	139.6	127,468	55.5	329,594	88.0	236,487	66.9	142,764	26.5	379,251	42.6
1956	395,804	273.4	159,337	69.4	555,141	148.2	419,552	118.7	167,304	31.1	586,856	65.8
1957	453,887	313.5	160,386	69.8	614,273	164.0	453,887	128.4	160,386	29.8	614,273	68.9
1958	156,470	108.1	94,374	41.1	250,844	67.0	E 151,776	42.9	E 92,487	17.2	E 244,263	27.4

E - Estimated

Source: Cols. (2, 4 & 6) - Bureau of Railroad Economics, Association of American Railroads.
Cols. (8 & 10) - Based on I.C.C. "Railroad Construction Indices." Indices for Region III were used as being typical of the Eastern District, including Pocahontas Region.

Research Department - PRR
September 16, 1959

EASTERN DISTRICT, EASTERN DISTRICT INCLUDING POCAHONTAS, SOUTHERN REGION, AND PENNSYLVANIA RAILROAD

CROSSTIES AND RAIL LAID IN REPLACEMENT (Continued)

YEARS 1950-1958
(Index 1950-53 = 100)

Item	Year	Eastern District		Eastern District Including Pocahontas Region		Southern Region		Pennsylvania Railroad	
		Number	Index	Number	Index	Number	Index	Number	Index
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
III. Crossties Laid in Replacement									
A. Total	1950	8,190,003	104.1	9,596,682	103.8	6,715,751	101.9	1,899,970	99.5
	1951	7,509,281	95.4	8,918,858	96.4	6,738,230	102.3	1,721,496	90.1
	1952	7,839,037	99.6	9,211,444	99.6	6,744,693	102.4	2,017,589	105.6
	1953	7,935,777	100.8	9,260,413	100.1	6,154,100	93.4	2,001,892	104.8
	4-Year Average	7,868,525	100.0	9,246,849	100.0	6,588,194	100.0	1,910,237	100.0
	1954	5,155,229	65.5	6,057,551	65.5	5,142,226	78.0	883,136	46.2
	1955	6,006,435	76.3	6,953,202	75.2	4,648,254	70.6	1,143,556	59.9
	1956	5,499,163	69.9	6,373,193	68.9	4,858,731	73.7	1,267,488	66.4
	1957	5,505,362	70.0	6,428,145	69.5	4,197,166	63.7	1,357,334	71.1
	1958	3,335,102	42.4	3,765,998	40.7	3,587,437	54.5	802,719	42.0
1. Per Mile of Track Maintained (Line I-A)	1950	84.20	103.4	86.30	103.3	129.47	101.8	88.69	99.4
	1951	77.42	95.1	80.39	96.2	129.97	102.2	80.30	90.0
	1952	81.23	99.8	83.37	99.8	130.15	102.4	94.14	105.5
	1953	82.79	101.7	84.23	100.8	119.05	93.6	93.70	105.0
	4-Year Average	81.41	100.0	83.57	100.0	127.16	100.0	89.21	100.0
	1954	54.14	66.5	55.45	66.4	99.38	78.2	41.52	105.0
	1955	64.43	79.1	64.77	77.5	89.88	70.7	55.19	61.9
	1956	59.79	73.4	60.16	72.0	93.61	73.6	62.33	69.9
	1957	60.91	74.8	61.59	73.7	78.55	61.8	67.39	75.5
	1958	37.35	45.9	36.45	43.6	68.85	54.1	40.04	44.9
2. Per Million Gross Ton-Miles	1950	13.49	103.9	13.20	104.4	25.38	104.0	11.89	100.6
	1951	11.94	92.0	11.60	91.8	24.34	99.8	10.15	85.9
	1952	13.16	101.4	12.77	101.0	24.83	101.6	12.60	106.6
	1953	13.33	102.7	13.01	102.8	23.06	94.5	12.65	107.0
	4-Year Average	12.98	100.0	12.64	100.0	24.40	100.0	11.82	100.0
	1954	9.69	74.7	9.49	75.1	20.25	83.0	6.34	53.6
	1955	10.34	79.7	9.73	77.0	17.64	72.3	7.44	62.9
	1956	9.30	71.6	8.64	68.3	17.96	73.6	8.04	68.0
	1957	9.89	76.2	9.10	72.0	16.20	66.4	9.01	76.2
	1958	6.90	53.2	6.26	49.5	14.73	60.4	6.23	52.7

CONTINUED ON NEXT PAGE

SOUTHERN REGION

GROSS CAPITAL EXPENDITURES FOR ROAD AND EQUIPMENT

YEARS 1925-1958
(Index 1925-29 = 100)
(Thousands)

Year	Current Dollars						Constant 1957 Dollars					
	Equipment		Roadway & Structures		Total		Equipment		Roadway & Structures		Total	
	Amount	Index	Amount	Index	Amount	Index	Amount	Index	Amount	Index	Amount	Index
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1925	$ 58,376	129.5	$ 90,232	134.7	$148,608	132.6	$138,935	131.9	$203,022	133.9	$341,957	133.1
1926	91,052	201.9	111,923	167.1	202,975	181.1	a213,972	203.2	248,469	163.9	462,441	180.0
1927	24,401	54.1	59,669	89.1	84,070	75.0	54,658	51.9	135,449	89.4	190,107	74.0
1928	30,554	67.8	37,016	55.3	67,570	60.3	72,413	68.8	86,247	56.9	158,660	61.8
1929	21,054	46.7	36,070	53.8	57,124	51.0	46,529	44.2	84,765	55.9	131,294	51.1
5 - Year Average	45,087	100.0	66,982	100.0	112,069	100.0	105,301	100.0	151,590	100.0	256,891	100.0
1930	25,053	55.6	27,252	40.7	52,305	46.7	56,119	53.3	67,040	44.2	123,159	47.9
1931	1,994	4.2	16,140	24.1	18,134	16.2	4,825	4.6	42,771	28.2	47,596	18.5
1932	302	0.7	5,816	8.7	6,118	5.5	809	0.8	16,517	10.9	17,326	6.7
1933	373	0.8	5,091	7.6	5,464	4.9	1,000	0.9	14,917	9.8	15,917	6.2
1934	5,528	12.3	6,129	9.2	11,657	10.4	13,488	12.8	17,406	11.5	30,894	12.0
1935	6,027	13.4	8,719	13.0	14,746	13.2	13,681	13.0	24,936	16.4	38,617	15.0
1936	6,659	14.8	8,068	12.0	14,727	13.1	14,783	14.0	22,510	14.8	37,293	14.5
1937	49,256	109.2	11,330	16.9	60,586	54.1	102,452	97.3	29,458	19.4	131,910	51.3
1938	28,108	62.3	9,151	13.7	37,259	33.2	58,465	55.5	24,433	16.1	82,898	32.3
1939	19,402	43.0	10,673	15.9	30,075	26.8	39,192	37.2	28,710	18.9	67,902	26.4
1940	45,111	100.1	12,795	19.1	57,906	51.7	86,613	82.3	33,651	22.2	120,264	46.8
1941	61,327	136.0	17,650	26.4	78,977	70.5	112,228	106.6	43,419	28.6	155,647	60.6
1942	55,390	122.9	20,107	30.0	75,497	67.4	91,394	86.8	42,024	27.7	133,418	51.9
1943	36,215	80.3	25,208	37.6	61,423	54.8	57,582	54.7	49,660	32.8	107,242	41.7
1944	31,895	70.7	32,160	48.0	64,055	57.2	50,713	48.2	63,034	41.6	113,747	44.3
1945	27,969	62.0	35,012	52.3	62,981	56.2	44,471	42.2	65,823	43.4	110,294	42.9
1946	54,949	121.9	37,648	56.2	92,597	82.6	75,830	72.0	64,002	42.2	139,832	54.4
1947	99,184	220.0	42,118	62.9	141,302	126.1	134,890	128.1	63,598	42.0	198,488	77.3
1948	103,923	230.5	42,622	63.9	146,545	130.8	131,982	125.3	58,818	38.8	190,800	74.3
1949	163,546	362.7	45,087	67.3	208,633	186.2	201,162	191.0	62,220	41.0	263,382	102.5
1950	109,951	243.9	50,345	75.2	160,296	143.0	138,538	131.6	67,462	44.5	206,000	80.2
1951	168,646	374.0	68,219	101.8	236,865	211.4	210,808	200.2	84,592	55.8	295,400	115.0
1952	127,185	282.1	68,407	102.1	195,592	174.5	158,981	151.0	82,088	54.2	241,069	93.8
1953	134,872	299.1	66,384	99.1	201,256	179.6	161,846	153.7	77,005	50.8	238,851	93.0
1954	70,505	156.4	55,086	82.2	125,591	112.1	83,901	79.7	63,349	41.8	147,250	57.3
1955	69,877	155.0	52,148	77.9	122,025	108.9	81,756	77.6	58,406	38.5	140,162	54.6
1956	90,947	201.7	66,215	98.9	157,162	140.2	97,313	92.4	69,526	45.9	166,839	64.9
1957	160,262	355.4	62,538	93.4	222,800	198.8	160,262	152.2	62,538	41.2	222,800	86.7
1958	91,705	203.4	41,663	62.2	133,368	119.0	E 88,954	84.5	E 41,246	27.2	E 130,200	50.7

E - Estimated

Source: Cols. (2,4 & 6) - Bureau of Railroad Economics, Association of American Railroads.
Cols. (8 & 10) - Based on I.C.C. "Railroad Construction Indices." Indices for Region V were used as being typical of the Southern Region, excluding Pocahontas Region.

Research Department - PRR
September 16, 1959

PENNSYLVANIA RAILROAD

GROSS CAPITAL EXPENDITURES FOR ROAD AND EQUIPMENT

YEARS 1925-1958
(Index 1925-29 = 100)
(Thousands)

Year	Current Dollars						Constant 1957 Dollars					
	Equipment		Roadway & Structures		Total		Equipment		Roadway & Structures		Total	
	Amount	Index	Amount	Index	Amount	Index	Amount	Index	Amount	Index	Amount	Index
	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1925	$ 24,211	93.3	$ 31,394	64.1	$ 55,605	74.2	$ 60,770	95.4	$ 72,206	62.9	$132,976	74.5
1926	40,571	156.3	43,181	88.2	83,752	111.8	101,427	159.3	99,748	86.9	201,175	112.8
1927	18,634	71.8	47,399	96.8	66,033	88.1	44,349	69.6	109,966	95.8	154,315	86.5
1928	19,554	75.3	47,706	97.4	67,260	89.8	49,081	77.1	113,063	98.5	162,144	90.9
1929	26,821	103.3	75,095	153.4	101,916	136.0	62,761	98.6	178,726	155.8	241,487	135.3
5 - Year Average	25,958	100.0	48,955	100.0	74,913	100.0	63,678	100.0	114,742	100.0	178,420	100.0
1930	20,754	80.0	89,910	183.7	110,664	147.7	48,979	76.9	224,775	195.9	273,754	153.4
1931	7,985	30.8	43,279	88.4	51,264	68.4	20,521	32.2	117,286	102.2	137,807	77.2
1932	13,396	51.6	28,248	57.7	41,644	55.6	38,045	59.7	83,049	72.4	121,094	67.9
1933	5,151	19.8	13,204	27.0	18,355	24.5	14,577	22.9	39,744	34.6	54,321	30.4
1934	20,836	80.3	43,289	88.4	64,125	85.6	53,549	84.1	126,404	110.2	179,953	100.9
1935	22,526	86.8	19,490	39.8	42,106	56.2	54,062	84.9	56,521	49.3	110,583	62.0
1936	29,063	112.0	20,652	42.2	49,715	66.4	68,589	107.7	58,858	51.3	127,447	71.4
1937	11,776	45.4	47,479	97.0	59,255	79.1	26,025	40.9	126,294	110.2	152,319	85.4
1938	8,486	32.7	20,118	41.1	28,604	38.2	18,754	29.5	54,922	47.9	73,676	41.3
1939	12,211	47.0	12,053	24.6	24,264	32.4	26,254	41.2	32,905	28.7	59,159	33.2
1940	22,696	87.4	12,954	26.5	35,650	47.6	46,300	72.7	34,458	30.0	80,758	45.3
1941	25,307	97.5	18,787	38.4	44,094	58.9	49,096	77.1	46,404	40.4	95,500	53.5
1942	31,690	122.1	31,558	64.5	63,248	84.4	55,774	87.6	68,481	59.7	124,255	69.6
1943	32,341	124.6	36,807	75.2	69,148	92.3	54,656	85.8	73,982	64.5	128,638	72.1
1944	9,933	38.3	20,230	41.3	30,163	40.3	16,787	26.4	40,460	35.3	57,247	32.1
1945	26,782	103.2	14,219	29.0	41,001	54.7	45,262	71.1	26,874	23.4	72,136	40.4
1946	16,018	61.7	17,702	36.2	33,720	45.0	29,386	36.7	30,093	26.2	53,479	30.0
1947	33,585	129.4	19,090	39.0	52,675	70.3	46,347	72.8	28,635	25.0	74,982	42.0
1948	83,089	320.1	23,248	47.5	106,337	141.9	108,016	169.6	31,617	27.6	139,633	78.3
1949	81,896	315.5	23,874	48.8	105,770	141.2	102,370	160.8	32,469	28.3	134,839	75.6
1950	63,790	245.7	24,008	49.0	87,798	117.2	82,927	130.2	32,171	28.0	115,098	64.5
1951	133,875	515.7	27,979	57.2	161,854	216.1	168,682	264.9	34,694	30.2	203,376	114.0
1952	89,393	344.4	33,928	69.3	123,321	164.6	109,059	171.3	40,374	35.2	149,433	83.8
1953	30,691	118.2	42,106	86.0	72,797	97.2	35,602	55.9	48,843	42.6	84,445	47.3
1954	12,016	46.3	28,979	59.2	40,995	54.7	14,299	22.5	33,616	29.3	47,915	26.9
1955	34,683	133.6	31,101	63.5	65,784	87.8	40,579	63.7	34,833	30.4	75,412	42.3
1956	49,774	191.7	36,316	74.2	86,090	114.9	52,760	82.9	38,132	33.2	90,892	50.9
1957	36,680	141.3	22,578	46.1	59,258	79.1	36,680	57.6	22,578	19.7	59,258	33.2
1958	34,797	134.1	12,394	25.3	47,191	63.0	E 33,753	53.0	E 12,146	10.6	E 45,899	25.7

E - Estimated

Source: Cols. (2, 4 & 6) - Office of Comptroller, P.R.R.
Cols. (8 & 10) - Based on I.C.C. "Railroad Construction Indices." Indices for Region III were used as being typical for the Pennsylvania Railroad.

Research Department - PRR
September 16, 1959

AAR EASTERN, ALLEGHENY, POCAHONTAS AND SOUTHERN DISTRICTS

FREIGHT CARS UNDERGOING OR AWAITING REPAIRS

YEARS 1950-1959

First of the Month (1)	Eastern and Allegheny Districts			Eastern, Allegheny and Pocahontas Districts			Southern District		
	Ownership (2)	Cars Undergoing or Awaiting Repairs Number (3)	Percent (4)	Ownership (5)	Cars Undergoing or Awaiting Repairs Number (6)	Percent (7)	Ownership (8)	Cars Undergoing or Awaiting Repairs Number (9)	Percent (10)
1950 January	689,707	87,068	12.6	821,746	95,699	11.6	243,350	13,246	5.4
April	685,862	81,971	12.0	796,971	89,825	11.3	235,785	12,855	5.5
July	685,952	74,342	10.8	845,279	81,495	9.6	258,116	11,149	4.3
October	683,451	64,199	9.4	840,422	70,396	8.4	256,735	9,788	3.8
1951 January	685,591	52,775	7.7	840,584	58,247	6.9	254,267	9,655	3.8
April	689,046	45,819	6.6	845,144	51,590	6.1	254,091	8,953	3.5
July	695,232	47,990	6.9	851,666	52,811	6.2	254,787	10,300	4.0
October	696,136	49,430	7.1	852,816	54,954	6.4	255,243	10,693	4.2
1952 January	695,525	48,861	7.0	853,250	53,901	6.3	257,960	9,979	3.9
April	698,803	48,900	7.0	856,178	54,151	6.3	260,161	9,513	3.7
July	699,955	57,816	8.3	857,516	62,853	7.3	262,046	9,823	3.7
October	694,148	59,488	8.6	850,560	62,960	7.4	262,206	8,708	3.3
1953 January	693,150	52,693	7.6	850,037	56,218	6.6	263,755	7,605	2.9
April	694,816	50,770	7.3	853,443	54,650	6.4	263,956	7,555	2.9
July	693,313	50,502	7.3	853,371	54,708	6.4	266,576	8,340	3.1
October	693,141	52,141	7.5	853,814	56,693	6.6	268,855	8,504	3.2
1954 January	691,801	49,961	7.2	852,418	53,763	6.3	271,072	7,965	2.9
April	689,112	58,617	8.5	849,915	63,236	7.4	276,756	8,605	3.1
July	680,619	72,000	10.6	841,175	77,065	9.2	266,553	9,392	3.5
October	672,581	79,493	11.8	832,067	85,066	10.2	266,739	9,299	3.5
1955 January	663,063	73,865	11.1	821,230	78,726	9.6	265,087	9,221	3.5
April	656,962	72,551	11.0	814,392	77,796	9.6	264,407	9,680	3.7
July	649,278	60,115	9.3	806,073	63,229	7.8	264,550	9,504	3.6
October	636,626	47,071	7.4	793,534	49,784	6.3	263,600	9,255	3.5
1956 January	626,942	37,349	6.0	784,249	39,163	5.0	263,178	7,677	2.9
April	626,637	33,497	5.3	785,114	35,425	4.5	264,625	8,272	3.1
July	628,804	29,488	4.7	789,812	30,986	3.9	265,353	8,390	3.2
October	629,560	32,775	5.2	792,635	34,002	4.3	264,870	8,816	3.3
1957 January	630,089	31,601	5.0	795,375	32,559	4.1	265,558	8,669	3.3
April	635,376	31,593	5.0	803,343	32,947	4.1	267,901	9,738	3.6
July	637,846	38,203	6.0	809,219	39,514	4.9	270,997	10,138	3.7
October	638,747	44,727	7.0	811,561	46,114	5.7	272,462	10,145	3.7
1958 January	639,217	49,706	7.8	814,800	51,400	6.3	274,273	9,957	3.6
April	638,405	63,876	10.0	815,573	67,063	8.2	275,849	10,660	3.9
July	637,536	82,025	12.9	813,816	88,326	10.9	273,437	12,655	4.6
October	633,451	93,069	14.7	809,547	99,856	12.3	269,712	13,046	4.8
1959 January	629,166	96,960	15.4	805,138	105,624	13.1	266,580	12,384	4.6
April	625,834	99,130	15.8	801,775	107,551	13.4	264,996	12,970	4.9
July	612,406	85,238	13.9	788,083	92,064	11.7	263,691	13,179	5.0
August	611,532	87,709	14.3	787,215	95,683	12.1	263,625	13,897	5.3

NOTE: Covers total ownership of Class I Railroads in the Districts shown, and both heavy and light repair cars.

SOURCE: Association of American Railroads, Statement CS-60A.

Research Department - PRR
September 23, 1959

AAR EASTERN, ALLEGHENY, POCAHONTAS AND SOUTHERN DISTRICTS

DIESEL-ELECTRIC AND ELECTRIC LOCOMOTIVE UNITS

OWNERSHIP AND UNITS IN OR AWAITING SHOP

YEARS 1950-1959

First of the Month	Diesel-Electric Locomotive Units									Electric Locomotive Units									Total Diesel-Electric and Electric Locomotive Units								
	Eastern and Allegheny			Eastern, Allegheny and Pocahontas			Southern			Eastern and Allegheny			Eastern, Allegheny and Pocahontas			Southern			Eastern and Allegheny			Eastern, Allegheny and Pocahontas			Southern		
	Owned or Leased	In or Awaiting Shop Number	In or Awaiting Shop Percent	Owned or Leased	In or Awaiting Shop Number	In or Awaiting Shop Percent	Owned or Leased	In or Awaiting Shop Number	In or Awaiting Shop Percent	Owned or Leased	In or Awaiting Shop Number	In or Awaiting Shop Percent	Owned or Leased	In or Awaiting Shop Number	In or Awaiting Shop Percent	Owned or Leased	In or Awaiting Shop Number	In or Awaiting Shop Percent	Owned or Leased	In or Awaiting Shop Number	In or Awaiting Shop Percent	Owned or Leased	In or Awaiting Shop Number	In or Awaiting Shop Percent	Owned or Leased	In or Awaiting Shop Number	In or Awaiting Shop Percent
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)	(28)
1950 January	3,811	33	0.9	3,956	33	0.8	1601	19	1.2	557	22	3.9	633	33	5.2				4368	55	1.3	4589	66	1.4	1601	19	1.2
April	4,014	45	1.1	4,198	45	1.1	1684	26	1.5	554	29	5.2	630	39	6.2				4568	74	1.6	4828	84	1.7	1684	26	1.5
July	4,328	43	1.0	4,528	43	0.9	1916	34	1.8	553	19	3.4	597	33	5.5				4881	62	1.3	5125	76	1.5	1916	34	1.8
October	4,643	50	1.1	4,895	50	1.0	2018	38	1.9	552	25	4.5	596	39	6.5				5195	75	1.4	5491	89	1.6	2018	38	1.9
1951 January	5,032	51	1.0	5,295	51	1.0	2240	36	1.6	550	18	3.3	594	31	5.2				5582	69	1.2	5889	82	1.4	2240	36	1.6
April	5,452	50	0.9	5,731	50	0.9	2404	48	2.0	550	27	4.9	594	40	6.7				6002	77	1.3	6325	90	1.4	2404	48	2.0
July	5,829	56	1.0	6,123	56	0.9	2579	48	1.9	554	28	5.1	598	38	6.4				6383	84	1.3	6721	94	1.4	2579	48	1.9
October	6,075	53	0.9	6,384	53	0.8	2706	53	2.0	548	40	7.3	592	50	8.4				6623	93	1.4	6976	103	1.5	2706	53	2.0
1952 January	6,342	60	0.9	6,732	60	0.9	2905	45	1.5	550	20	3.6	594	30	5.1				6892	80	1.2	7326	90	1.2	2905	45	1.5
April	6,780	72	1.1	7,282	72	1.0	3015	53	1.8	549	37	6.7	593	47	7.9				7329	109	1.5	7875	119	1.5	3015	53	1.8
July	7,214	70	1.0	7,779	70	0.9	3115	56	1.8	546	38	7.0	590	49	8.3				7760	108	1.4	8369	119	1.4	3115	56	1.8
October	7,495	66	0.9	8,064	66	0.8	3213	52	1.6	546	41	7.5	590	54	9.2				8041	107	1.3	8654	120	1.4	3213	52	1.6
1953 January	7,690	60	0.8	8,298	60	0.7	3310	33	1.0	532	24	4.5	576	37	6.4				8222	84	1.0	8874	97	1.1	3310	33	1.0
April	7,908	70	0.9	8,540	70	0.8	3410	50	1.5	533	28	5.3	577	44	7.6				8441	98	1.2	9117	114	1.3	3410	50	1.5
July	8,126	62	0.8	8,801	62	0.7	3512	60	1.7	507	24	4.7	551	37	6.7				8633	86	1.0	9352	99	1.1	3512	60	1.7
October	8,283	76	0.9	8,974	77	0.9	3523	58	1.6	496	30	6.0	540	43	8.0				8779	106	1.2	9514	120	1.3	3523	58	1.6
1954 January	8,435	85	1.0	9,130	85	0.9	3539	50	1.4	487	13	2.7	531	29	5.5				8922	98	1.1	9661	114	1.2	3539	50	1.4
April	8,489	334	3.9	9,185	366	4.0	3596	87	2.4	487	54	11.1	531	72	13.6				8976	388	4.3	9719	438	4.5	3596	87	2.4
July	8,525	343	4.0	9,243	379	4.1	3656	124	3.4	487	50	10.3	531	72	13.6				9012	393	4.4	9774	451	4.6	3656	124	3.4
October	8,540	306	3.6	9,261	319	3.4	3652	130	3.6	452	38	8.4	496	50	10.1				8992	344	3.8	9757	369	3.8	3652	130	3.6
1955 January	8,553	279	3.3	9,293	291	3.1	3653	78	2.1	452	26	5.8	496	38	7.7				9005	305	3.4	9789	329	3.4	3653	78	2.1
April	8,555	346	4.0	9,313	364	3.9	3748	80	2.1	454	39	8.6	498	52	10.4				9009	385	4.3	9811	416	4.2	3748	80	2.1
July	8,642	262	3.0	9,402	277	2.9	3771	114	3.0	466	45	9.7	510	59	11.6				9108	307	3.4	9912	336	3.4	3771	114	3.0
October	8,746	353	4.0	9,547	365	3.8	3771	123	3.3	465	43	9.2	509	56	11.0				9211	396	4.3	10056	421	4.2	3771	123	3.3
1956 January	8,875	373	4.2	9,729	384	3.9	3821	76	2.0	455	40	8.8	499	50	10.0				9330	413	4.4	10228	434	4.2	3821	76	2.0
April	8,930	328	3.7	9,825	342	3.5	3914	85	2.2	456	47	10.3	500	60	12.0				9386	375	4.0	10325	402	3.9	3914	85	2.2
July	8,977	329	3.7	9,960	342	3.4	3933	99	2.5	454	37	8.1	498	50	10.0				9431	366	3.9	10458	392	3.7	3933	99	2.5
October	9,097	373	4.1	10,158	405	4.0	3933	127	3.2	446	43	9.6	490	53	10.8				9543	416	4.4	10648	458	4.3	3933	127	3.2
1957 January	9,221	362	3.9	10,359	383	3.7	3988	92	2.3	446	39	8.7	498	61	12.2				9667	401	4.1	10857	444	4.1	3988	92	2.3
April	9,248	382	4.1	10,422	412	4.0	3067	107	2.6	446	42	9.4	502	65	13.0				9694	424	4.4	10924	477	4.4	4067	107	2.6
July	9,424	390	4.1	10,666	414	3.9	4033	140	3.5	453	48	10.6	509	73	14.3				9877	438	4.4	11175	487	4.4	4033	140	3.5
October	9,498	431	4.5	10,767	455	4.2	4033	147	3.6	453	38	8.4	509	58	11.4				9951	469	4.7	11276	513	4.6	4033	147	3.6
1958 January	9,691	466	4.8	10,994	496	4.5	4036	119	2.9	428	49	11.4	484	66	13.6				10119	515	5.1	11478	562	4.9	4036	119	2.9
April	9,751	505	5.2	11,090	531	4.8	4112	141	3.4	414	47	11.4	470	78	16.6				10165	552	5.4	11560	609	5.3	4112	141	3.4
July	9,779	526	5.4	11,116	570	5.1	4113	135	3.3	413	32	7.7	469	62	13.2				10192	558	5.5	11585	632	5.5	4113	135	3.3
October	9,768	630	6.4	11,113	663	6.0	4099	134	3.3	405	52	12.8	461	83	18.0				10173	682	6.7	11574	746	6.4	4099	134	3.3
1959 January	9,778	678	6.9	11,151	712	6.4	4118	93	2.3	405	40	9.9	461	76	16.5				10183	718	7.1	11612	788	6.8	4118	93	2.3
April	9,761	663	6.8	11,228	733	6.5	4123	123	3.0	404	60	14.9	460	94	20.4				10165	723	7.1	11688	827	7.1	4123	123	3.0
July	9,778	613	6.3	11,286	704	6.2	4129	127	3.1	396	49	12.1	452	82	18.1				10174	661	6.5	11738	786	6.7	4129	127	3.1

SOURCE: Association of American Railroads, Statement CS-56A.

Research Department - PRR
September 23, 1959

EASTERN DISTRICT, EASTERN DISTRICT INCLUDING POCAHONTAS, SOUTHERN REGION, AND PENNSYLVANIA RAILROAD

CROSSTIES AND RAIL LAID IN REPLACEMENT

YEARS 1950-1958
(Index 1950-53 = 100)

Item	Year	Eastern District		Eastern District Including Pocahontas Region		Southern Region		Pennsylvania Railroad	
		Number	Index	Number	Index	Number	Index	Number	Index
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
I. Miles of Track Maintained									
A. Laid with Crossties	1950	97,272	100.6	111,195	100.5	51,872	100.1	21,422	100.0
	1951	96,988	100.3	110,942	100.3	51,848	100.1	21,437	100.1
	1952	96,503	99.8	110,492	99.9	51,824	100.0	21,431	100.1
	1953	95,853	99.2	109,941	99.4	51,695	99.8	21,366	99.8
	4-Year Average	96,654	100.0	110,643	100.0	51,810	100.0	21,414	100.0
	1954	95,226	98.5	109,241	98.7	51,745	99.9	21,270	99.3
	1955	93,225	96.5	107,352	97.0	51,716	99.8	20,720	96.8
	1956	91,980	95.2	105,937	95.7	51,903	100.2	20,334	95.0
	1957	90,388	93.5	104,373	94.3	53,433	103.1	20,140	94.1
	1958	89,288	92.4	103,310	93.4	52,103	100.6	20,050	93.6
B. Laid with Crossties, Switch and Bridge Ties	1950	106,276	100.6	121,225	100.5	55,699	100.1	23,741	100.0
	1951	105,961	100.4	120,947	100.3	55,696	100.1	23,759	100.1
	1952	105,434	99.9	120,455	99.9	55,649	100.0	23,752	100.1
	1953	104,693	99.1	119,814	99.3	55,510	99.8	23,679	99.8
	4-Year Average	105,591	100.0	120,610	100.0	55,639	100.0	23,733	100.0
	1954	103,913	98.4	118,963	98.6	55,550	99.8	23,573	99.3
	1955	101,924	96.5	117,086	97.1	55,506	99.8	22,963	96.8
	1956	100,344	95.0	115,336	95.6	55,726	100.2	22,535	95.0
	1957	98,746	93.5	113,776	94.3	57,395	103.2	22,321	94.1
	1958	97,803	92.6	112,872	93.6	56,100	100.8	22,221	93.6
II. Gross Ton-Miles (Millions)	1950	607,163	100.1	726,794	99.3	264,624	98.0	159,749	98.6
	1951	629,090	103.7	768,867	105.0	276,738	102.5	169,685	104.8
	1952	595,713	98.2	721,296	98.5	271,639	100.6	160,086	98.9
	1953	595,421	98.1	711,893	97.2	266,839	98.8	158,218	97.7
	4-Year Average	606,847	100.0	732,213	100.0	269,960	100.0	161,935	100.0
	1954	531,950	87.7	638,293	87.2	253,969	94.1	139,220	86.0
	1955	580,783	95.7	714,706	97.6	263,542	97.6	153,699	94.9
	1956	591,467	97.5	737,462	100.7	270,606	100.2	157,589	97.3
	1957	556,719	91.7	706,039	96.4	259,090	96.0	150,594	93.0
	1958	483,584	79.7	601,373	82.1	243,609	90.2	128,787	79.5

CONTINUED ON NEXT PAGE

EASTERN DISTRICT, EASTERN DISTRICT INCLUDING POCAHONTAS, SOUTHERN REGION, AND PENNSYLVANIA RAILROAD

CROSSTIES AND RAIL LAID IN REPLACEMENT (Continued)

YEARS 1950-1958
(Index 1950-53 = 100)

Item	Year	Eastern District		Eastern District Including Pocahontas Region		Southern Region		Pennsylvania Railroad	
		Number	Index	Number	Index	Number	Index	Number	Index
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
IV. Rail Laid in Replacement									
A. New Rail									
1. Tons Laid (2,000 pounds)	1950	332,442	101.7	429,684	102.8	264,570	115.6	57,504	92.8
	1951	352,435	107.8	454,553	108.8	234,768	102.6	56,312	90.9
	1952	302,646	92.6	375,801	89.9	189,240	82.7	60,654	97.9
	1953	320,410	98.0	411,365	98.4	227,028	99.2	73,388	118.4
	4-Year Average	326,983	100.0	417,851	100.0	228,902	100.0	61,965	100.0
	1954	186,916	57.2	253,350	60.6	231,578	101.2	12,518	20.2
	1955	186,475	57.0	254,362	60.9	208,084	90.9	9,780	15.8
	1956	161,380	49.4	236,330	56.6	175,534	76.7	14,911	24.1
	1957	159,390	48.7	227,155	54.4	184,795	80.7	33,845	54.6
	1958	69,255	21.2	85,688	20.5	114,051	49.8	8,734	14.1
a. Per Mile of Track Maintained (Line I-B)	1950	3.13	101.0	3.54	102.3	4.75	115.3	2.42	92.7
	1951	3.33	107.4	3.76	108.7	4.22	102.4	2.37	90.8
	1952	2.87	92.6	3.12	90.2	3.41	82.8	2.55	97.7
	1953	3.06	98.7	3.43	99.1	4.09	99.3	3.10	118.8
	4-Year Average	3.10	100.0	3.46	100.0	4.12	100.0	2.61	100.0
	1954	1.80	58.1	2.13	61.6	4.17	101.2	0.53	20.3
	1955	1.83	59.0	2.17	62.7	3.75	91.0	0.43	16.5
	1956	1.61	51.9	2.05	59.2	3.15	76.5	0.66	25.3
	1957	1.61	51.9	2.00	57.8	3.22	78.2	1.52	58.2
	1958	0.71	22.9	0.76	22.0	2.03	49.3	0.39	14.9
b. Per Million Gross Ton-Miles	1950	0.55	101.8	0.59	103.5	1.00	117.6	0.36	94.7
	1951	0.56	103.7	0.59	103.5	0.85	100.0	0.33	86.8
	1952	0.51	94.4	0.52	91.2	0.70	82.3	0.38	100.0
	1953	0.54	100.0	0.58	101.7	0.85	100.0	0.46	121.0
	4-Year Average	0.54	100.0	0.57	100.0	0.85	100.0	0.38	100.0
	1954	0.35	64.8	0.40	70.2	0.91	107.1	0.09	23.7
	1955	0.32	59.3	0.36	63.2	0.79	92.9	0.06	15.8
	1956	0.27	50.0	0.32	56.1	0.65	76.5	0.09	23.7
	1957	0.29	53.7	0.32	56.1	0.71	83.5	0.22	57.9
	1958	0.14	25.9	0.14	24.6	0.47	55.3	0.07	18.4

CONTINUED ON NEXT PAGE

EASTERN DISTRICT, EASTERN DISTRICT INCLUDING POCAHONTAS, SOUTHERN REGION, AND PENNSYLVANIA RAILROAD

CROSSTIES AND RAIL LAID IN REPLACEMENT (Concluded)

YEARS 1950-1958
(Index 1950-53 = 100)

Item	Year	Eastern District		Eastern District Including Pocahontas Region		Southern Region		Pennsylvania Railroad	
		Number	Index	Number	Index	Number	Index	Number	Index
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
B. Secondhand Rail									
1. Tons Laid (2,000 pounds)	1950	321,531	94.8	381,259	97.9	235,245	112.4	69,124	83.1
	1951	329,731	97.2	386,981	99.4	218,874	104.6	80,168	96.4
	1952	360,559	106.3	406,688	104.4	193,377	92.4	95,283	114.5
	1953	344,532	101.6	383,044	98.3	189,354	90.5	88,217	106.0
	4-Year Average	339,088	100.0	389,493	100.0	209,213	100.0	83,198	100.0
	1954	262,597	77.4	303,480	77.9	241,734	115.5	40,739	49.0
	1955	288,020	84.9	335,229	86.1	233,533	111.6	55,415	66.6
	1956	283,525	83.6	320,853	82.4	187,420	89.6	47,832	57.5
	1957	261,713	77.2	298,790	76.7	192,885	92.2	50,777	61.0
	1958	151,216	44.6	165,378	42.5	109,075	52.1	36,028	43.3
a. Per Mile of Track Maintained (Line I-B)	1950	3.03	94.4	3.15	97.5	4.22	112.2	2.91	82.9
	1951	3.11	96.9	3.20	99.1	3.93	104.5	3.37	96.0
	1952	3.42	106.5	3.38	104.6	3.49	92.8	4.01	114.2
	1953	3.29	102.5	3.20	99.1	3.41	90.7	3.73	106.3
	4-Year Average	3.21	100.0	3.23	100.0	3.76	100.0	3.51	100.0
	1954	2.53	78.8	2.55	78.9	4.35	115.7	1.73	49.3
	1955	2.83	88.2	2.86	88.5	4.21	112.0	2.41	68.7
	1956	2.83	88.2	2.78	86.1	3.36	89.4	2.12	60.4
	1957	2.65	82.6	2.63	81.4	3.36	89.4	2,27	64.7
	1958	1.54	48.0	1.47	45.5	1.94	51.6	1.62	46.2
b. Per Million Gross Ton Miles	1950	0.52	92.9	0.52	98.1	0.88	114.3	0.43	82.7
	1951	0.52	92.9	0.50	94.3	0.79	102.6	0.47	90.4
	1952	0.60	107.1	0.56	105.7	0.71	92.2	0.60	115.4
	1953	0.58	103.6	0.54	101.9	0.71	92.2	0.56	107.7
	4-Year Average	0.56	100.0	0.53	100.0	0.77	100.0	0.52	100.0
	1954	0.49	87.5	0.48	90.6	0.95	123.4	0.29	55.8
	1955	0.50	89.3	0.47	88.7	0.89	115.6	0.36	69.2
	1956	0.48	85.7	0.44	83.0	0.69	89.6	0.30	57.7
	1957	0.47	83.9	0.42	79.2	0.74	96.1	0.34	65.4
	1958	0.31	55.4	0.28	52.8	0.45	58.4	0.28	53.8

Source: Pennsylvania Railroad - Annual Reports to I.C.C.
Other - I.C.C. "Statistics of Railways in the United States," and Association of American Railroads.

Research Department - PRR
September 21, 1959

CARS OF REVENUE FREIGHT LOADED BY WEEKS

AAR EASTERN, ALLEGHENY, POCAHONTAS AND SOUTHERN DISTRICTS

YEARS 1959, 1958 and 1957

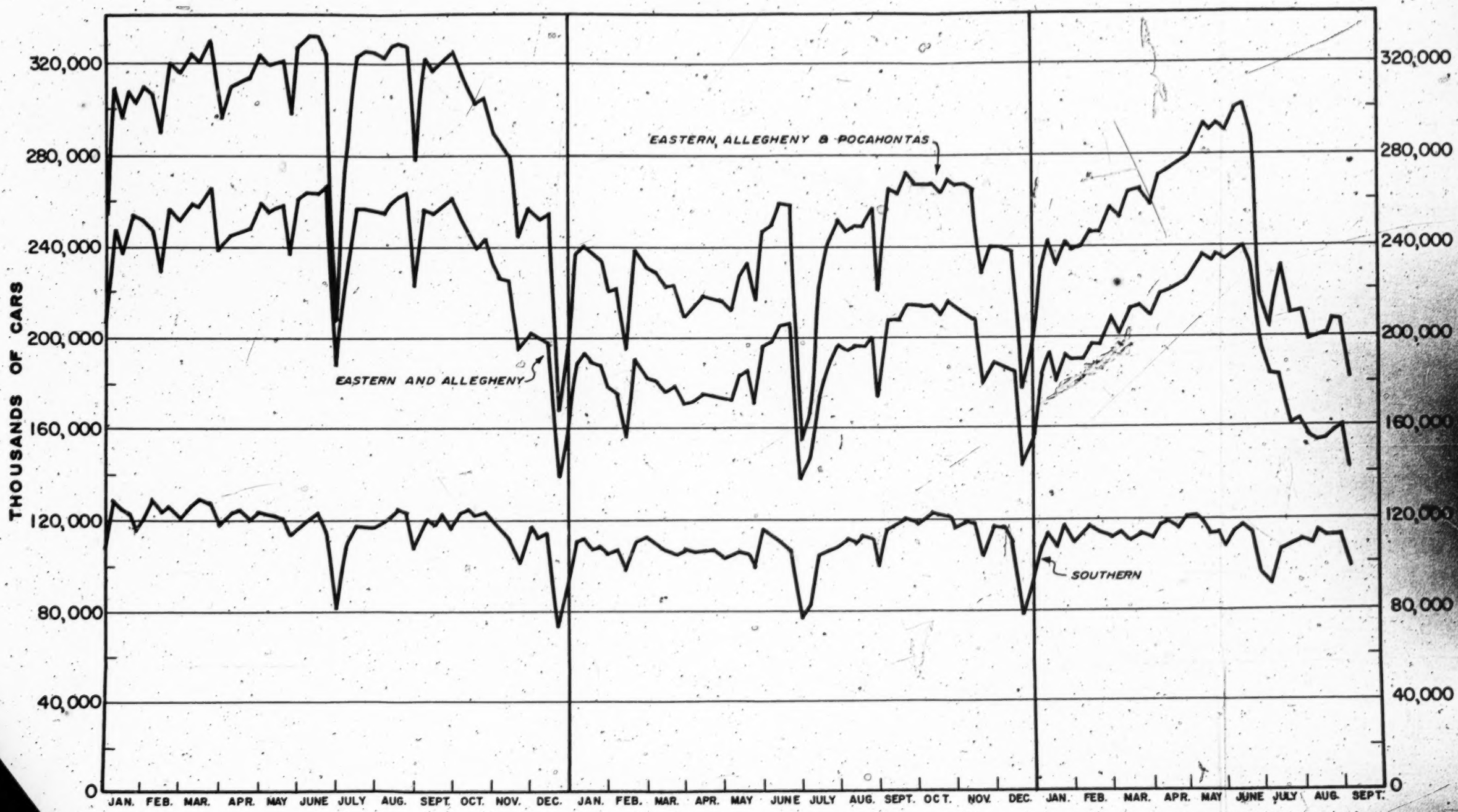
Weeks - 1959	1959 Eastern and Allegheny	1959 Eastern, Allegheny and Pocahontas	1959 Southern	1958 Eastern and Allegheny	1958 Eastern, Allegheny and Pocahontas	1958 Southern	1957 Eastern and Allegheny	1957 Eastern, Allegheny and Pocahontas	1957 Southern
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Jan. 3	154,846	195,151	90,334	156,144	196,087	94,097	206,173	251,846	106,576
10	183,324	230,171	106,830	188,484	237,342	109,988	247,372	308,215	128,056
17	191,722	241,653	112,854	191,630	240,361	111,186	237,228	293,604	123,916
24	180,075	229,536	107,270	187,976	236,251	107,373	245,841	305,797	123,151
31	190,991	242,208	115,640	187,396	233,635	107,026	253,050	302,154	115,372
Feb. 7	189,013	238,664	109,104	177,615	220,383	103,975	251,231	309,046	119,997
14	189,212	240,306	111,548	173,989	220,808	106,292	245,808	305,266	129,275
21	195,997	246,036	115,628	155,700	194,473	97,999	228,229	287,891	122,527
28	195,697	245,968	112,909	189,907	239,143	108,510	254,693	319,709	125,307
Mar. 7	206,274	256,345	112,221	181,035	230,105	110,967	251,484	314,549	120,151
14	201,684	251,333	114,084	179,827	227,133	108,135	257,356	322,955	126,016
21	211,967	262,350	109,927	175,021	220,757	105,406	255,641	320,369	128,594
28	213,194	264,087	113,173	178,025	221,279	103,713	263,665	329,375	127,249
Apr. 4	208,486	254,977	110,839	169,632	208,127	105,691	238,693	293,808	118,274
11	218,347	270,364	117,968	170,911	214,485	105,434	244,296	307,775	122,846
18	218,310	271,383	119,078	174,622	217,636	106,090	245,189	309,965	124,384
25	221,357	275,869	114,872	173,848	216,270	106,222	246,924	312,157	119,650
May 2	223,844	279,142	120,932	172,890	214,963	103,382	257,618	322,346	122,584
9	228,271	283,859	120,523	170,609	211,151	103,971	253,735	319,403	121,608
16	235,527	292,123	118,869	182,734	226,934	105,442	256,023	320,407	122,466
23	231,820	289,043	113,440	185,342	231,862	104,475	256,406	321,438	120,350
30	235,157	290,712	112,761	170,127	215,608	97,677	235,996	295,934	113,474
June 6	232,695	288,741	107,528	195,441	245,973	114,757	260,468	325,892	117,403
13	237,429	298,194	113,795	197,095	249,446	112,275	262,313	330,493	120,301
20	239,923	300,367	116,580	203,918	258,123	108,526	262,329	330,764	122,917
27	229,332	286,054	113,657	204,004	257,160	105,461	265,541	323,214	114,198
July 4	193,815	215,736	96,065	136,619	153,586	76,876	287,225	205,836	80,537
11	181,920	203,035	90,925	146,993	166,397	82,316	231,887	284,276	109,179
18	182,447	229,785	105,343	172,899	220,520	104,330	254,853	322,416	116,589
25	160,950	208,752	107,151	189,251	241,364	105,721	254,582	323,812	115,940
Aug. 1	162,625	209,612	109,380	197,148	250,109	106,893	254,432	323,491	115,584
8	154,808	199,093	107,804	192,838	245,382	110,339	253,002	321,344	118,568
15	153,471	200,533	112,686	194,918	247,074	108,940	258,140	325,676	120,763
22	153,847	200,934	111,622	194,551	247,341	112,190	260,917	327,203	123,686
29	158,415	206,503	111,872	200,603	256,184	111,315	261,586	326,373	123,023
Sept. 5	159,576	206,134	112,417	173,254	219,108	98,546	222,453	277,287	107,055
12	140,840	180,799	97,880	206,318	263,734	115,395	254,511	320,934	119,552
19				205,888	262,480	118,144	252,786	315,813	117,438
26				213,249	271,294	119,565	255,846	320,370	122,288
Oct. 3				212,641	266,464	118,332	260,435	323,850	116,602
10				211,880	265,945	119,689	252,104	314,221	123,185
17				212,974	265,512	123,222	245,183	307,308	124,316
24				209,280	262,485	120,910	238,923	300,734	121,781
31				214,967	267,963	121,418	242,750	302,776	123,472
Nov. 7				212,402	265,568	116,413	230,937	289,009	119,980
14				209,945	264,733	119,017	225,304	283,741	115,734
21				207,361	261,743	117,640	223,586	280,039	111,588
28				178,862	226,599	103,335	194,735	243,304	99,676
Dec. 5				187,547	240,438	116,389	202,133	256,305	116,522
12				186,058	240,342	115,784	200,393	251,346	112,060
19				184,309	236,810	108,659	197,719	253,132	112,560
26				144,179	176,842	78,295	138,680	168,481	72,938

Note: Eastern, Allegheny and Pocahontas Districts include R.F.& P., Southern District excludes R.F.& P.

SOURCE: Association of American Railroads, Car Service Division

Research Department - PRR
September 23, 1959

CARS OF REVENUE FREIGHT LOADED BY WEEKS
AAR EASTERN, ALLEGHENY, POCAHONTAS AND SOUTHERN DISTRICTS
1957 - 1959



Research Department, P.R.R. September 23, 1959.

FREIGHT REVENUE

EASTERN DISTRICT, EASTERN DISTRICT INCLUDING POCAHONTAS, AND SOUTHERN REGION

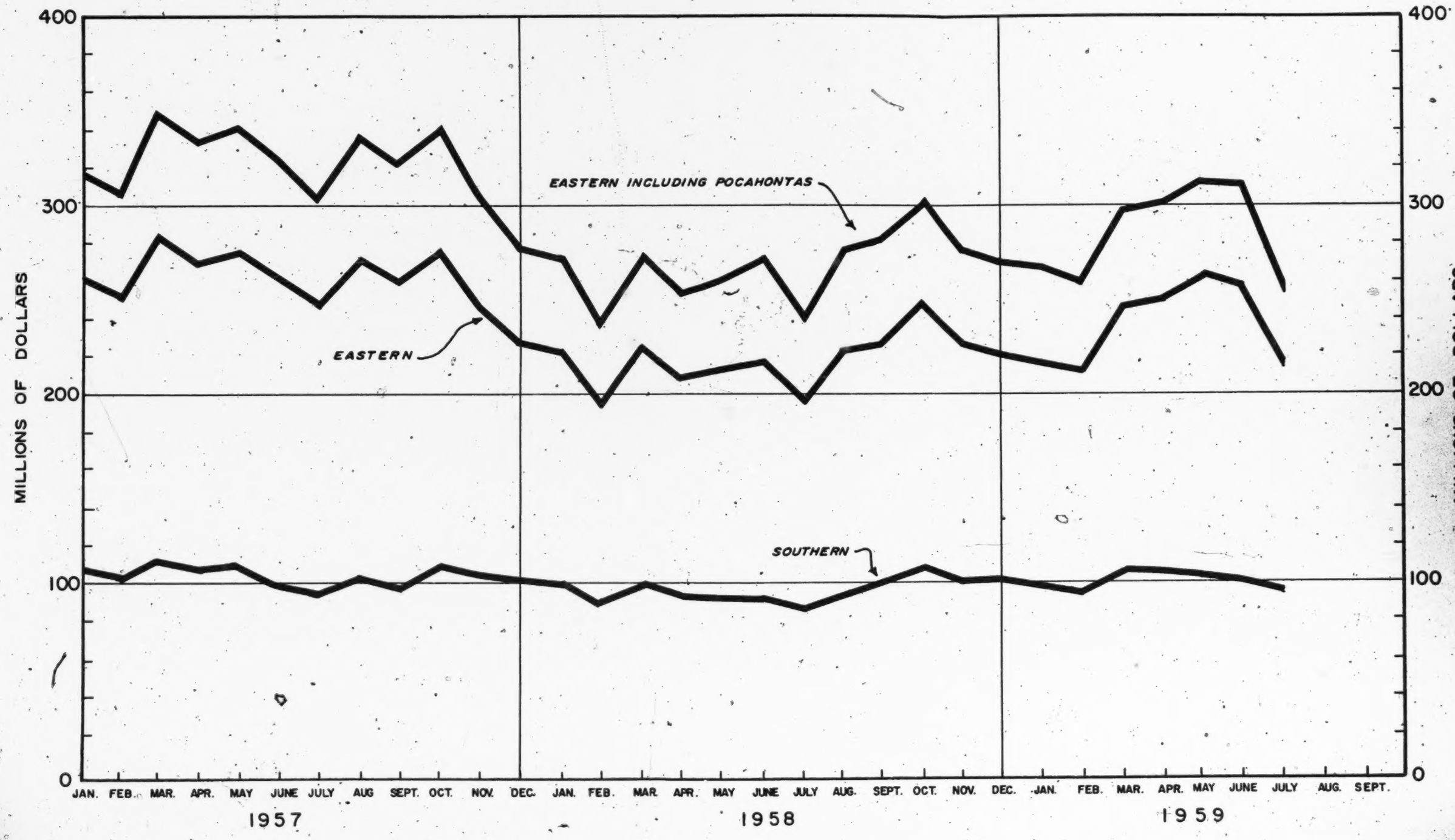
YEARS 1957, 1958 and 1959

Year (1)	Month (2)	Eastern District (3)	Eastern District Including Pocahontas Region (4)	Southern Region (5)
1957	January	$261,569,312	$316,245,084	$108,257,439
	February	252,972,116	306,200,434	102,547,473
	March	283,466,788	348,285,389	113,340,717
	April	270,343,283	332,444,117	109,419,104
	May	276,725,406	341,442,047	112,141,618
	June	261,211,327	324,231,663	100,091,678
	July	248,434,825	302,823,222	96,253,026
	August	271,064,697	337,440,702	104,851,763
	September	260,334,538	321,596,119	100,135,994
	October	276,399,846	340,806,906	111,015,168
	November	246,502,782	303,105,381	105,767,870
	December	227,116,979	277,470,675	103,224,897
1958	January	222,779,148	272,761,590	101,686,414
	February	194,308,636	236,075,736	90,402,571
	March	225,275,379	273,185,017	100,176,627
	April	210,115,545	253,936,786	95,520,130
	May	214,544,804	261,858,528	94,007,458
	June	218,404,711	267,730,613	93,862,616
	July	198,121,187	239,417,816	88,871,413
	August	224,511,893	277,917,411	95,932,493
	September	228,635,423	282,179,855	100,020,727
	October	249,697,382	303,561,485	109,620,307
	November	227,336,481	276,919,927	102,510,755
	December	222,576,030	271,893,358	103,073,691
1959	January	218,866,493	267,133,208	99,599,517
	February	214,283,622	259,347,956	95,897,504
	March	248,268,204	297,625,840	107,253,135
	April	251,912,919	302,443,538	107,047,022
	May	260,137,486	314,016,073	105,973,964
	June	259,435,716	312,629,813	100,993,470
	July	216,634,567	256,967,977	95,570,521

SOURCE: Interstate Commerce Commission Statement No. M.-100

Research Department - PRR
September 24, 1959

FREIGHT REVENUE
EASTERN DISTRICT, EASTERN DISTRICT INCLUDING POCAHONTAS AND SOUTHERN REGION
1957 - 1959



Research Department, P.R.R. September 22, 1959

RESULTS TO STOCKHOLDERS
As Reflected By
COMMON STOCK MARKET PRICES and DIVIDENDS
of
REPRESENTATIVE RAILROADS WHICH DID NOT GO THROUGH BANKRUPTCY
Based On
$5,000 INVESTMENT IN EACH COMPANY IN 1925

Item	Eastern District					Pocahontas Region	Total Eastern Dist. Incl. Pocahontas		Southern Region				
				Total								Total	
	P.R.R.	N.Y.C.	B.& O.	Amount	Index	C.& O.	Amount	Index	Sou.	A.C.L.	L.& N.	Amount	Index
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
A. Present Value of 1925 Investment of $5,000 In Common Stock of Each Company													
1. Investment - 1925	$5,000.00	$5,000.00	$5,000.00	$15,000.00	100.0	$5,000.00	$20,000.00	100.0	$5,000.00	$5,000.00	$5,000.00	$15,000.00	100.0
2. Average Market Price Per Share - 1925	$48.94	$125.38	$82.75	$74.07		$109.88	$80.65		$99.06	$207.63	$127.00	$131.58	
3. Number of Shares - 1925	102.2	39.9	60.4	202.5		45.5	248.0		50.5	24.1	39.4	114.0	
4. Additional Shares due to Stock Splits After 1925	-	-	-	-		136.5	136.5		202.0	48.2	39.4	289.6	
5. Present Number of Shares	102.2	39.9	60.4	202.5		182.0	384.5		252.5	72.3	78.8	403.6	
6. Average Market Price Per Share - 1st 8 Months 1959	$17.81	$28.81	$45.81	$28.33		$70.31	$48.20		$56.81	$55.13	$82.38	$61.50	
7. Present Value of Investment (Line 5 X 6)	$1,820.18	$1,149.52	$2,766.92	$5,736.62	38.2	$12,796.42	$18,533.04	92.7	$14,344.53	$3,985.90	$6,491.54	$24,821.97	165.5
B. Common Stock Dividends													
1925-29 5-year average	$347.48	$301.25	$350.32	$999.05	100.0	$409.50	$1,408.55	100.0	$353.50	$228.95	$263.98	$ 846.43	100.0
1950	102.20	39.90	-	142.10	14.2	273.00	415.10	29.5	151.50	96.40	277.38	525.28	61.1
1954	76.65	-	60.40	137.05	13.7	546.00	683.05	48.5	353.50	144.60	394.00	892.10	105.4
1955	153.30	79.80	120.80	353.90	35.4	568.75	922.65	65.5	404.00	144.60	394.00	942.60	111.4
1956	158.41	107.73(a)	151.00	417.14	41.7	659.75	1,076.89	76.5	656.50	144.60	394.00	1,195.10	141.2
1957	127.75	108.93(b)	151.00	387.68	38.8	728.00	1,115.68	79.2	707.00	144.60	394.00	1,245.60	147.2
1958	25.55	-	90.60	116.15	11.6	728.00	844.15	59.9	707.00	144.60	394.00	1,245.60	147.2

Notes: (a) Includes cash value of U.S. Freight Company shares distributed to stockholders.
(b) Includes cash value of Reading Company common and preferred stock distributed to stockholders.

Source: Moody's Transportation Manuals except current published stock market reports for line A-6.

Research Department - PRR
September 16, 1959

DIVIDENDS PAID BY THE PENNSYLVANIA RAILROAD COMPANY

The Pennsylvania Railroad Company has paid a cash return to its stockholders in every year, beginning with the first payment in May, 1848. The first installment on subscriptions to the capital stock of The Pennsylvania Railroad Company was paid to it in April, 1847. In May, 1848 the Company began the payment of interest on stock subscriptions at the rate of 6% per annum, and similar payments were made in each year until November 1, 1855. Payments designated as dividends have been made in every subsequent year. Allotments of Capital Stock have been made at various times since 1864 at issue prices which resulted in valuable rights on the outstanding stock.

CASH DIVIDENDS PER SHARE

Year	Amount	Year	Amount	Year	Amount	Year	Amount
1848	$3.00	1876	$4.00	1904	$3.00	1932	$ .50
1849	3.00	1877	1.75	1905	3.00	1933	.50
1850	3.00	1878	1.00	1906	3.25	1934	1.00
1851	3.00	1879	2.25	1907	3.50	1935	.50
1852	3.00	1880	1.50	1908	3.00	1936	2.00
1853	3.00	1881	4.00	1909	3.00	1937	1.25
1854	3.00	1882	3.25	1910	3.00	1938	.50
1855	3.00	1883	2.25	1911	3.00	1939	1.00
1856	4.00	1884	2.50	1912	3.00	1940	1.50
1857	2.00	1885	2.50	1913	3.00	1941	2.00
1858	3.00	1886	2.50	1914	3.00	1942	2.50
1859	3.00	1887	2.75	1915	3.00	1943	2.50
1860	3.00	1888	2.50	1916	3.00	1944	2.50
1861	3.00	1889	2.50	1917	3.00	1945	2.50
1862	4.00	1890	2.75	1918	3.00	1946	1.50
1863	4.50	1891	1.50	1919	3.00	1947	.50
1864	5.00	1892	3.00	1920	3.00	1948	1.00
1865	5.00	1893	2.50	1921	2.25	1949	.75
1866	4.50	1894	2.50	1922	2.25	1950	1.00
1867	3.00	1895	2.50	1923	3.00	1951	1.00
1868	4.00	1896	2.50	1924	3.00	1952	1.00
1869	5.00	1897	2.50	1925	3.00	1953	1.50
1870	5.00	1898	2.50	1926	3.12½	1954	.75
1871	5.00	1899	2.50	1927	3.50	1955	1.50
1872	5.00	1900	3.00	1928	3.50	1956	1.55
1873	2.50	1901	3.00	1929	3.87½	1957	1.25
1874	5.00	1902	3.00	1930	4.00	1958	.25
1875	4.00	1903	3.00	1931	3.25		

Total paid, 1848 to 1958, inclusive, $1,476,316,091.

STOCK AND SCRIP DIVIDENDS

Stock Dividends	
1864	30%
1867	5%
1868	5%

Scrip Dividends Redeemable in Cash or Stock			
1873	5%	1883	4%
1880	4%	1884	2%
1882	2%	1891	3%
	1893	2%	

Source: PRR Annual Report.

Research Department - PRR
September 15, 1959

EASTERN DISTRICT INCLUDING POCAHONTAS REGION

RAILROADS WHICH PAID DIVIDENDS ON COMMON STOCK IN 1957, AND REDUCED OR PASSED DIVIDENDS IN 1958 AND 1959

Railroad (1)	Dividends Paid Per Share — Year 1957 (2)	Year 1958 (3)	First 9 Months 1957 (4)	First 9 Months 1958 (5)	First 9 Months 1959 (6)
The Akron, Canton & Youngstown Railroad Company	$ 1.50	$ 0.65	$ 1.00	$ 0.40	$ 1.00
The Baltimore and Ohio Railroad Company	2.50	1.50	1.50	0.75	1.12½
Bangor and Aroostook Railroad Company	2.40	2.20	1.80	1.80	1.00
Chicago and Eastern Illinois Railroad Company	1.25	none	0.75	none	none
The Delaware, Lackawanna and Western Railroad Company	0.62½	none	0.62½	none	none
The Detroit and Toledo Shore Line Railroad Company	20.00	8.00	N.A.	N.A.	N.A.
Detroit, Toledo and Ironton Railroad Company	12.50	11.50	7.75	8.25	6.50
Erie Railroad Company	1.00	none	1.00	none	none
The Lehigh and Hudson River Railway Company	5.00	1.25	1.75	1.25	none
Lehigh and New England Railroad Company	5.25	none	N.A.	N.A.	N.A.
Lehigh Valley Railroad Company	0.90	none	0.90	none	none
Monon Railroad Company	1.25	none	1.25	none	none
The New York Central Railroad Company	1.00+(a)(b)	none	1.00(a)	none	none
The Pennsylvania Railroad Company	1.25	0.25	1.05	none	none
The Pittsburgh and Lake Erie Railroad Company	6.00	4.00	4.50	3.00	3.00
The Pittsburgh and West Virginia Railway Company	1.80	0.40	1.20	0.40	none
Reading Company	2.00	1.25	1.50	1.25	0.50
The Richmond, Fredericksburg and Potomac Railroad Company	5.00	4.00	2.00	1.50	1.75
The Virginian Railway Company(c)	2.40	2.00	1.30	1.50	1.50
Wabash Railroad Company	8.40	4.85	6.15	4.85	2.00

N.A. - Data not readily available.
(a) $1.00 plus 1 share of Reading Company for each 25 shares held.
(b) 1 Share of 2nd Preferred Reading Company Stock for each 65 shares held.
(c) Adjusted for additional 1½ additional shares for each share held to effect a 2½ for 1 split - August 20, 1957.

SOURCE: Moody's Dividend Record

Research Department - PRR
September 24, 1959

PENNSYLVANIA RAILROAD SYSTEM

ESTIMATED ANNUAL PAYMENTS FOR MATURITIES AND INTEREST ON PUBLICLY HELD DEBT

Year Ended Dec. 31	SECTION A — BONDED DEBT			SECTION B — EQUIPMENT OBLIGATIONS			SECTION C — TOTAL DEBT SERVICE		
	Maturities	Estimated Annual Interest	Total	Maturities	Estimated Annual Interest	Total	Maturities	Estimated Annual Interest	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1959	$ 7,554,853.	$ 24,911,000.	$ 32,465,853.	$ 37,222,355.	$ 8,493,000.	$ 45,715,355.	$ 44,777,208.	$ 33,404,000.	$ 78,181,208.
1960	50,439,853.	23,798,000.	74,237,853.	36,158,295.	7,404,000.	43,562,295.	86,598,148.	31,202,000.	117,800,148.
1961	7,530,853.	22,542,000.	30,072,853.	35,072,878.	6,337,000.	41,409,878.	42,603,731.	28,879,000.	71,482,731.
1962	13,728,525.	22,065,000.	35,793,525.	34,866,153.	5,280,000.	40,146,153.	48,594,678.	27,345,000.	75,939,678.
1963	10,517,539.	21,705,000.	32,222,539.	31,703,603.	4,264,000.	35,967,603.	42,221,142.	25,969,000.	68,190,142.
1964	10,449,539.	21,061,000.	31,510,539.	26,543,604.	3,325,000.	29,868,604.	36,993,143.	24,386,000.	61,379,143.
1965	86,694,539.	18,594,000.	105,288,539.	25,804,496.	2,452,000.	28,256,496.	112,499,035.	21,046,000.	133,545,035.
1966	6,877,573.	16,998,000.	23,875,573.	20,229,359.	1,702,000.	21,931,359.	27,106,932.	18,700,000.	45,806,932.
1967	5,609,250.	16,791,000.	22,400,250.	12,994,008.	1,162,000.	14,156,008.	18,603,258.	17,953,000.	36,556,258.
1968	55,584,001.	16,383,000.	71,967,001.	8,200,854.	794,000.	8,994,854.	63,784,855.	17,177,000.	80,961,855.
1969	5,551,250.	13,893,000.	19,444,250.	5,779,134.	551,000.	6,330,134.	11,330,384.	14,444,000.	25,774,384.
1970	25,226,250.	13,118,000.	38,344,250.	5,428,134.	345,000.	5,773,134.	30,654,384.	13,463,000.	44,117,384.
1971	4,266,250.	12,539,000.	16,805,250.	3,954,134.	157,000.	4,111,134.	8,220,384.	12,696,000.	20,916,384.
1972	5,466,250.	12,353,000.	17,819,250.	1,834,134.	48,000.	1,882,134.	7,300,384.	12,401,000.	19,701,384.
1973	20,897,250.	11,958,000.	32,855,250.	301,400.	4,000.	305,400.	21,198,650.	11,962,000.	33,160,650.
1974	35,805,250.	10,270,000.	46,075,250.	-	-	-	35,805,250.	10,270,000.	46,075,250.
1975	69,204,250.	8,571,000.	77,775,250.	-	-	-	69,204,250.	8,571,000.	77,775,250.
1976	13,501,250.	6,992,000.	20,493,250.	-	-	-	13,501,250.	6,992,000.	20,493,250.
1977	14,516,250.	6,585,000.	21,101,250.	-	-	-	14,516,250.	6,585,000.	21,101,250.
1978	10,106,000.	6,184,000.	16,290,000.	-	-	-	10,106,000.	6,184,000.	16,290,000.
TOTALS	459,526,775.	307,311,000.	766,837,775.	286,092,541.	42,318,000.	328,410,541.	745,619,316.	349,629,000.	1,095,248,316.

Source: Financial Department - Pennsylvania Railroad Company

Research Department - PRR
September 15, 1959

PENNSYLVANIA RAILROAD SYSTEM
(Consolidated Basis)

ANNUAL MATURITIES OF PUBLICLY HELD FUNDED DEBT
(Based on Amounts Outstanding December 31, 1958)

		Rate	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	
	1. Bonds:																	
1	Jan. 1 Penna. R. R. 30-Year Secured Serial	4%	$1,084,000	$1,100,000	$1,100,000	$1,100,000	$1,100,000	$1,100,000										1
2	Feb. 1 United New Jersey R. R. & Canal Genl	4½															$1,824,000	2
3	Feb. 1 Pgh., Cinti., Chgo. & St. Louis Ry. Cons. Ser. H	4		265,000														3
4	Feb. 1 Pgh., Youngs. & Ash. Ry. 1st Genl. Ser. B	5				4,804,000												4
5	April 1 Phila., Balto. & Wash. R. R. Genl. Ser. A	4		6,000,000														5
6	May 1 Pgh., Cinti., Chgo. & St. Louis Ry. Cons. Ser. J	4½						2,478,000										6
7	June 1 Penna. R. R. Genl. Ser. A	4½							$79,616,000									7
8	June 1 Pgh., Cinti., Chgo. & St. Louis R. R. Genl. Ser. A	5												$20,000,000				8
9	Aug. 1 Penna. R. R. Consolidated	4½		36,315,000														9
10	Aug. 1 Pgh., Cinti., Chgo. & St. Louis Ry. Cons. Ser. I	4½					2,745,000											10
11	Oct. 1 United New Jersey R. R. & Canal Genl	3															6,487,000	11
12	Oct. 1 New York Bay R. R. 1st Ser. A	3⅜															7,420,000	12
13	Nov. 1 Little Miami R. R. Genl. Ser. A	4				999,000												13
14	Nov. 10 N. Y., Sus. & Western (Croxton Viaduct) Serial	4	60,000	60,000	60,000	60,000	60,000	60,000	60,000	$60,000	$60,000	$60,000	$25,000					14
15	Dec. 1 Penna. R. R. Genl. Ser. B	5										49,992,000						15
	Pennsylvania Company:																	
16	April 1 Secured Serial Notes 1959–1966	2.00 to 2.25	1,354,000	1,323,000	1,254,000	1,325,000	1,006,000	1,205,000	1,412,000	1,254,000								16
17	May 1 Collateral Trust Serial Bonds 1959–1975	3.10 to 4.50	1,805,000	2,125,000	1,865,000	2,200,000	2,400,000	2,400,000	2,400,000	2,400,000	2,400,000	2,400,000	2,400,000	2,100,000	$1,200,000	$2,400,000	2,400,000	17
	Total		4,303,000	47,188,000	4,279,000	10,488,000	7,311,000	7,243,000	83,488,000	3,714,000	2,460,000	52,452,000	2,425,000	22,100,000	1,200,000	2,400,000	18,131,000	
18	**2. Notes—Manor Real Estate Co.**		125,603	125,603	125,603	114,275	80,289	80,289	80,289	37,323	23,000	5,751						18
19	**3. Mandatory Sinking Fund Payments**		3,126,250	3,126,250	3,126,250	3,126,250	3,126,250	3,126,250	3,126,250	3,126,250	3,126,250	3,126,250	3,126,250	3,126,250	3,066,250	3,066,250	2,766,250	19
	Total Bonded Debt		**7,554,853**	**58,439,853**	**7,539,853**	**13,728,525**	**10,517,539**	**10,449,539**	**86,694,539**	**6,877,573**	**5,609,250**	**55,584,001**	**5,551,250**	**25,226,250**	**4,266,250**	**5,466,250**	**20,897,250**	
	4. Equipment Obligations:																	
20	P. R. R. Equipment Trusts		18,470,000	17,669,000	16,660,000	16,654,000	13,502,000	8,422,000	7,729,000	5,005,000	5,005,008	4,978,000	4,403,000	4,052,000	2,578,000	658,000		20
21	P. R. R. Conditional Sales		18,435,103	18,201,603	18,201,603	18,201,603	18,201,603	18,121,604	18,075,496	15,224,359	7,989,008	3,222,854	1,376,134	1,376,134	1,376,134	1,176,134	301,400	21
	Total		**36,905,103**	**35,870,603**	**34,861,603**	**34,855,603**	**31,703,603**	**26,543,604**	**25,804,496**	**20,229,359**	**12,994,008**	**8,200,854**	**5,779,134**	**5,428,134**	**3,954,134**	**1,834,134**	**301,400**	
22	Excelsior Truck Leasing Co. Notes	2½, 3 & 3½	317,252	287,692	211,275	10,550												22
	Total Equipment Obligations		**37,222,355**	**36,158,295**	**35,072,878**	**34,866,153**	**31,703,603**	**26,543,604**	**25,804,496**	**20,229,359**	**12,994,008**	**8,200,854**	**5,779,134**	**5,428,134**	**3,954,134**	**1,834,134**	**301,400**	
	Total		**44,777,208**	**86,598,148**	**42,603,731**	**48,594,678**	**42,221,142**	**36,993,143**	**112,499,035**	**27,106,932**	**18,603,258**	**63,784,855**	**11,330,384**	**30,654,384**	**8,220,384**	**7,300,384**	**21,198,650**	

(Continued on next page.)

PENNSYLVANIA RAILROAD SYSTEM
(Consolidated Basis)

ANNUAL MATURITIES OF PUBLICLY HELD FUNDED DEBT—(Concluded)
(Based on Amounts Outstanding December 31, 1958)

		Rate	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	
	1. Bonds:														
1	Jan. 1 Penna. R. R. Genl. Ser. F	3½%												$31,439,000	1
2	Feb. 1 Phila., Balto. & Wash. R. R. Genl. Ser. B	5	$10,000,000												2
3	Mar. 1 Connecting Ry. 1st Ser. A	3⅛			$6,102,000										3
4	Mar. 1 Northern Central Ry. Gen. & Refdg. Ser. A	4½	6,431,000												4
5	Mar. 1 Northern Central Ry. Gen. & Refdg. Ser. A	5	8,300,000												5
6	Mar. 1 United New Jersey R. R. & Canal Genl.	2¾			5,669,000										6
7	April 1 Penna. R. R. Genl. Ser. D	4¼								$44,041,000					7
8	April 1 Pgh., Cinti., Chgo. & St. Louis R. R. Genl. Ser. B	5		$26,000,000											8
9	May 1 Penna. R. R. Genl. Ser. G	3												32,057,000	9
10	May 1 Phila., Balto. & Wash. R. R. Genl. Ser. F	3½						$12,407,000							10
11	June 1 Pgh., Youngs. & Ash. Ry. 1st Genl. Ser. C	5	1,401,000												11
12	June 1 Pgh., Youngs. & Ash. Ry. 1st Genl. Ser. D	4½				$1,485,000									12
13	July 1 Penna. R. R. Genl. Ser. E	4¼											$31,834,000		13
14	July 1 Phila., Balto. & Wash. R. R. Genl. Ser. C	4½				11,301,000									14
15	Sept. 1 United New Jersey R. R. & Canal Genl.	4½						6,020,000							15
16	Oct. 1 Cleve. & Pgh. R. R. Genl. & Refdg. Ser. C	3	4,727,000												16
17	Oct. 1 Penna., Ohio & Detroit R. R. 1st & Refdg. Ser. E	2⅞		22,773,000											17
18	Oct. 1 Pgh., Cinti., Chgo. & St. Louis R. R. Genl. Ser. E	3⅜		16,051,000											18
19	Oct. 1 Phila., Balto. & Wash. R. R. Genl. Ser. E	3					$8,509,000								19
	Pennsylvania Company:														
20	May 1 Collateral Trust Serial Bonds 1959–1975	3.10 to 4.50	2,400,000	2,400,000											20
	Total Bonds		33,259,000	67,224,000	11,771,000	12,786,000	8,509,000	18,427,000		44,041,000			31,834,000	63,496,000	
21	2. Mandatory Sinking Fund Payments		2,546,250	1,980,250	1,730,250	1,730,250	1,597,000	1,422,000	$1,422,000	1,422,000	$1,422,000	$1,422,000	572,000		21
	Total		35,805,250	69,204,250	13,501,250	14,516,250	10,106,000	19,849,000	1,422,000	45,463,000	1,422,000	1,422,000	32,406,000	63,496,000	

Source: PRR Annual Report.

Research Department - PRR
September 15, 1959

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Tons		12	12	12	12
Per mile of track maintained		12	12	12	12
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Tons		13	13	13	13
Per mile of track maintained		13	13	13	13
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VERIFIED STATEMENT NO. 5 OF ALFRED E. PERLMAN.

(Due Date: October 1, 1959.)

[1]

My name is Alfred E. Perlman. I am President of The New York Central Railroad Company. I started working for railroads at the age of 15 and since graduation from college have been associated with the Northern Pacific, the Chicago, Burlington and Quincy, and the Denver and Rio Grande Western. I was elected President of the New York Central on June 14, 1954.

The Central has an imperative need for increased revenues, as I shall explain. A comparative indicator of a railroad's revenue and financial condition is its rate of return on investment. Last year Central earned less than $12-million in net railway operating income on an investment in transportation plant and equipment of just under $2-billion, for a return of sixty-one hundredths of one percent. Exhibit No. 1, attached hereto, shows that from 1930, except for the war years, our rate of return exceeded 3 percent in only two years. Because of our very poor recent earnings, we have not paid a dividend to our stockholders since 1957.

Central's low earnings have been directly reflected in its credit rating. We have been unable to secure, at reasonable terms, the capital necessary to keep our operations abreast of rapidly changing technology and service requirements.

[2]

Whereas our average annual capital expenditure for the 1947-1957 period was close to $83-million, my Exhibit No. 2 shows that in 1958 our capital expenditures dropped to a low of $18-million, with capital expenditures for 1959 continuing at about the same low level. This is alarming because the changes in technology have been such and are continuing at such a pace that the Central should be spend-

ing for improvement and modernization at a much greater-than-average rate.

In the last three years we have had to delay or curtail important capital projects which were badly needed, for example, the installation of centralized traffic control on the tracks between Cleveland and Toledo, Ohio, at a proposed cost of $3.7-million, because money just was not available to permit this expenditure. Our entire yard building and centralized traffic control program has been seriously delayed for the same reason.

In June of this year Central found it necessary to apply to the Interstate Commerce Commission, in Finance Docket No. 20689, for an "additions and betterments" loan guaranty of a $40-million loan. The application was made pursuant to Part V of the Interstate Commerce Act, Section 504, which imposes as a condition to a guaranty of such loans that the Commission find that—

[3]

> "the carrier would be unable to obtain necessary funds, on reasonable terms, for the purposes for which the loan is sought;"

In view of this requirement, the decision to seek the loan guaranty was not easily made. It is obvious that an admission by a carrier that it cannot otherwise obtain necessary funds on reasonable terms can do serious damage to its credit standing. Nevertheless, because of the great need for additional funds, we felt impelled to make the application which was approved in Finance Docket No. 20689 on September 16, 1959.

In the immediate future Central is faced with an extraordinarily heavy schedule of fixed obligations which must be paid. Exhibit No. 3 shows that in 1960 Central will pay over $74-millions in fixed charges and maturities. In 1961, the figure will reach $89-million; in 1962, $98-million, and in 1963, $75-million, for a total of over $338-million in the 1960-1963 period. With a favorable bond

market, we believe that we can refinance $10-million of our 1960 obligations, and $12-million of our 1961 obligations. This will leave us with about $316-million in fixed charges and maturities for the four-year period beginning January 1, 1960. At our present level of earnings we are going to find that the satisfaction of these obligations will impose critical restrictions upon our finances in other areas.

Our financial problem has been influenced by a multitude of factors, many of which have borne upon the industry

[4]

generally, but which have fallen with particular severity upon the Central due to the urban nature of the territory which the Central serves and the intricate complex and variety of services which the Central must maintain in order to support its markets and production areas.

Inflation, for example, has hit all railroads, but it has hit the Central particularly hard; first, because of its high proportion of passenger service, which involves a relatively high labor factor and, second, because of its abnormally large proportion of terminal operations. This latter is demonstrated by the fact that the New York Central, in 1958, operated 3.015-million freight yard switching locomotive hours in comparison with 1.309-million freight train hours, a 2.30 ratio, whereas the railroads in the Southern Region operated 5.264-million freight yard switching locomotive hours versus 3.447-million freight train hours, a 1.53 ratio. Although the diesel unquestionably has reduced the cost of locomotive operation per engine hour in both yard and road service, it has not greatly improved the productivity in terms of cars handled per engine hour in either the North or the South, whereas in road service the diesel locomotive has immeasurably improved trainload and gross ton miles per train hour both for the northern and the southern railroads. Thus, the lines in the North, and the Central in particular, have not had the opportunity to ameliorate the impact

[5]

of inflation upon their operations due to their larger volume of terminal services as have the lines operating in the South with their greater proportion of line-haul services.

Similarly, while many railroads have been subjected to increased highway competition through the development of improved thruways or expressways, few railroads in the country have been subjected to this form of competition to the same extent as Central. Our railroad is faced with a thruway or expressway which parallels its main line through the entire states of Massachusetts, New York, Ohio, and much of Indiana. It is, therefore, not surprising that, although the railroads in the South throughout the years 1946-1958 have experienced substantially no diminution in their volume of traffic when measured in terms of gross ton miles, the Central, in common with the eastern lines in this period, has suffered a substantial decrease in volume. This is shown by the following table:

[6]

Gross Ton Miles—Freight

Year	*New York Central*	*Eastern District (incl. Poco.)*	*Southern Region*
	Freight Gross Ton Miles	*Freight Gross Ton Miles*	*Freight Gross Ton Miles*
	(000)	*(000)*	*(000)*
1946	97,431,743	568,795,783	191,026,122
1947	102,176,777	619,522,344	202,682,110
1948	97,888,767	594,361,549	199,044,135
1949	84,217,772	488,538,141	173,937,628
1950	92,083,904	535,221,332	192,436,490
1951	94,603,822	575,042,545	203,428,344
1952	88,230,831	536,304,356	200,757,837
1953	89,476,960	534,398,645	198,354,929
1954	78,963,966	475,534,187	189,337,479
1955	88,667,820	549,429,400	201,596,901
1956	86,588,990	573,888,298	207,193,369
1957	80,185,378	553,399,276	198,804,175
1958	70,103,892	463,388,138	187,967,764

This fact has limited the opportunity of the eastern lines and the Central to minimize the impact of inflation, whereas the increased or relatively constant volume in the South has enlarged the opportunity of the railroads serving this area to deal with such problems because it has permitted a greater utilization of the improved technology in railroading which has been afforded in this period. For example, the Central has invested in several large electronic yards at the cost of many millions of dollars which would be expected to materially reduce its cost of switching. But these yards under present traffic levels are only handling about one-half their designed capacity, with the result that

[7]

although the Central has kept well abreast of the changing railroad technology, it is not realizing, and under present traffic conditions, it cannot realize its full benefits. Had we enjoyed the same relative traffic volume (i.e., approximately 100-billion gross ton miles or approximately 4,600,000 cars handled) enjoyed by the Southern lines, we would be receiving a handsome return on these investments in the form of reduced unit costs which would enable us to better offset effects of inflation upon wages and materials.

In addition, the Central, in serving its highly urbanized territory, is faced with the necessity of maintaining, under present regulatory requirements, a substantial volume of passenger service, including communtation service, which has produced deficits in the post-war era beginning with 1947, ranging from $30-million to $54-million annually. These deficits have absorbed between 34 and 73.7 percent of the railroad's freight net operating income or an average of 52.2 percent for the period. (See Exhibit No. 4.) We are told repeatedly by the state agencies in New Jersey and New York that such services are essential to the existence of metropolitan New York. This is the same metropolitan New York that consumes substantial quantities of southern products, such as perishables and lumber. When

expected to provide us with the funds, required to continue the modernization program which is essential to our survival; neither has our Other Income been sufficient to maintain our credit at a point where funds could be generated from outside sources at reasonable rates to continue our modernization program. Thus, it is imperative that the Central receive from its railroad income sufficient to not only satisfy the expense of operation, but also to generate the funds or credit necessary to continue the modernization and debt retirement programs which are vital to the continuance of the Central as a financially dependable and satisfactory partner in the interterritorial service which it affords with its connections.

(Verification omitted in printing.)

we sought to discontinue the West Shore segment of commutation service, we were forced to include in our presentation

[8]

before the State Commission a statement of our freight earnings, as well as our passenger earnings, because in the view, at least of state regulatory bodies with which we have to live, there is an intimate tie between the two services which relate to a common market. Yet, the earnings which we have been receiving on freight traffic have not been sufficient to absorb the passenger deficit and maintain the Central in a healthy financial condition.

More recently, the Central and other eastern lines have been faced with a new form of competition, namely the St. Lawrence Seaway, which has exposed a substantial proportion of the Central's total traffic to competition from not only low cost foreign tramp steamships, but also from American steamship lines, which are subsidized by the Federal government to meet such low cost competition. As a consequence, the Central and the other eastern lines have had to make substantial rate reductions on important commodities. Central is in the process of making reductions on other important commodities moving intraterritorially within the East and moving to export through the North Atlantic ports. These commodities have up to now borne a much greater share of the total cost of maintaining the complex of rail service which the Central must maintain in order to serve its territory than they can be expected to bear in the future. This is illustrated by the following table of commodities which have suffered rate cuts to meet Seaway competition.

[9]

These statistics have been compiled from the Bureau of Accounts, Cost Finding and Evaluation's Statement 2-59, *Distribution of Rail Revenue Contribution by Commodity Groups—1957*, based upon the 1 percent waybill study.

OFFICIAL TO OFFICIAL TERRITORY—1957.

No.	Commodity	Carloads	Revenue (Dollars)	Contribution (over O.P. Costs) (Dollars)	Ratio of Revenue to O.P. Cost
001	Wheat	899	222,174	59,736	137
003	Corn	2,183	594,154	204,600	153
007	Oats	265	57,598	13,049	129
009	Barley & Rye	188	46,501	8,600	123
043	Soybeans	834	198,831	103,553	209
	Totals	4,369	1,119,248	389,538	
900	Products of Agriculture	8,362	1,916,187	373,475	124

All of these factors add up to the necessity for the Central's receiving from its traffic, particularly its interterritorial traffic, increased revenue if the Central is to maintain the financial position necessary to continue to service the interterritorial traffic as it has in the past. We have done and are doing everything within the limits of the number of dollars available to modernize our plant, reduce our costs, and

[10]

maintain efficient service. However, as the financial record indicates, the cost of inflation in relation to our operating conditions and the impact of competitive factors have more than offset our best efforts in this respect, with the result that the Central did not receive in 1958, and probably will not receive in 1959, revenue from its railway operation sufficient to pay its total costs. In short, the Central's Other Income has kept it solvent in the last two years as it has in 9 of the 13 post-war years. Although our Other Income to date has proven sufficient to keep us out of the red, it has not provided us with the funds, and cannot be

THE NEW YORK CENTRAL RAILROAD COMPANY

RATE OF RETURN ON NET INVESTMENT

Year	Net Investment in Property Used in Transportation Service, including Cash Material and Supplies	Net Railway Operating Income	Rate of Return
1930	$ 1,928,266,677	$ 57,235,527	2.97%
1931	1,915,558,526	28,075,579	1.47
1932	1,912,793,717	20,812,987	1.09
1933	1,904,479,321	33,269,162	1.75
1934	1,874,494,333	29,160,928	1.56
1935	1,853,313,768	36,748,524	1.98
1936	1,826,507,398	45,278,626	2.48
1937	1,822,159,839	36,028,267	1.98
1938	1,793,555,565	15,582,476	0.87
1939	1,778,014,587	37,303,427	2.10
1940	1,794,024,850	44,052,437	2.46
1941	1,787,373,333	57,418,760	3.21
1942	1,753,702,893	90,399,495	5.15
1943	1,775,492,184	88,524,297	4.99
1944	1,731,283,116	65,759,085	3.80
1945	1,690,070,069	49,944,321	2.96
1946	1,698,912,447	15,447,219	0.91
1947	1,729,952,127	24,519,561	1.42
1948	1,769,777,469	37,221,591	2.10
1949	1,789,366,546	32,295,475	1.80
1950	1,813,503,082	37,475,423	2.07
1951	1,892,312,644	40,049,934	2.12
1952	2,009,824,262	49,817,193	2.48
1953	2,024,336,041	63,180,171	3.12
1954	2,001,574,700	33,034,962	1.65
1955	1,970,726,485	73,897,427	3.75
1956	1,969,446,839	58,320,739	2.96
1957	1,991,929,058	29,532,356	1.48
1958	1,933,930,595	11,824,179	0.61

Source: Carrier's Reports to the Interstate Commerce Commission.

THE NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF EXPENDITURES FOR ROAD AND EQUIPMENT, BY YEARS FROM 1947 TO JUNE 30, 1959, AS REPORTED TO I.C.C. ON FORM IBS.

	Expended for Road and Equipment (Including Leased Lines)
Year 1947	$ 48,368,092
" 1948	90,169,767
" 1949	100,548,059
" 1950	63,000,485
" 1951	114,070,860
" 1952	140,490,713
" 1953	82,979,056
" 1954	39,134,917
" 1955	39,601,087
" 1956	79,343,937
" 1957	114,199,316
" 1958	18,215,938
June 30, 1959	11,728,114
1947-1957 Total	$ 911,906,289
Average	82,900,472

MATURING OBLIGATIONS:

a) Installments on the $40 000 000 Loan Agreement
b) New York Central R.R. Co. Mortgage bonds
c) Lessor Companies - Mortgage Bonds
d) Equipment Trust Certificates
e) Conditional Sales Agreements
f) Sinking Fund- N.Y.C.Collateral Trust - 5 3/4%
g) do. do. - 5 1/4%
h) do. do. - 6%

Total Maturing Obligations

FIXED CHARGES:

a) Rent for leased roads and equipment:
1 - Fixed rental
2 - Other

Total

b) Interest on funded debt:
1 - On the $40 000 000 Loan
2 - Mortgage Bonds
3 - Equipment Trust Certificates
4 - Conditional Sale Agreements

Total

c) Interest on unfunded debt:
1 - New York State Grade Crossing Elimination Projects
2 - Cleveland Mail Terminal
3 - Peoria & Eastern Ry. Co.

Total

d) Amortization of discount on funded debt

Total fixed charges

Total of Maturing Obligations and fixed charges

THE NEW YORK CENTRAL RAILROAD COMPANY Exhibit No: 3 to V.S

apitulation of Maturing Long-Term debt and fixed charges
for the years 1959 to 1974, inclusive.

1959	1960	1961	1962	1963	1
-	-	-	-	$ 3 300 000	$ 3 3
$17 252 150	$ 7 706 000	$ 4 436 000	-	-	
1 068 000	-	18 000 000	$29 235 000	3 356 000	
11 371 000	10 408 000	10 713 000	11 161 000	11 157 000	11 1
18 138 840	12 343 419	12 996 870	16 251 114	17 628 350	15 2
25 000	25 000	25 000	25 000	25 000	
10 000	10 000	10 000	10 000	10 000	
1 000 000	1 000 000	1 000 000	1 000 000	1 000 000	1 0
48 864 990	31 492 419	47 180 870	57 682 114	36 476 350	30
9 613 464	9 584 984	9 044 984	8 409 546	7 271 646	7
4 471 500	4 471 500	4 471 500	4 471 500	4 471 500	4
14 084 964	14 056 484	13 516 484	12 881 046	11 743 146	11
-	1 075 000	1 825 000	2 000 000	2 000 000	1
21 046 949	20 775 508	20 531 211	20 420 308	20 358 870	20
2 884 503	2 555 619	2 226 979	1 894 813	1 553 183	1
4 092 367	3 777 575	3 368 430	2 873 231	2 238 720	1
28 023 819	28 183 702	27 951 620	27 188 352	26 150 773	24
522 512	503 537	484 685	466 367	447 751	
380 531	355 781	331 031	306 281	281 531	
80 000	70 000	70 000	70 000	70 000	
983 043	929 318	885 716	842 648	799 282	
105 625	92 664	80 172	67 970	55 963	
43 197 451	43 262 168	42 433 992	40 980 016	38 749 164	37
$92 062 441	$74 754 587	$89 614 862	$98 662 130	$75 225 514	$68

Recapitulation of Maturing Long-Term debt and fixed charges
for the years 1959 to 1974, inclusive.

Sheet 1 of 2.

	1959	1960	1961	1962	1963	1964	1965	1966	1967
n Agreement	-	-	-	-	$ 3 300 000	$ 3 300 000	$ 3 300 000	$ 3 300 000	$ 3 300 000
bonds	$17 252 150	$ 7 706 000	$ 4 436 000	-	-	-	-	-	-
	1 068 000	-	18 000 000	$29 235 000	3 356 000	-	-	-	-
	11 371 000	10 408 000	10 713 000	11 161 000	11 157 000	11 163 000	7 612 000	5 912 000	4 872 000
	18 138 840	12 343 419	12 996 870	16 251 114	17 628 350	15 292 774	15 143 814	13 289 342	3 945 634
t - 5 3/4%	25 000	25 000	25 000	25 000	25 000	25 000	25 000	25 000	25 000
- 5 1/4%	10 000	10 000	10 000	10 000	10 000	10 000	10 000	10 000	10 000
- 6%	1 000 000	1 000 000	1 000 000	1 000 000	1 000 000	1 000 000	1 000 000	1 000 000	1 000 000
ons	48 864 990	31 492 419	47 180 870	57 682 114	36 476 350	30 790 774	27 090 814	23 536 342	13 152 634
t:	9 613 464	9 584 984	9 044 984	8 409 546	7 271 646	7 146 884	7 146 884	7 146 884	7 146 884
	4 471 500	4 471 500	4 471 500	4 471 500	4 471 500	4 471 500	4 471 500	4 471 500	4 471 500
	14 084 964	14 056 484	13 516 484	12 881 046	11 743 146	11 618 384	11 618 384	11 618 384	11 618 384
	-	1 075 000	1 825 000	2 000 000	2 000 000	1 835 000	1 670 000	1 505 000	1 340 000
	21 046 949	20 775 508	20 531 211	20 420 308	20 358 870	20 296 908	20 234 945	20 172 983	20 111 020
	2 884 503	2 555 619	2 226 979	1 894 813	1 553 183	1 211 563	898 513	670 699	477 535
	4 092 367	3 777 575	3 368 430	2 873 231	2 238 720	1 594 771	1 003 368	419 416	198 451
	28 023 819	28 183 702	27 951 620	27 188 352	26 150 773	24 938 242	23 806 826	22 768 098	22 127 006
g	522 512	503 537	484 685	466 367	447 751	429 776	412 418	395 317	378 753
	380 531	355 781	331 031	306 281	281 531	256 781	232 031	207 280	182 531
	80 000	70 000	70 000	70 000	70 000	70 000	70 000	70 000	70 000
	983 043	929 318	885 716	842 648	799 282	756 557	714 449	672 598	631 284
debt	105 625	92 664	80 172	67 970	55 963	44 279	35 199	26 255	19 682
	43 197 451	43 262 168	42 433 992	40 980 016	38 749 164	37 357 462	36 174 858	35 085 335	34 396 356
ixed charges	$92 062 441	$74 754 587	$89 614 862	$98 662 130	$75 225 514	$68 148 236	$63 265 672	$58 621 677	$47 548 990

THE NEW YORK CENTRAL RAILROAD COMPANY — Exhibit No. 3 to V.S. No.

Recapitulation of Maturing Long-Term debt and fixed charges
for the years 1959 to 1974, inclusive.

	1968	1969	1970	1971	1972	1973
MATURING OBLIGATIONS:						
a) Installments on the $40 000 000 Loan Agreement	$3 300 000	$3 300 000	$3 300 000	$3 300 000	$3 300 000	$3 300 00
b) New York Central R.R.Co. Mortgage Bonds	-	-	-	-	-	-
c) Lessor Companies - Mortgage Bonds	-	-	-	-	-	-
d) Equipment Trust Certificates	3 369 000	1 969 000	1 969 000	1 029 000	1 029 000	-
e) Conditional Sales Agreements	1 069 118	856 920	-	-	-	-
f) Sinking Fund- N.Y.C. Collateral Trust - 5 3/4%	25 000	25 000	25 000	25 000	25 000	25 00
g) do. do. - 5 1/4%	10 000	10 000	10 000	10 000	10 000	10 00
h) do. do. - 6%	1 000 000	1 000 000	1 000 000	1 000 000	1 000 000	1 000 00
Total Maturing Obligations	8 773 118	7 160 920	6 304 000	5 364 000	5 364 000	4 335 00
FIXED CHARGES:						
a) Rent for leased roads and equipment:						
1 - Fixed rental	7 125 929	7 104 974	7 104 974	7 104 974	7 104 974	7 104 9
2 - Other	4 471 500	4 471 500	4 471 500	4 471 500	4 471 500	4 471 5
Total	11 597 429	11 576 474	11 576 474	11 576 474	11 576 474	11 576 4
b) Interest on funded debt:						
1 - On the $40 000 000 Loan	1 175 000	1 010 000	845 000	680 000	515 000	350 0
2 - Mortgage bonds	20 049 058	19 987 095	19 925 133	19 863 170	19 801 208	19 739 2
3 - Equipment Trust Certificates	324 870	229 401	172 762	78 694	30 181	-
4 - Conditional Sale Agreements	75 482	25 233	-	-	-	-
Total	21 624 410	21 251 729	20 942 895	20 621 864	20 346 389	20 089 2
c) Interest on unfunded debt:						
1 - New York State Grade Crossing Elimination Projects	362 483	346 713	329 992	313 491	297 400	281 1
2 - Cleveland Mail Terminal	157 781	133 031	108 281	83 531	58 781	34 0
3 - Peoria & Eastern Ry. Co.	70 000	70 000	70 000	70 000	70 000	70 0
Total	590 264	549 744	508 273	467 022	426 181	385 1
d) Amortization of discount on funded debt	14 797	11 528	8 346	5 938	4 532	4 0
Total fixed charges	33 826 900	33 389 475	33 035 988	32 671 298	32 353 576	32 054 8
Total of Maturing Obligations and fixed charges	$42 600 018	$40 550 395	$39 339 988	$38 035 298	$37 717 576	$36 389 8

Recapitulation of Maturing Long-Term debt and fixed charges
for the years 1959 to 1974, inclusive.

	1968	1969	1970	1971	1972	1973	1974	Total
Loan Agreement	$3 300 000	$3 300 000	$3 300 000	$3 300 000	$3 300 000	$3 300 000	$3 700 000	$40 000 000
e Bonds	-	-	-	-	-	-	-	29 394 150
s	-	-	-	-	-	-	-	51 659 000
	3 369 000	1 969 000	1 969 000	1 029 000	1 029 000	-	-	93 734 000
	1 069 118	856 920	-	-	-	-	-	126 956 195
Trust - 5 3/4%	25 000	25 000	25 000	25 000	25 000	25 000	25 000	400 000
- 5 1/4%	10 000	10 000	10 000	10 000	10 000	10 000	10 000	160 000
- 6%	1 000 000	1 000 000	1 000 000	1 000 000	1 000 000	1 000 000	1 000 000	16 000 000
ions	8 773 118	7 160 920	6 304 000	5 364 000	5 364 000	4 335 000	4 735 000	358 303 345
ent:								
	7 125 929	7 104 974	7 104 974	7 104 974	7 104 974	7 104 974	7 104 974	122 267 933
	4 471 500	4 471 500	4 471 500	4 471 500	4 471 500	4 471 500	4 471 500	71 544 000
	11 597 429	11 576 474	11 576 474	11 576 474	11 576 474	11 576 474	11 576 474	193 811 933
	1 175 000	1 010 000	845 000	680 000	515 000	350 000	185 000	18 010 000
	20 049 058	19 987 095	19 925 133	19 863 170	19 801 208	19 739 245	19 677 283	322 990 894
tes	324 870	229 401	172 762	78 694	30 181	-	-	15 209 315
ts	75 482	25 233	-	-	-	-	-	19 667 044
	21 624 410	21 251 729	20 942 895	20 621 864	20 346 389	20 089 245	19 862 283	375 877 253
sing								
	362 483	346 713	329 992	313 491	297 400	281 130	264 859	6 237 184
	157 781	133 031	108 281	83 531	58 781	34 031	9 281	3 118 496
	70 000	70 000	70 000	70 000	70 000	70 000	70 000	1 130 000
	590 264	549 744	508 273	467 022	426 181	385 161	344 140	10 485 680
led debt	14 797	11 528	8 346	5 938	4 532	4 000	4 000	580 950
	33 826 900	33 389 475	33 035 988	32 671 298	32 353 576	32 054 880	31 786 897	580 755 816
d fixed charges	$42 600 018	$40 550 395	$39 339 988	$38 035 298	$37 717 576	$36 389 880	$36 521 897	$939 059 161

THE NEW YORK CENTRAL RAILROAD COMPANY

NET RAILWAY OPERATING INCOME - FREIGHT AND PASSENGER

Year	Freight Net Railway Operating Income (1)	Passenger Net Railway Operating Income (2)	Percent of Freight Net Railway Operating Income required to absorb Passenger Net Railway Operating Deficit Col. (2) ÷ Col. (1)	
1936	$ 52,537,966	$ 8,390,282 Deficit	16.0	
1937	43,412,982	8,469,961 Deficit	19.5	
1938	25,680,262	10,843,639 Deficit	42.2	
1939	48,244,478	11,724,935 Deficit	24.3	
1940	61,677,856	18,370,631 Deficit	29.8	
1941	75,795,317	19,081,160 Deficit	25.2	
1942	77,419,646	12,495,474	-	
1943	60,279,676	28,031,864	-	
1944	36,939,185	28,451,810	-	
1945	8,503,063	40,711,764	-	
1946	14,152,299	1,249,765	-	
1947	54,040,704	30,114,386 Deficit	55.7	
1948	85,112,613	48,550,613 Deficit	57.0	
1949	81,369,888	49,661,066 Deficit	61.0	
1950	71,071,362	33,966,085 Deficit	47.8	
1951	93,878,195	54,266,425 Deficit	57.8	Average
1952	99,995,250	50,521,758 Deficit	50.6	1947 - 1958
1953	114,656,180	52,439,291 Deficit	45.7	
1954	71,488,308	38,806,458 Deficit	54.3	52.2%
1955	111,281,598	37,788,353 Deficit	34.0	
1956	106,472,324	48,476,269 Deficit	45.5	
1957	81,685,060	52,282,982 Deficit	64.0	
1958	44,157,312	32,560,775 Deficit	73.7	

Source: Annual Reports to the Interstate Commerce Commission.

VERIFIED STATEMENT NO. 6
OF JOHN I. BARNES

(Verified September 29, 1959)

[1]

My name is John I. Barnes. I am Comptroller of The Baltimore and Ohio Railroad Company, with headquarters at Baltimore, Maryland.

This statement is made on behalf of The Baltimore and Ohio Railroad Company in support of petition of Eastern Railroads for an increase in divisions on traffic moving between Official and Southern territories.

The Baltimore and Ohio is an important part of the Official Territory railroad system which serves the densely populated and highly industrialized Official Territory. It is an integral part of the transportation system of the country which is essential to the public interest. It serves thirteen states and many large and populous cities, which depend on it for transportation service adequate to meet the needs of commerce as well as the national defense. Its healthy financial and economic state, so necessary to continue to provide adequate service, depends on sufficient earnings from the service it performs.

In the thirteen years since the end of World War II, the earnings of the Baltimore and Ohio have been inadequate to provide sufficient funds to permit it to keep up with technological advancements and modernization, including necessary replacements; improve its cash position, and give its owners, the stockholders, a fair return on their investments in the property they provide for public service.

Exhibit A shows the net investment of the Baltimore and Ohio in property devoted to transportation service, net railway operating income, and rate of return in each of the

years 1946 to 1958, inclusive. The return earned by the Baltimore and Ohio on its net investment in those years ranged from a high of 4.4% in 1948 downward to a low of 2.61% in 1958. The

[2]

average return over those years was only 3.56%. Present indications are that the return in 1959 will be even lower than the extremely poor result of last year.

Exhibit B is the record of Current Assets (excluding materials and supplies), Current Liabilities and Net Working Capital as of December 31 in each year 1946 to 1958, and as of July 31, 1959. Net working capital of the Baltimore and Ohio, excluding materials and supplies, December 31, 1946, was $38,862,386. By the end of 1957 it had been entirely wiped out and there was a *deficit* of $3,366,723. As of July 31, 1959, net working capital was $13,364,997—only one-third of what it was December 31, 1946—and much too small to provide for our needs.

Lack of funds has prevented the Baltimore and Ohio from making capital expenditures which would provide better transportation service and enable it to maintain and improve its competitive position. An outstanding illustration of this situation is the new modern yard at Cumberland, Md., estimated cost $15 million. It is expected that this new facility, if and when completed, would enable us to move traffic more expeditiously and establish schedules that would provide shippers and receivers with as good or better service than our competitors. Construction work on this yard began October 10, 1956 but was suspended February 1, 1958 after $6 million had been expended and the project about one-third complete. We need $9 million to finish it, but we simply don't have it now for that purpose. Until the necessary funds are available from earnings, construction cannot be resumed and meanwhile we are being deprived of the advantages.

There are many other improvements that should be made in our plant

[3]

to keep the railroad up to date and meet the transportation service requirements of our shippers and receivers. They include reduction in grades, elimination of clearance restrictions, reconstruction of bridges, new retarder yards, Centralized Traffic Control, improved freight station facilities, piers and warehouses, improvements in interlocking signals, communications, etc. We also need new roadway and shop machinery and tools. Many of our older freight train cars should be replaced, and a number of new ones, specially equipped to handle certain commodities, should be acquired. These are not transitory requirements but are of a continuing nature.

Inability of Eastern roads to maintain their competitive position not only adversely affects them but also their connections serving other territories. The loss of traffic originating or terminating in the East and moving between points in the South or West will reduce the volume of rail traffic of the roads in those territories. On the other hand, ability of Eastern roads to provide transportation service which attracts increased traffic or discourages diversion will produce additional traffic for Southern and Western roads to and from the populous Official Territory. Therefore, the economic well-being of Eastern roads for such reason, if for no other, is of much importance to the roads in other territories and inures to their benefit.

The Baltimore and Ohio, like most other Eastern roads, has been forced to sharply curtail its equipment maintenance program because of inadequate earnings. During the period 1946 to date, the number of unserviceable freight cars of the Baltimore and Ohio rose from 4.1% in 1946 to 22% in 1959. At the end of 1950, the percent of unserviceable freight cars

[4]

to ownership was 7%; at the end of 1951 it was 5.2%. Compare these figures with the 22% in September 1959. As of September 30, 1959, there were about 21,000 freight train cars in unserviceable condition on the B&O, or 22% of ownership. Obviously, this contributes to car shortages, which create serious situations for the public and the railroads. To bring the number of B&O unserviceable freight cars down to a fairly normal figure of 4,600, or 4.8% of ownership, by the end of July 1960 would require the expenditure of $19 million between October 1, 1959 and July 31, 1960. This would, of course, be in addition to the cost of currently maintaining the balance of the fleet in serviceable condition.

Locomotive maintenance too has suffered from lack of funds. At the end of September 1959 the Baltimore and Ohio had 156 diesel units, or 13% of its fleet, in or awaiting shop for repairs. To reduce the number of unserviceable units to 8% by July 1960, would require the expenditure of $8.7 million, which would be in addition to the cost of keeping the remaining units serviceable.

So, to reduce bad order freight cars and diesel locomotive units to more normal levels between October 1, 1959 and July 1960, would cost the Baltimore and Ohio roundly $28 million. Unless additional revenue is forthcoming to provide that sum, it is extremely doubtful that such a program could be accomplished.

The bad order car and locomotive situation on the Eastern roads is much more unfavorable than on the Southern roads. As of August 1, 1959, unserviceable freight cars in the Eastern District, excluding the Pocahontas

[5]

Region, represented 14.3% of ownership; in the South the figure was 5.3%.

Roadway maintenance on the Baltimore and Ohio has also been sharply curtailed. Exhibit C shows the quantities of rail, ties, and ballast applied in maintenance during each of the past six years and the quantities which, in the opinion of our maintenance officers, should have been applied had our earnings been adequate to perform what they consider to be normal maintenance. The curtailments so clearly indicated by these figures were due to only one cause—insufficient earnings. The labor and material were available, but we simply didn't have money enough to purchase them.

Our bridge maintenance program is far behind schedule. To bring it up to date over the next five years would require the expenditure of $10.6 million, or an average of $2.1 million per annum. This includes $646,000 for painting, which has been deferred for a longer period of time than it should have been to properly protect the structures so as to avoid greater repair costs later.

Realizing that substantial aid in meeting the constantly increasing costs could be obtained from mechanizing some of our roadway maintenance work, but not having the funds with which to purchase the necessary equipment, arrangements were made early this year to acquire under lease a number of roadway maintenance machines. Only because we were able to rent this equipment, are we obtaining the benefit of this mechanization.

The unsatisfactory earnings of the Baltimore and Ohio cannot be attributed to inactivity of management or failure to avail of technological advances to the extent possible. Being fully aware of the necessity to find ways to offset the increasing costs, every effort, consistent with the

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resources at our command, has been exerted to meet our problems and improve the property and efficiency of service. From 1946 to 1958 the Company invested a total of $470 million in improvements to road and equipment, an average of $36 million per year. Of the total, $309,258,560 was expended for equipment. The table below shows the figures by years:

Year	*Road*	*Equipment*	*Total*
1946	$ 12,535,514	$ 12,578,973	$ 25,114,487
1947	16,642,829	43,266,582	59,909,411
1948	14,915,984	43,728,392	58,644,376
1949	9,556,787	12,671,792	22,228,579
	$ 53,651,114	$112,245,739	$165,896,853
1950	$ 10,334,816	$ 14,160,658	$ 24,495,474
1951	14,089,753	22,342,736	36,432,489
1952	11,805,896	26,400,351	38,206,247
1953	10,455,447	25,171,145	35,626,592
1954	11,431,933	7,581,521	19,013,454
1955	10,301,763	12,687,636	22,989,399
1956	9,953,024	26,911,148	36,864,172
1957	16,265,194	37,004,588	53,269,782
1958	12,262,017	24,753,038	37,015,055
	$106,899,843	$197,012,821	$303,912,664
	$160,550,957	$309,258,560	$469,809,517

These expenditures were financed by borrowing on equipment—our only source of credit; by depreciation, which, because of inflation, was far short of the amount needed to cover replacement costs, and by such portion of our inadequate net earnings as could be allocated for that purpose. Oustanding equipment obligations rose from $47 million at the end of 1946 to $83 million as of December 31, 1949, an increase of 76%, and increased further to $96 million, or 28%, in the period 1950 to the end of 1958, a total increase of 104%, 1958 over 1946.

In 1946 the Baltimore and Ohio had only 136 diesel units—24 freight, 44 passenger and 68 switch. It now has a total of 1,130 units—

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712 freight, 70 passenger and 348 switch. Of these, 569 units, or more than half, were acquired under lease because

we didn't have the money necessary to finance their purchase. Since March 1958 the operations of the Baltimore and Ohio have been completely dieselized.

To the extent of its financial ability, taking into account the discharge of other obligations to which it is committed, such as equipment maturities, sinking funds, etc., which have to be met, the Baltimore and Ohio has made certain roadway improvements, for example, installation of Centralized Traffic Control over relatively small segments of the line, modernization to a limited extent of several yards and certain signal and communication facilities in an effort to compensate for the higher costs. It is in these areas that so much more is needed, but they will cost a great deal of money, which we do not now have. We cannot finance, at reasonable rates and assured ability to repay loans, new yards, grade and curvature revisions, etc., by borrowing, as is possible in the case of new equipment.

Exhibit D shows the number of man hours required to produce 1000 gross ton miles in the Eastern and Southern Regions, excluding Pocahontas Region, by years, 1946 to 1958, inclusive. More man hours were required to produce 1000 gross ton miles in the East than in the South, reflecting the effect of the expensive physical, operating and terminal conditions, in the East. For the years 1950-1958 the figures compare as follows:

	Man Hours Required to Produce 1000 Gross Ton Miles	
	Eastern District	Southern Region
1950.....	2.229	1.762
1951.....	2.199	1.733
1952.....	2.165	1.692
1953.....	2.102	1.645
1954.....	2.024	1.573
1955.....	1.898	1.449
1956.....	1.832	1.406
1957.....	1.834	1.369
1958.....	1.744	1.279

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The following comparison of freight expense per 1000 gross ton miles in the East and South is another indication of the lower operating costs in the South:

	Freight Operating Expense Per 1000 Gross Ton Miles	
	Eastern District	Southern Region
1950.....	$4.8770	$3.8265
1951.....	5.1943	4.1474
1952.....	5.3680	4.2441
1953.....	5.4462	4.2616
1954.....	5.3368	4.2041
1955.....	5.0846	3.9988
1956.....	5.2925	4.2162
1957.....	5.7145	4.4953
1958.....	5.7539	4.5209

The considerably lower operating ratios in the South is another such indication—

	Total Operating Ratio	
	Eastern District	Southern Region
1950.....	71.10	64.77
1951.....	71.97	66.58
1952.....	71.03	64.66
1953.....	70.73	63.50
1954.....	73.77	66.75
1955.....	70.49	64.26
1956.....	71.33	66.09
1957.....	73.65	68.73
1958.....	76.36	70.05

For fifteen years, 1933-1947, inclusive, the stockholders of the Baltimore and Ohio did not receive one cent of dividends. In 1948 a dividend of $1 per share was paid on the 4% Preferred stock. The record from 1948 to date is—

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	Dividends Paid	
	4% Preferred	Common
	(Par $100)	(Par $100)
1948.....	$1.00	$—
1949.....	1.00	—
1950.....	4.00	—
1951.....	4.00	—
1952.....	4.00	0.75
1953.....	4.00	1.00
1954.....	4.00	1.00
1955.....	4.00	2.00
1956.....	4.00	2.50
1957.....	4.00	2.50
1958.....	4.00	1.50
1959.....	4.00	1.50

Note particularly that dividends on Common were not resumed until 1952, after a lapse of twenty years. The 1952 dividend was at the extremely modest rate of 75 cents per share, which was raised in small steps to $2.50—still quite modest—in 1956 and 1957. Because of the worsening financial situation, the Common dividend was reduced to $1.50 in 1958 and 1959.

The facts here presented are convincing evidence that the Baltimore and Ohio is in need of additional revenue and we urge the Commission to properly weigh that need when establishing divisions between the East and the South.

(Verification omitted in printing.)

THE BALTIMORE AND OHIO RAILROAD COMPANY

Investment and Rate of Return

1946 to 1958

Year	Net Investment in Property Devoted to Transportation Service	Net Railway Operating Income	Rate of Return %
1946	$ 909,938,049	$25,909,109	2.85
1947	932,887,340	29,099,949	3.12
1948	979,533,313	43,110,013	4.40
1949	1,004,158,933	27,887,361	2.78
1950	1,008,112,283	34,142,197	3.39
1951	1,021,420,819	36,833,480	3.61
1952	1,040,263,088	44,339,773	4.26
1953	1,054,557,272	43,797,993	4.15
1954	1,056,349,985	29,487,876	2.79
1955	1,055,914,839	38,898,776	3.68
1956	1,064,948,983	43,458,707	4.08
1957	1,084,521,765	37,917,444	3.50
1958	1,095,865,629	28,588,964	2.61
Average 1948 - 1958			3.56

Exhibit "B"

THE BALTIMORE AND OHIO RAILROAD COMPANY

Working Capital
(Excluding Materials and Supplies)

Year	Current Assets	Current Liabilities	Net Working Capital
1946	$90,491,476.53	$51,629,090.60	$ 38,862,385.93
1947	74,573,773.46	58,828,536.63	15,745,236.83
1948	77,424,358.44	62,763,781.28	14,660,577.16
1949	66,976,962.40	53,766,506.47	13,210,455.93
1950	92,393,110.08	69,002,212.76	23,390,897.32
1951	85,716,274.84	69,821,773.83	15,894,501.01
1952	95,021,972.26	71,517,053.86	23,504,918.40
1953	90,447,713.69	75,505,195.46	14,942,518.23
1954	73,655,586.31	62,316,997.64	11,338,588.67
1955	95,140,305.84	88,275,994.73	6,864,311.11
1956	95,817,315.72	85,487,917.86	10,329,397.86
1957	86,017,764.99	89,384,487.97	Def. 3,366,722.98
1958	73,832,536.14	63,664,704.62	10,167,831.52
1959 (July 31)	66,312,026.64	52,947,029.48	13,364,997.16

THE BALTIMORE AND OHIO RAILROAD COMPANY

Quantities of Rail, Ties and Ballast applied and which would have been applied had earnings permitted

New Rail

Year	Tons Applied	Tons which should have been applied
1953	37,471	48,300
1954	18,228	42,000
1955	63,463	47,500
1956	42,159	50,200
1957	26,855	47,200
1958	16,693	39,000

Ties

Year	Applied	Which should have been applied
1953	373,901	931,000
1954	450,411	898,000
1955	789,531	921,000
1956	701,518	931,000
1957	657,954	913,000
1958	480,735	872,000

Ballast

Year	Tons Applied	Tons which should have been applied
1953	759,707	824,000
1954	317,863	715,000
1955	596,756	810,000
1956	445,853	856,000
1957	577,932	805,000
1958	284,901	666,000

MAN HOURS REQUIRED TO PRODUCE 1000 GROSS TON MILES

Year	Gross Ton Miles			Total Man Hours Paid For	Per 1000 G.T.M.
	Freight (000's)	Passenger (000's)	Total (000's)		
SOUTHERN DISTRICT (EXCLUDING POCAHONTAS REGION)					
1946	191,152,826	42,069,883	233,222,709	529,050,903	2.268
1947	200,978,260	39,890,223	240,868,483	530,684,674	2.203
1948	199,158,750	39,930,820	239,089,570	511,625,601	2.140
1949	174,050,767	37,012,876	211,063,643	427,499,166	2.025
1950	192,467,420	35,566,794	228,034,214	401,762,006	1.762
1951	203,435,722	36,829,311	240,265,033	416,282,822	1.733
1952	200,761,036	35,838,485	236,599,521	400,334,162	1.692
1953	198,442,244	34,311,786	232,754,030	382,987,869	1.645
1954	189,410,332	32,110,000	221,520,332	348,494,542	1.573
1955	201,661,253	29,731,473	231,392,726	335,201,300	1.449
1956	207,249,443	30,167,681	237,417,124	333,845,652	1.406
1957	198,894,635	28,413,493	227,308,128	311,267,891	1.369
1958	188,004,638	25,281,128	213,285,766	272,807,249	1.279
EASTERN DISTRICT (EXCLUDING POCAHONTAS REGION)					
1946	478,338,906	112,019,593	590,358,499	1,482,318,026	2.511
1947	502,062,430	103,717,150	605,779,580	1,468,497,944	2.424
1948	478,175,479	102,801,003	580,976,482	1,439,618,248	2.478
1949	400,957,358	91,266,663	492,224,021	1,198,367,233	2.435
1950	436,108,633	85,732,744	521,841,377	1,163,237,748	2.229
1951	457,555,595	85,570,065	543,125,660	1,194,088,364	2.199
1952	430,445,714	85,138,598	515,584,312	1,116,314,456	2.165
1953	436,659,204	81,966,649	518,625,853	1,089,927,487	2.102
1954	386,551,049	77,380,806	463,931,855	938,843,362	2.024
1955	434,323,712	75,701,107	510,024,819	967,910,688	1.898
1956	447,316,491	73,485,339	520,801,830	953,889,202	1.832
1957	422,749,202	67,477,989	490,227,191	899,244,976	1.834
1958	365,963,980	58,330,186	424,294,166	740,150,479	1.744

VERIFIED STATEMENT NO. 7
OF CHARLES C. SHANNON

(Verified September 29, 1959)

[1]

My name is Charles C. Shannon and my office is located at 54 Meadow Street, New Haven, Connecticut. I have been employed by the New Haven Railroad since January 1, 1958, first as Operating Vice-President, and since November 1, 1958, as Executive Vice-President.

Prior to joining the New Haven, I was employed for approximately 22 years by the Chicago and North Western Railway, Chicago, Illinois. I started with that company in a clerical capacity and thereafter held positions of Trainmaster, Assistant Superintendent and Superintendent in the Transportation Department. I was also Manager of Station Services, which included the supervision of mail, baggage and express traffic. I also held the position of Assistant to the Operating Vice President and in such position made many cost studies of various operations. I was responsible for the setting up of improvement budgets for the railroad as a whole. I was also responsible for the investigation and development of new types of equipment and methods of performing work. Thereafter I was assigned as a General Superintendent of that railroad, having the responsibility for the operation of approximately 6,000 miles of railroad. After completion of this assignment I became General Manager of Passenger Services,

[2]

which included the operation of three heavily travelled suburban lines on the west, northwest and north sides of the City of Chicago. Eventually I became System General Manager in charge of the Transportation Department, covering the movement of all freight and passenger traffic. Prior to coming to the New Haven I was Assistant to the President-Operations.

Exhibit No. 1 is a map showing the location and extent of the New Haven System. It indicates the number of tracks between various points, kind of service operated, the stations served and the many injunction points with other railroads for the interchange of freight and passengers. This map incorrectly shows passenger service on the former Old Colony lines. Such service was discontinued on June 30, 1959, and at present no passenger service is operated on the lines between Boston-Greenbush, Boston-Plymouth, Boston-Hyannis, Buzzards Bay-Woods Hole and Attleboro-Middleboro via Taunton, all in southeastern Massachusetts.

The New Haven serves southeastern New York State, all of Connecticut and Rhode Island, and southern Massachusetts. This is an area of about 14,000 square miles, with a total population of about 15 million people according to the Census of 1950. The System serves directly 13 cities of 100,000 or over including New York City and Boston. The population per square miles in the area served is greater than anywhere else in the country except the District of Columbia and the State of New Jersey. Rhode Island ranks first among the New England states in this respect with 748.5 people per square miles, then follows Massachusetts with 596.2, and Connecticut with 409.7.

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The New Haven Railroad is an important part of the economy of New England which is the oldest industrial area in the country. This area contains only 66,608 square miles. In contrast, the Southern Region, composed of the eight states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee consists of 383,167 square miles or approximately 5.75 times the size of New England. The major portion of the railroad industry in the New England Region is suffering from reduced earnings and inadequate returns on investment. This has occurred in spite of the fact that the population of the region has increased substantially during the past 20 years.

The table below shows population by states within and for the New England and Southern Regions for 1920, 1940, 1950 and 1959 with the percentage increases for each—1959 over 1920.

State	1920	1940	1950	Jan. 1, 1959*	% Change 59 v. 20
Me.	768,014	847,226	913,774	914,600	19.1
N. H.	443,083	491,524	533,242	568,000	28.2
Vt.	352,428	359,231	377,747	375,600	6.6
Mass.	3,852,356	4,316,721	4,690,414	5,008,300	29.8
R. I.	604,397	713,346	791,896	842,800	39.4
Conn.	1,380,631	1,709,242	2,007,280	2,389,400	73.1
N. E.	7,400,909	8,437,290	9,314,453	10,098,700	36.5
Ala.	2,348,174	2,832,961	3,061,473	3,184,500	35.6
Fla.	968,470	1,897,414	2,771,305	4,439,900	358.4
Ga.	2,895,832	3,123,723	3,444,578	3,837,900	32.5
Ky.	2,416,630	2,845,627	2,994,806	3,030,800	25.4
Miss.	1,790,818	2,183,796	2,179,914	2,138,600	19.4
N. C.	2,559,123	3,571,623	4,061,929	4,536,700	77.3
S. C.	1,683,724	1,899,804	2,117,027	2,376,500	41.1
Tenn.	2,337,885	2,915,841	3,291,708	3,471,200	48.5
South	17,000,456	21,270,789	23,872,740	27,016,100	58.9

* Estimated.

Source: U. S. Bureau of Census.

It will be noted that the population of the New England states increased 36.5% in 1959 over 1920, while the Southern states,

[4]

during the same period, show an increase of 58.9%. If the Florida increase were eliminated the percent of increase for the South would not be greatly in excess of that of New England.

While New England compares favorably with the Southern Region with respect to population changes, a comparison of changes in railroad tonnages handled in the two regions between 1936 and 1957 is decidedly unfavorable for New England. Tabulated below are the total revenue tons handled, tons originated and tons terminated for the two regions for the years 1936, 1940, 1946, 1948, 1950 and 1957.

In the tabulation, the following railroads are included under the caption "New England Region": Bangor and Aroostook Railroad Company, Boston and Maine Railroad, Central Vermont Railway, Inc., Canadian Pacific Lines in Maine, Maine Central Railroad Company, The New York, New Haven and Hartford Railroad Company, The New York Connecting Rail Road Company and Rutland Railway Corporation. These railroads are used for the New England Region in compiling the 1957 I.C.C. statistics. The Boston & Albany Railroad had been included in the New England Region up to and including 1948, but not thereafter, and the Canadian National Lines in New England and the Canadian Pacific Lines in Vermont were eliminated from the New England Region statistics by the I.C.C. in 1957. These lines have therefore been eliminated throughout the following table:

Year	New England Region		Southern Region
Total Revenue Tons			
1936	53,327,698		204,649,650
1940	57,156,310		235,405,755
1946	82,306,392		374,581,071
1948	80,120,099		420,392,849
1950	66,971,881		402,046,744
1957	63,421,762		444,393,979
% Change '57 vs. '36	18.9		117.1
% Change '57 vs. '48	20.8	(Decrease)	5.7
% Change '57 vs. '50	5.3	(Decrease)	10.5
Tons Originated			
1936	15,122,912		122,122,327
1940	14,985,105		136,375,282
1946	20,835,064		206,613,849
1948	19,726,170		234,197,883
1950	16,792,071		225,851,548
1957	16,124,253		253,796,211
% Change '57 vs. '36	6.6		107.8
% Change '57 vs. '48	18.3	(Decrease)	8.4
% Change '57 vs. '50	4.0	(Decrease)	12.4
Tons Terminated			
1936	32,441,274		100,111,994
1940	34,143,068		116,248,413
1946	45,562,817		179,690,868
1948	43,772,211		202,985,050
1950	37,501,036		194,193,622
1957	35,492,947		226,547,140
% Change '57 vs. '36	9.4		126.3
% Change '57 vs. '48	18.9	(Decrease)	11.6
% Change '57 vs. '50	5.4	(Decrease)	16.7

Source: I.C.C. Freight Commodity Statistics,
Class I Steam Railways in the United States.

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From the preceding table it appears that while tonnage in all categories shown increased substantially in New England from 1936 to 1946, it thereafter declines precipitously to 1957. In contrast, the Southern Region shows a continuation of the upward trend through 1957.

Tons originated in New England in 1957 increased only 6.6% over 1936, but decreased 18.3% over 1948, and 4.0% over 1950, whereas in the Southern Region there were increases of 107.8%, 8.4% and 12.4% for those periods. Similarly, tons terminated in New England increased only 9.4% in 1957 compared with 1936, but decreased 18.9% compared with 1948 and 5.4% compared with 1950, while the Southern Region shows increases of 126.3%, 11.6% and 16.7% for the respective periods.

When the New Haven tonnage and revenue figures are compared with those of the Seaboard, Atlantic Coast Line, and Florida East Coast, the differences are even more pronounced. Exhibit No. 2 shows tonnage and revenue figures at five-year intervals from 1928 to 1958 inclusive for all four companies. The local tonnage, as well as the interline tonnage originating or terminating on the New Haven's line, show marked decreases whereas the tonnage for the other companies show very marked increases. The increase in freight revenue during this period for the New Haven is very small in comparison with the increase in freight revenue for the other companies.

Because of the short distances between population centers, railroad tonnage in the New England Region is extremely vulnerable to motor carrier competition.

New England, according to the 1950 Census, had 29

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cities with more than 50,000 population in an area that is smaller than the combined states of Kentucky and South Carolina. Included among these 29 cities are 12 with populations exceeding 100,000.

City	Population	City	Population
Boston, Mass.	801,444	New Bedford, Mass.	109,189
Bridgeport, Conn.	158,709	New Britain, Conn.	73,726
Brockton, Mass.	62,860	New Haven, Conn.	164,443
Cambridge, Mass.	120,740	Newton, Mass.	81,944
Cranston, R. I.	55,060	Pawtucket, R. I.	81,436
Fall River, Mass.	111,963	Pittsfield, Mass.	53,348
Hartford, Conn.	177,397	Portland, Me.	77,634
Holyoke, Mass.	54,661	Providence, R. I.	248,674
Lawrence, Mass.	80,536	Quincy, Mass.	83,835
Lowell, Mass.	97,249	Somerville, Mass.	102,351
Lynn, Mass.	99,738	Springfield, Mass.	162,399
Malden, Mass.	59,804	Stamford, Conn.	74,293
Manchester, N. H.	82,732	Waterbury, Conn.	104,477
Medford, Mass.	66,113	Woonsocket, R. I.	50,211
		Worchester, Mass.	203,486

An example of the relatively short distances between large cities is shown below for the route between Springfield, Massachusetts and New York City.

(1950) Population	Mileage Between Cities	Springfield - New York	Mileage from Springfield
162,399		Springfield	
177,397	25.4	Hartford, Conn.	25.4
44,088	17.9	Meriden, Conn.	43.3
164,443	18.6	New Haven, Conn.	61.9
158,709	16.7	Bridgeport, Conn.	78.6
49,460	14.6	Norwalk, Conn.	93.2
74,293	8.0	Stamford, Conn.	101.2
40,835	4.9	Greenwich, Conn.	106.1
23,970	2.5	Port Chester, N. Y.	108.6
59,725	9.1	New Rochelle, N. Y.	117.7
71,899	2.8	Mount Vernon, N. Y.	120.5
7,891,957	13.8	New York, N. Y.	134.3

Source: Population: U. S. Bureau of Census
Mileage: N.Y., N.H., & H.R.R. Co. Timetable No. 8 (Employees')

[8]

Thus, in a short haul of 134 miles a motor carrier would pass through 10 cities, all but one of which exceeded

25,000 in population and five of which exceeded 150,000 in population. In fact, practically all of the traffic in New England is highly susceptible to motor truck competition due to the short distances between population centers, the good highways and the variety of the commodities produced in this area.

Consequently, motor carriers in New England handle a proportionately larger share of the total tonnage than do motor carriers in the Southern Region. For the year 1957, the Class I motor carriers in the New England Region carried 12.6% of the total tonnage transported by rail and truck. For the same year, the Southern motor carriers transported only 5.8% of the total tonnage transported by rail and truck.

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Tons Transported by Class I Motor Carriers—Year 1957

	New England Region	Southern Region
Common Carriers of General Commodities	6,144,220	15,726,456
Common Carriers of Special Commodities	2,596,916	10,942,306
Contract Carriers	386,622	926,787
Total Tons	9,127,758	27,595,549
Total Tons Transported by Class I Railroads in 1957	63,421,762	444,393,979
Total	72,549,520	471,989,528
Percent of Tonnage Trucked to Total Transported by Rail and Truck	12.6%	5.8%

Sources: I.C.C. Statement Q-800—Year 1957
I.C.C. Freight Commodity Statistics of Class I Railways—Year 1957.

Another factor which has seriously affected the railroads in New England as compared with those in the South is the sharp change in the position of New England with respect to manufactures as compared with that of the South.

In 1939 New England's manufactures exceeded those of the South by 25% but by 1947 this margin had shrunk to 2% and at present New England is running more than 20% behind the South.

[10]

Value Added by Manufacture (000)

	New England	Southern States	Percentage N.E. Above or Below ( ) South
1939	$ 2,414,268	$ 1,932,493	24.9
1947	6,813,800	6,682,388	2.0
1957	10,640,000	13,602,000	(21.8)

Source: 1939, 1947—Bureau of Census, U.S. Census of Manufacturers. 1957—Annual Survey of Manufacturers.

In 1947 expenditures for new manufacturing plants were $188,196,000 in the South as compared with $115,151,000 in the New England states. In 1957 the investment in the South was $385,525,000, while in New England for the same year the investment was $176,523,000. The source of this information is U.S. Census of Manufactures, 1947: Annual Survey of Manufactures, 1957.

With such a trend in new construction it is not surprising that New England has lost the lead which it long had over the Southern Region in the production of manufactured goods.

The past half century has seen many of New England's plants move to other sections of the country or has seen branch plants built in other sections of the country so that New England's relative position in manufacturing has declined severely.

The New England area also suffers from water carrier competition to a large degree. One of the reasons for the

extent of water carrier competition is the geographical position of New England. It is naturally bounded for all

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practical purposes on three sides by water: the Atlantic Ocean and Long Island Sound on the east and south, and the Hudson River on the west. To these natural water boundaries has recently been added the St. Lawrence Seaway in the north which is expected to increase water carrier competition for the New England railroads. Coastwise and intercoastal shipping from and to this section of the country is advantageous to shippers because of the existence of the three major ports of Boston, Portland and Providence, and the great abundance of smaller harbors all the way from Port Chester, New York on the Connecticut-New York line to Eastport, Maine on the Main-Canadian border. In New England nearly all cities of 50,000 or more population are within a very few miles of tidewater. Most of the traffic moving through these ports is trucked to or from interior points. The Port of New York has always been the outstanding port for commerce to and from southern New England. The Hudson River as far as Albany, New York, also serves a section of New England. It is a fair statement that it would be difficult to find another section of the country that is more subject to tidewater competition.

The factors enumerated above in large measure account for the very low rate of return presently being earned by New England railroads. Exhibit No. 3 shows such information by railroads and for the region as a whole for the years 1957 and 1958. It will be noted that in 1957, the New England Region had net railway operating income of $11,200,356, a return of 1.23 and a deficit in net income of $1,070,555. The same figures for 1958 were $3,256,584, 0.36, and a deficit of

[12]

$6,616,865. The source of this information is the statement issued by the Association of American Railroads entitled

"Property Investment and Condensed Operating Income Account."

The two largest railroads in New England are the New Haven and the Boston and Maine, in the order named. In 1957, out of a total of 63,421,762 revenue tons of freight transported by New England railroads, the New Haven transported 22,990,537 and the Boston and Maine 17,110,374, or a total of 40,100,911 tons. In the same year the New Haven earned revenues of $94,941,832 and the Boston and Maine $67,646,588, or a total of $162,588,420 as compared with $226,689,936 for the New England Region. The source of these figures is "Freight Commodity Statistics" issued by the Interstate Commerce Commission for the year 1957. It will be seen that the New Haven's tonnage and revenue were 36.3% and 41.9% respectively of the total, and the combined New Haven and Boston and Maine tonnage and revenue were 63.2% and 71.7% respectively of the total.

As shown in Exhibit No. 3 the combined New Haven and Boston and Maine average net investment and total operating revenue constitute a major portion of the total for the region. Thus it is clear that the operating revenues of the New Haven and the Boston and Maine have a very substantial effect on the overall results for the New England Region, and it is also clear that the New Haven is a very important part of the New England railroad system.

The New Haven's earnings have deteriorated seriously

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during the past several years, particularly since 1954, as a consequence of which it has had to defer a substantial amount of maintenance, over and above that necessary to preserve safety of operation, and it has been unable to make necessary capital improvements, and of course, it has been unable to compensate its stockholders. It is greatly in need of additional revenues in order to provide funds for maintenance which can no longer be deferred, for capital improvements which are vitally necessary, and also to make some return to its stockholders. This need for additional revenue is demonstrated by the following exhibits:

Exhibit No. 4 is a Condensed Operating Income Account covering the years 1948 to 1958, inclusive. It also shows a comparison of the first seven months of 1959 with the same period of 1958. This exhibit demonstrates the alarming reduction in net railway operating income and net income since 1954.

Exhibit No. 5 shows net investment, net railway operating income and rate of return for the years 1948 to 1958, inclusive. It will be noted that in all these years the rate of return was never adequate, but beginning in 1955 it started dropping and vanished completely in 1958.

Exhibit No. 6 is a Condensed Operating Income Account—Freight Service for the years 1948 to 1958, inclusive, and demonstrates the drop in freight earnings since 1955.

Exhibit No. 7 is a Condensed Operating Income Account—Passenger and Allied Service, for the years 1948 to 1958, inclusive. It shows the fairly steady increase in the

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New Haven's passenger deficit to and including 1957. A substantial reduction in the deficit was accomplished in 1958, brought about by stringent economies and also by reducing maintenance as far as possible without affecting safety. It is doubtful that this reduction in the deficit can be held in 1959 because of the need to perform maintenance work which can no longer be deferred. However, every effort is being made to reduce passenger losses as far as possible, by seeking authority to discontinue unprofitable trains, on the one hand, and on the other, by seeking increases in fares to the extent permitted by competition. The dense population of the area served by the New Haven requires a substantial amount of passenger service, and consequently the New Haven's passenger operations are a large part of its total operations. In 1958, the New Haven's passenger operations produced 45% of its total revenue, 51% of its total expenses, and 73% of its total train miles. The people served by the New Haven's passenger opera-

tions form a substantial part of the producers and users of the freight traffic to and from the South, as well as to and from other areas of the country.

The foregoing exhibits demonstrate why the New Haven is in need of additional revenue. In order to meet the situation created by the decline in net earnings, the New Haven has sold real estate in the amount of approximately $30 million since 1947, and in the same period sales of scrap have totalled approximately $15,000,000. Despite this, a large amount of deferred maintenance has accumulated. In addition, due to the decline in earnings, the

[15]

New Haven has not been able to keep up a program of necessary capital expenditures. The table below shows the amount of capital expenditures for 1953 to 1958, inclusive.

1953	$21,546,940
1954	28,321,179
1955	16,067,179
1956	10,499,244
1957	13,077,525
1958	1,388,439

During the same period, the New Haven has fallen behind in the installation of new rail and ties. The table below shows the rail installation, expressed in gross tons, 1953 to 1958, inclusive.

1953	14,509
1954	7,402
1955	10,675
1956	3,564
1957	1,838
1958	2,264

The number of ties laid during the same period is shown below.

1953	163,338
1954	31,099
1955	96,398
1956	100,367
1957	106,313
1958	96,297

Because of the accumulation of deferred maintenance as well as the inability to make average capital expenditures during the past several years, the New Haven is now faced with the need to spend substantial sums of money for capital improvements and deferred maintenance as set forth below. The maintenance items shown will be in addition to the normal day-to-day maintenance. During the next 10 years it will be necessary to spend $1,200,000 per year for deferred rail renewals in main line track, and during the next five years $228,000 per year for other rail renewals which have been

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deferred. In addition, $97,500 must be spent in 1960 to cover deferred rail renewal on the Harlem River branch. Deferred tie renewals will cost $500,000 per year during the next five years. Painting and repair of buildings will cost $90,000 per year during the next five years to cover deferred maintenance. Bridge painting and repairs will cost approximately $360,000 per year during the next five years to cover deferred maintenance.

Substantial sums must be spent during the next five years for the repair of the locomotive and passenger car fleets, and substantial sums should be spent for the purchase of new equipment.

Except for the purchase of new equipment, funds for the expenditures set forth above must be generated from increased earnings.

The New Haven has paid no dividends to preferred stockholders since 1955, and none to common stockholders since the stock was issued in 1948.

Exhibit No. 8 is a statement of the annual fixed charges and contingent interest and annual long-term debt matu-

rities to be met by the New Haven during the next five years.

The following table shows the New Haven's position from December 31, 1956 to July 31, 1959 with respect to net working capital and cash:

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	Current Assets	Current Liabilities	Net Working Capital	Cash
Dec. 31, 1956	$36,054,000	$35,083,000	$ 971,000	$10,437,000
Dec. 31, 1957	32,987,000	33,920,000	(933,000)	9,205,000
Mar. 31, 1958	26,609,000	34,620,000	(811,000)	6,720,000
June 30, 1958	26,248,000	29,775,000	(3,527,000)	5,209,000
Aug. 31, 1958	27,604,000	29,570,000	(1,966,000)	5,839,000
Oct. 31, 1958	29,228,000	30,334,000	(1,106,000)	6,555,000
Nov. 30, 1958	29,912,000	30,335,000	(423,000)	6,894,000
Dec. 31, 1958	32,748,000	31,328,000	1,420,000	6,538,000
July 31, 1959	27,296,000	30,858,000	(3,562,000)	5,156,000

( ) Indicates deficiency.

As indicated earlier, the New Haven is extremely vulnerable to motor carrier and water carrier competition. Down through the years, such competition has gradually siphoned away a very large part of the New Haven's short haul traffic both local and interline. Consequently, the long-haul interterritorial traffic has become more and more important in the New Haven's overall traffic picture. For 1958, the New Haven's total freight revenue, carload and l.c.l., was $81,832,614, and its total interline revenue was $74,969,537, or 91.61 percent of its total freight revenue. During the same year, the New Haven's revenue on interline traffic to and from the South was $6,096,816, or 8.13 percent of its total interline freight revenue.

For the reasons set forth above, the New Haven, as well as other Eastern lines, is in urgent need of increased revenues on traffic to and from the South, commensurate with its cost of providing the service and its financial needs.

(Verification omitted in printing.)

Exhibit No. 2 to V.S. No. 7 of C.C. Sha

INTERSTATE COMMERCE COMMISSION - BUREAU OF STATISTICS

GRAND TOTAL OF CARLOAD FREIGHT

STATEMENT OF TONS, REVENUE AND RATIO FOR THE YEARS SHOWN USING 1928 AS INDEX 100

COLUMN	ORIGINATING ON RESPONDENT'S LINE				RECEIVED FROM CONNECTING CARRIERS			
	TERMINATING ON RESPONDENT'S LINE		DELIVERED TO CONNECTING CARRIERS		TERMINATING ON RESPONDENT'S LINE		DELIVERED TO CONNECTING CARRIERS	
	1	2	3	4	5	6	7	8
YEAR	TONS	INDEX	TONS	INDEX	TONS	INDEX	TONS	INDEX
				THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY				
1928	6,033,372	100.00	2,554,775	100.00	17,609,962	100.00	1,632,254	100.00
1933	2,860,408	47.41	1,370,796	53.66	10,334,202	58.68	954,944	58.50
1938	2,593,520	42.99	1,377,334	53.91	10,107,814	57.40	1,329,445	81.45
1943	2,659,234	44.08	4,830,016	189.05	25,935,025	147.27	3,161,676	193.70
1948	3,061,834	50.75	3,425,481	134.08	16,992,363	96.49	3,068,932	188.02
1953	3,172,958	52.59	3,249,712	127.20	13,542,160	76.90	2,971,907	182.07
1958	2,602,969	43.14	2,011,567	78.73	12,296,822	69.82	2,586,255	158.44
				SEABOARD AIRLINE RAILROAD COMPANY				
1928	6,398,386	100.00	4,934,387	100.00	3,416,777	100.00	1,974,364	100.00
1933	3,403,643	53.20	2,256,710	45.73	2,262,393	66.22	1,269,674	64.31
1938	6,030,827	94.26	3,186,857	64.58	3,011,862	88.15	2,000,749	101.34
1943	8,928,839	139.55	8,908,266	180.53	10,288,601	301.12	4,814,463	243.85
1948	12,471,434	194.92	9,254,993	187.56	10,020,374	293.28	5,334,501	270.19
1953	15,627,686	244.25	11,373,797	230.50	10,681,999	312.64	5,830,881	295.33
1958	19,759,075	308.81	11,687,002	236.85	10,816,276	316.57	5,471,393	277.12
				ATLANTIC COAST LINE RAILROAD COMPANY				
1928	9,344,609	100.00	4,690,859	100.00	3,738,732	100.00	1,727,910	100.00
1933	3,937,165	42.13	2,752,594	58.68	1,838,690	49.18	918,235	53.14
1938	5,222,409	55.89	3,644,220	77.69	2,805,413	75.04	1,410,545	81.63
1943	11,399,157	121.99	11,110,836	236.86	10,849,190	290.18	5,686,427	329.09
1948	13,812,296	147.81	9,690,768	206.59	8,731,295	233.54	3,876,531	224.35
1953	16,197,728	173.34	10,838,545	231.06	12,896,358	344.94	4,274,277	247.37
1958	18,340,462	196.27	9,541,625	203.41	12,286,928	328.64	4,338,632	251.09
				FLORIDA EAST COAST RAILWAY COMPANY				
1928	825,719	100.00	391,200	100.00	783,576	100.00	706	100.00
1933	266,757	32.31	260,633	66.63	480,713	61.35	28,970	410.34
1938	356,647	43.19	341,878	87.39	628,341	80.19	37,123	525.84
1943	1,000,105	121.12	2,383,352	609.24	2,382,674	304.10	59,407	841.45
1948	666,048	80.67	1,597,115	408.27	2,112,693	269.64	72,124	1,021.60
1953	994,101	120.40	1,980,643	506.31	2,359,284	301.11	118,492	1,678.40
1958	1,735,494	210.19	1,615,853	413.06	4,159,085	530.78	100,077	1,417.56

Source: I.C.C.Freight Commodity Statistics, Class I Steam Railways in United States: 1958 figures from Form A Reports

INTERSTATE COMMERCE COMMISSION - BUREAU OF STATISTICS

GRAND TOTAL OF CARLOAD FREIGHT

STATEMENT OF TONS, REVENUE AND RATIO FOR THE YEARS SHOWN USING 1928 AS INDEX 100

ORIGINATING ON RESPONDENT'S LINE				RECEIVED FROM CONNECTING CARRIERS					
ATING ON DENT'S LINE		DELIVERED TO CONNECTING CARRIERS		TERMINATING ON RESPONDENT'S LINE		DELIVERED TO CONNECTING CARRIERS		FREIGHT REVENUE (DOLLARS)	
1	2	3	4	5	6	7	8	9	10
S	INDEX	TONS	INDEX	TONS	INDEX	TONS	INDEX		INDEX
			THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY						
3,372	100.00	2,554,775	100.00	17,609,962	100.00	1,632,254	100.00	$ 63,848,265	100.00
0,408	47.41	1,370,796	53.66	10,334,202	58.68	954,944	58.50	33,088,484	51.82
3,520	42.99	1,377,334	53.91	10,107,814	57.40	1,329,445	81.45	33,131,594	51.89
9,234	44.08	4,830,016	189.05	25,935,025	147.27	3,161,676	193.70	85,496,520	133.91
1,834	50.75	3,425,481	134.08	16,992,363	96.49	3,068,932	188.02	86,642,658	135.70
2,958	52.59	3,249,712	127.20	13,542,160	76.90	2,971,907	182.07	89,892,089	140.79
02,969	43.14	2,011,567	78.73	12,296,822	69.82	2,586,255	158.44	77,866,164	121.95
			SEABOARD AIRLINE RAILROAD COMPANY						
98,386	100.00	4,934,387	100.00	3,416,777	100.00	1,974,364	100.00	$ 38,241,868	100.00
03,643	53.20	2,256,710	45.73	2,262,393	66.22	1,269,674	64.31	22,990,480	60.12
30,827	94.26	3,186,857	64.58	3,011,862	88.15	2,000,749	101.34	27,782,482	72.65
28,839	139.55	8,908,266	180.53	10,288,601	301.12	4,814,463	243.85	85,336,263	223.15
71,434	194.92	9,254,993	187.56	10,020,374	293.28	5,334,501	270.19	100,003,618	261.53
27,686	244.25	11,373,797	230.50	10,681,999	312.64	5,830,881	295.33	126,938,116	331.94
59,075	308.81	11,687,002	236.85	10,816,276	316.57	5,471,393	277.12	128,337,681	335.60
			ATLANTIC COAST LINE RAILROAD COMPANY						
44,609	100.00	4,690,859	100.00	3,738,732	100.00	1,727,910	100.00	$ 45,994,497	100.00
37,165	42.13	2,752,594	58.68	1,838,690	49.18	918,235	53.14	26,478,092	57.57
22,409	55.89	3,644,220	77.69	2,805,413	75.04	1,410,545	81.63	29,297,611	63.70
99,157	121.99	11,110,836	236.86	10,849,190	290.18	5,686,427	329.09	97,747,760	212.52
12,296	147.81	9,690,768	206.59	8,731,295	233.54	3,876,531	224.35	99,796,757	216.98
97,728	173.34	10,838,545	231.06	12,896,358	344.94	4,274,277	247.37	128,084,418	278.48
40,462	196.27	9,541,625	203.41	12,286,928	328.64	4,338,632	251.09	121,306,335	263.74
			FLORIDA EAST COAST RAILWAY COMPANY						
25,719	100.00	391,200	100.00	783,576	100.00	706	100.00	$ 6,922,681	100.00
66,757	32.31	260,633	66.63	480,713	61.35	28,970	410.34	4,114,241	59.43
56,647	43.19	341,878	87.39	628,341	80.19	37,123	525.84	5,577,119	80.56
00,105	121.12	2,383,352	609.24	2,382,674	304.10	59,407	841.45	17,532,091	253.26
66,048	80.67	1,597,115	408.27	2,112,693	269.64	72,124	1,021.60	17,608,226	254.36
94,101	120.40	1,980,643	506.31	2,359,284	301.11	118,492	1,678.40	22,893,831	330.71
35,494	210.19	1,615,853	413.06	4,159,085	530.78	100,077	1,417.56	26,505,353	382.86

.C.C.Freight Commodity Statistics, Class I Steam Railways in United States: 1958 figures from Form A Reports

PROPERTY INVESTMENT AND CONDENSED OPERATING INCOME ACCOUNT
Class I Roads of the New England Region

Calendar Year Ending December 31, 1957

Road	Average miles of road operated	Average net Investment [a]	Total operating revenues	Total operating expenses	Railway tax accruals	Equipment rents net balance	Joint facility rents net balance	Net r... A...
NEW ENGLAND REGION:								
Bangor & Aroostook R.R.	602	$ 56 482 070	$ 15,364 330	$ 12 428 782	$1 280 722	Cr $1 315 805	Dr $ 9 641	$ 2
Boston & Maine R.R.	1 571	272 270 041	85 953 927	68 884 867	5 666 675	Dr 5 442 532	Dr 440 650	5
Canadian Pacific (lines in Me.)	234	13 798 279	6 971 007	5 586 132	401 331	Dr 613 065	Dr 108 751	
Central Vermont Ry.	383	25 827 620	11 596 267	9 750 350	602 176	Dr 1 515 590	Dr 206 426	Def.
Maine Central R.R.	944	66 497 661	26 977 097	21 815 338	2 312 441	Dr 328 494	Dr 375 352	2
New York Connecting R.R.	21	23 117 235	3 733 284	2 507 234	1 000 242	Dr 144 476	Cr 100 100	
New York New Haven & Hartford R.R.	1 762	428 791 195	164 056 355	135 383 552	11 705 944	Dr 9 007 366	Dr 7 616 344	
Rutland Ry.	391	23 173 144	5 113 653	4 393 262	333 892	Dr 75 652	Dr 44 190	
Total - New England Region	5 908	909 957 245	319 765 920	260 749 517	23 303 423	Dr 15 811 370	Dr 8 701 254	11

Calendar Year Ending December 31, 1958

NEW ENGLAND REGION:								
Bangor & Aroostook R.R.	602	$ 57 479 036	$14 194 305	$ 12 242 252	$ 692 596	Cr. $1 312 757	Dr $ 10 165	$ 2
Boston & Maine R.R.	1 571	277 555 598	77 435 364	63 524 283	6 021 266	Dr. 5 474 028	Dr 501 549	1
Canadian Pacific (lines in Me.)	234	13 627 493	7 458 735	5 185 846	395 073	Dr. 699 060	Dr 121 867	1
Central Vermont Ry.	377	25 943 630	10 761 000	9 385 852	610 148	Dr. 1 464 475	Dr 208 646	Def.
Maine Central R. R.	944	65 772 453	24 995 705	20 240 487	2 168 401	Dr. 310 785	Dr 411 451	1
New York Connecting R.R.	21	22 896 494	4 361 908	2 523 544	1 065 214	Dr. 146 780	Dr. 114 230	
New York New Haven & Hartford R.R.	1 762	422 512 797	149 550 961	125 435 142	11 756 329	Dr. 9 038 112	Dr 7 176 925	Def. 3
Rutland Ry.	391	22 970 565	4 635 748	4 144 795	328 453	Dr 51 965	Dr 180	
Total - New England Region	5 902	908 758 066	293 393 726	242 682 201	23 037 480	Dr 15 872 448	Dr 8 545 013	3

Source: Annual Reports of the railroads to the Interstate Commerce Commission.

Def. - Denotes deficit

a. Represents average investment at beginning and end of year in road an... equipment (less accrued depreciation and amortization), material and sup... (Acct. 716) and cash (Acct. 708).

Association o...
Bureau of Rai...
Washington, D...

PROPERTY INVESTMENT AND CONDENSED OPERATING INCOME ACCOUNT
Class I Roads of the New England Region

Calendar Year Ending December 31, 1957

	Average miles of road operated	Average net Investment [a]	Total operating revenues	Total operating expenses	Railway tax accruals	Equipment rents net balance	Joint facility rents net balance	Net ry.operating income: Amount	Net ry.operating income: Rate of return on avg.net investment.	Net income after fixed and contingent charges
.R.	602	$ 56 482 070	$ 15,364 330	$ 12 428 782	$1 280 722	Cr $1 315 805	Dr $ 9 641	$ 2 960 990	5.24%	$1 051 453
	1 571	272 270 041	85 953 927	68 884 867	5 666 675	Dr 5 442 532	Dr 440 650	5 519 203	2.03	764 162
nes in Me.)	234	13 798 279	6 971 007	5 586 132	401 331	Dr 613 065	Dr 108 751	261 728	1.90	-
	383	25 827 620	11 596 267	9 750 350	602 176	Dr 1 515 590	Dr 206 426	Def 478 275	Def	Def 1 291 727
R.R.	944	66 497 661	26 977 097	21 815 338	2 312 441	Dr 328 494	Dr 375 352	2 145 472	3.23	914 866
Hartford R.R.	21	23 117 235	3 733 284	2 507 234	1 000 242	Dr 144 476	Cr 100 100	181 432	0.78	Def 444 627
	1 762	428 791 195	164 056 355	135 383 552	11 705 944	Dr 9 007 366	Dr 7 616 344	343 149	0.08	Def 2 363 702
	391	23 173 144	5 113 653	4 393 262	333 892	Dr 75 652	Dr 44 190	266 657	1.15	299 020
nd Region	5 908	909 957 245	319 765 920	260 749 517	23 303 423	Dr.15 811 370	Dr 8 701 254	11 200 356	1.23	Def 1 070 555

Calendar Year Ending December 31, 1958

.R.	602	$ 57 479 036	$14 194 305	$ 12 242 252	$ 692 596	Cr.$1 312 757	Dr $ 10 165	$ 2 562 049	4.46%	$1 431 684
	1 571	277 555 598	77 435 364	63 524 283	6 021 266	Dr. 5 474 028	Dr 501 549	1 914 238	0.69	Def.3 242 207
nes in Me.)	234	13 627 493	7 458 735	5 185 846	395 073	Dr. 699 060	Dr 121 867	1 056 889	7.76	-
	377	25 943 630	10 761 000	9 385 852	610 148	Dr. 1 464 475	Dr 208 646	Def. 908 121	Def.	Def. 1 442 282
R.R.	944	65 772 453	24 995 705	20 240 487	2 168 401	Dr. 310 785	Dr 411 451	1 864 581	2.83	753 850
Hartford R.R.	21	22 896 494	4 361 908	2 523 544	1 065 214	Dr. 146 780	Dr. 114 230	512 140	2.24	3 702
	1 762	422 512 797	149 550 961	125 435 142	11 756 329	Dr. 9 038 112	Dr 7 176 925	Def3 855 547	Def.	Def 4 276 639
	391	22 970 565	4 635 748	4 144 795	328 453	Dr 51 965	Dr 180	110 355	0.48	155 027
nd Region	5 902	908 758 066	293 393 726	242 682 201	23 037 480	Dr 15 872 448	Dr 8 545 013	3 256 584	0.36	Def 6 616 865

ports of the railroads to the Interstate Commerce Commission.

Def. - Denotes deficit

a. Represents average investment at beginning and end of year in road and equipment (less accrued depreciation and amortization), material and supplies (Acct. 716) and cash (Acct. 708).

Association of American Railroads
Bureau of Railway Economics
Washington, D.C.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

CONDENSED OPERATING INCOME ACCOUNT

Year	Operating Revenues	Subsidy-Old Colony Line	Operating Expenses	Taxes	Rents Net Debit	Net Railway Operating Income or (Deficit)	Net Income or (Deficit)
1948	$171,391,814	$ -	$ 135,370,333	$ 14,323,563	$ 10,795,382	$ 10,902,536	$ 5,799,596
1949	144,690,868	-	117,145,462	11,142,000	8,874,408	7,528,998	2,774,888
1950	150,764,985	-	115,075,645	14,983,256	9,803,273	10,902,811	7,467,299
1951	159,105,404	-	127,348,726	12,949,013	10,911,028	7,896,637	4,930,718
1952	163,419,662	-	130,301,586	11,679,476	10,805,722	10,632,878	7,044,599
1953	165,029,092	-	132,973,431	11,223,390	10,904,194	9,928,077	6,060,348
1954	149,986,923	-	121,470,321	7,418,853	11,848,805	9,248,944	9,090,635
1955	155,118,869	-	127,036,004	8,739,455	13,611,071	5,732,339	4,246,534
1956	162,450,211	-	131,813,650	11,894,998	16,205,732	2,535,831	261,704
1957	164,056,355	-	135,383,552	11,705,944	16,623,710	343,149	(2,363,702)
1958	149,100,961	450,000	125,435,142	11,756,329	16,215,037	(3,855,547)	(4,276,639)*
JANUARY - JULY, Inclusive							
1958	85,187,569	75,000	73,467,569	6,013,169	9,640,268	(3,858,437)	(3,448,839)*
1959	86,368,251	450,000	73,061,902	6,914,254	9,980,095	(3,138,000)	(4,390,278)

* Includes $1,429,304 retroactive Mail pay for period prior to January 1, 1958

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

PROPERTY INVESTMENT AND RATE OF RETURN

Year	Net Investment	Net Railway Operating Income or (Deficit)	Rate of Return on Net Investment
1948	$ 399,311,166	$ 10,902,536	2.73%
1949	407,372,383	7,528,998	1.85
1950	394,388,940	10,902,811	2.76
1951	390,468,218	7,896,637	2.02
1952	396,514,458	10,632,878	2.68
1953	402,534,295	9,928,077	2.47
1954	426,728,450	9,248,944	2.17
1955	426,153,055	5,732,339	1.34
1956	428,036,464	—2,535,831	0.59
1957	429,545,925	343,149	0.08
1958	415,479,668	(3,855,547)	None

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

CONDENSED OPERATING INCOME ACCOUNT

Freight Service

Year	Revenue	Expenses	Expenses, Taxes and Net Rents	Freight Net Railway Operating Income
1948	$100,380,318	$ 69,633,755	$83,960,240	$16,420,078
1949	82,472,850	56,232,548	65,328,725	17,144,125
1950	90,698,892	56,848,329	70,429,984	20,268,908
1951	94,355,235	63,393,207	74,547,585	19,807,650
1952	95,593,165	62,434,416	72,433,331	23,159,834
1953	96,901,297	63,145,312	73,574,179	23,327,118
1954	84,364,308	57,912,595	64,931,650	19,432,658
1955	91,732,257	59,959,252	71,744,388	19,987,869
1956	94,427,098	62,367,811	77,032,712	17,394,386
1957	94,278,581	64,443,221	78,660,404	15,618,177
1958	81,144,595	60,010,185	74,015,840	7,128,755

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

CONDENSED OPERATING INCOME ACCOUNT

PASSENGER AND ALLIED SERVICES

Year	Revenues	Subsidy-Old Colony Line	Expenses	Expenses Taxes and Net Rents	Net Railway Operating Income or (Deficit)
1948	$ 70,377,734	$ -	$ 65,235,810	$ 75,946,125	$ (5,568,391)
1949	61,626,234	-	60,374,306	71,218,414	(9,592,180)
1950	59,488,510	-	57,728,739	68,856,326	(9,367,816)
1951	64,146,440	-	63,438,749	76,064,077	(11,917,637)
1952	67,161,427	-	67,281,529	79,685,894	(12,524,467)
1953	67,439,281	-	69,189,974	80,807,524	(13,368,243)
1954	64,901,636	-	62,880,422	75,046,555	(10,144,919)
1955	62,635,777	-	66,331,276	76,800,414	(14,164,637)
1956	67,207,674	-	68,696,419	82,041,401	(14,833,727)
1957	69,021,306	-	70,216,453	84,245,865	(15,224,559)
1958	67,151,873	450,000	64,607,521	78,480,129	(10,878,256)

ESTIMATED ANNUAL FIXED CHARGES AND CONTINGENT INTEREST AND LONG-TERM DEBT MATURITIES - NEW HAVEN RAILROAD

Period	Fixed Charges and Contingent Interest	Long-term Debt Maturities (a)	Total Fixed and Contingent Obligations (b)
Year 1959	$9,260,000	$ 9,935,000	$19,195,000
Year 1960	9,400,000	10,805,000	20,205,000
Year 1961	9,180,000	9,330,000	18,510,000
Year 1962	8,850,000	8,705,000	18,655,000
Year 1963	8,550,000	6,930,000	16,480,000

(a) These estimates anticipate rescheduling of flood loan agreements to provide for principal repayments of $1 million annually to 1973. Estimates also include sinking fund requirements.

(b) Includes accruals for contingent interest of $2,375,000 each year 1958 to 1963 inclusive. No provision is included for contingent liability under agreement with Union Securities Corporation covering purchase of 131,385 shares of preferred stock.

VERIFIED STATEMENT NO. 8
OF H. L. NANCARROW

[1]

I am Assistant Vice President—Special Services of The Pennsylvania Railroad Company, with offices at Six Penn Center Plaza, Philadelphia, Pennsylvania. I am responsible for the service aspects of freight traffic solicitation. I have been with The Pennsylvania Railroad Company for 39 years, serving in both the Operating and Traffic Departments, and am completely familiar with the freight train operations of that Company and, in general, with those of other Eastern railroads.

Following graduation from Bucknell University, Lewisburg, Pa., with a Bachelor of Science degree in Mechanical Engineering, I entered the service of the Pennsylvania Railroad in October, 1920, as a draftsman in the Motive Power Section of the Maintenance Department. After serving an apprenticeship in the Altoona Shops I held various positions within the Motive Power Department at a number of different locations over the system. Thereafter, in 1936, I was appointed Superintendent

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of the Logansport Division. Subsequently, I served successively as Superintendent of the Buffalo Division, Superintendent of Passenger Transportation, Eastern Region at Philadelphia, Superintendent of the Pittsburgh Division in the Central Region, General Superintendent of the Lakes Region at Cleveland, General Manager of the Western Region at Chicago and General Manager of the Eastern Region at Philadelphia. In 1952, I was appointed Assistant Vice President—Operations for the system and, in 1955, I became Assistant Vice President—Freight Sales and Services. In 1958, I assumed my present position as Assistant Vice President—Special Services in the Sales Department.

In my long career with the Pennsylvania Railroad,

serving in various capacities at numerous points over the system I have gained a fairly wide knowledge of the operations of other Eastern railroads, in addition to what I feel to be a thorough familiarity with those of the Pennsylvania Railroad itself.

I am a member of the American Railway Engineering Association and The American Association of Railroad Superintendents and am a licensed professional engineer in the State of Pennsylvania.

My testimony will deal with the general nature of the operations of Eastern railroads in the handling both of freight traffic generally and Official-Southern interterritorial traffic in particular as part of the overall operation.

The Southern railroads in their Reply, dated May 1, 1959, to the Petition of Eastern Railroads for Reopening, Further Hearing and

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Modification of Order herein assail the group average Form A cost data shown by Eastern railroads on the ground that such data reflects territorial average traffic and is, therefore, assertedly unrepresentative of the North-South interterritorial traffic here in issue. For the reasons which I shall hereafter explain in detail, it is my opinion that the Southern railroads are unrealistic in suggesting the segregated costing of a particular category of general traffic, inasmuch as that traffic is, in fact, handled on Eastern lines, and I feel confident on Southern lines as well, as an indistinguishable part of the overall operation.

Railroad facilities and services are planned and operated, with the exception as to some roads of volume movements of heavy loading commodities such as coal and ore, so as to transport all freight cars between two points in a similar manner with all necessary dispatch as part of an efficient volume movement, irrespective of their contents or ultimate point of origin or destination. To illustrate, a car received by an Eastern line from a Southern connection at Cincinnati for movement North receives the same line-haul service on that line as one destined to the same point which

originates at Cincinnati. Each car enjoys the service advantages of integrated system operations and it seems only proper that each car likewise bear its proportionate share of the cost of operating and maintaining the system. In my opinion, while an effort to put a price tag on a particular category of traffic, such as Official-Southern interterritorial traffic, may have some theoretical appeal, such an approach, even if it could be accomplished on sound principles of cost accounting, fails to recognize that in actual operations all traffic, with

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the possible exception of the volume coal and ore traffic previously mentioned moved by Eastern lines, and doubtless by Southern lines as well, is so intermingled that every segment of the whole is affected by and, in turn, itself affects the services accorded on all other traffic.

The degree of commingling and interdependence of traffic in Official Territory can best be appreciated if the general character of train service on Eastern railroads is first described. Present-day transportation is a highly competitive field. The commercial demands of today's shippers and receivers are considerably more exacting than those of railroad customers in the past. As will be seen later in my description of the operations of Trains MD-12 and CS-1 between Potomac Yard, Va., and Harsimus Cove Yard, N. J., among others, satisfying those demands for particular shippers and receivers creates additional burdens with respect to other traffic. Moreover, railroads at present, particularly in the East, are faced with constantly increasing competition from other modes of transportation, primarily truck and water. In response to the service demands of shippers, and particularly of their receivers, and in order to maintain their competitive position, the Eastern railroads have established a comprehensive pattern of arranged freight train services with such coordination of schedules, consists and make-ups that a substantial change in any particular service must of necessity directly influence many

other services. Inasmuch as expedited service is required on interline traffic, just as on certain local traffic, the coordination of

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schedules must often extend beyond the operation of an individual carrier. If this were not the case it would, of course, be impossible to provide speedy, dependable and efficient transportation of the traffic as a whole.

Using for purposes of illustration the Pennsylvania Railroad, with which I am of course most familiar, service is provided throughout the East in all directions, East-West as well as North-South. In general, the freight train operations of the Pennsylvania involve the regular operation of the following types of train service:

1. Preference trains operating, when the volume of traffic justifies, between the more extreme terminals of the system performing an absolute minimum number of set-offs and pick-ups at intermediate points en route.

2. Preference trains between extreme system terminals providing limited intermediate service.

3. Through trains operating between important terminals not necessarily at the extremes of the system, generally along the routes of the preference trains previously described.

4. Through trains operating between terminals not located on the routes of the trains described above.

5. Local freight trains operating on both main and branch lines for the distribution and collection of cars and for station, team track and industrial switching.

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6. Non-preference through freight trains operating over the routes and between the terminals previously described, some of them seasonal in nature, consisting mainly of a single commodity such as coal or ore or of empty cars.

The foregoing is a conventional method of operation and is by no means peculiar to the Pennsylvania. The pertinent consideration is the recognition that each of the foregoing types of train service is provided on Official-Southern traffic just as on all other traffic and generally in conjunction with such other traffic. These general conclusions are fully confirmed by the studies which I shall hereafter describe.

The nature and extent of the services provided by Eastern railroads on Southern interterritorial traffic is best illustrated by the studies on the Pennsylvania and other Eastern railroads conducted under my supervision incorporated into the exhibits which I shall now explain in detail. The first of these studies may be termed a train utilization study and is simply intended to demonstrate the extent to which the total train service of Eastern railroads participates in the movement of Southern interterritorial traffic. The studies in the second group consist of detailed tracings depicting schematically a number of trains operated by the Pennsylvania which are substantially involved in the transportation of Southern traffic. The latter studies are illustrative of the commingling of traffic and the interdependence of trains comprising the general transportation network.

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My accompanying Exhibit A is the Train Utilization Study. It should be noted with respect to this study that it was not confined to Eastern lines known at the outset to participate substantially in Southern interterritorial traffic. In the interest of conservatism, it was desired to include a fair cross-section of the Official Territory carriers in this study. Thus, the Erie and Nickel Plate, both primarily East-West rather than North-South carriers, were studied, as well as the Pennsylvania and Baltimore & Ohio, which participate heavily in this traffic, and the New Haven, the principal New England participant. Exhibit A shows the results of the study for each of the five study lines individually as well as on a consolidated basis.

Each of the five named carriers was asked to study its operations and traffic during a week in May of this year to determine the proportion of trains handling at least one carload of the involved Official-Southern interterritorial traffic. Light locomotives, locomotives with caboose cars only, switching or transfer runs, non-revenue freight trains and coal trains were excluded. The five study lines were merely asked to furnish, first the total number of freight trains operated during the week, classified as between through and local trains and, secondly, the number of such trains similarly classified which were found upon study to include at least one car of Official-Southern interterritorial traffic.

The results of this study are most revealing. On the Pennsylvania

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we found that 40.4% of the loaded freight trains (excepting those previously enumerated) operated on the system during the Week of May 3-9, 1959, including East-West trains as well as North-South trains, contained Southern business. On the Baltimore & Ohio, 47.9% of the trains operated during the week of May 20-26, 1959, contained Southern business. On the New Haven, 52.8% of the trains operated by that system during the week of May 3-9, 1959, included at least one Southern car. And it is significant to note that even roads which are primarily East-West carriers nonetheless utilized a significant portion of their train service in handling that Southern traffic in which they participate. For the Erie Railroad, 38.5% of the trains operated during the week of May 17-23, 1959, contained Southern cars, while for the Nickel Plate, during the week of May 10-16, 1959, 57.8%, or well over half of the trains of this predominantly East-West railroad, included at least one car of Southern interterritorial traffic. On a consolidated basis for the five study Eastern railroads, of the weekly total of 13,660 trains, 6,199, or 44.7%, participated in the transportation of the carload traffic here involved to or from South-

ern Territory. These included 50.7% of all through trains and 33.4% of all local trains operated. It must be emphasized that many trains which might not contain a loaded Southern car nonetheless contained empty cars moving interterritorially but were not included in the study. The inclusion of these trains would obviously increase the utilization shown.

In their Reply to petition previously referred to, the Southern rail-

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roads attempt to minimize the importance of the involved traffic to the Official Territory carriers. Thus, it is asserted, at page 20, that "the divisions here at issue affect only 5% of the total revenues of the Northern lines." I am not prepared to accept the percentage there stated but, even if this were the case, it is most significant that in order to derive whatever revenues may properly be attributable to Southern traffic, five representative Eastern lines were obliged during a one-week period to utilize over 44% of their total available service. During another week, I am sure that proportionate utilization would be at least as great but, more important, many different trains would be found with Southern cars in their consist. I am convinced that were it possible to extend the same test for a longer period and to enumerate the thousands of different trains involved, it would be found that ultimately every train operated by an Eastern line would participate in the transportation of Southern traffic. The obvious conclusion to be drawn is that Southern traffic shares in the same service provided on traffic generally within Official Territory and is not restricted to any particular trains or categories of service.

Another comparison is possible as a result of the breakdown by train type in the train utilization study which again serves to justify on an operating basis the propriety of allocating to Southern interterritorial traffic its proportionate share of the average cost of all traffic in the East. As stated, these studies distinguish between through and way

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or local trains. Thus, it was possible to determine the proportions of all trains operated by each of the five study roads during the test week which were way or local trains. On an individual basis, these proportions range from 15.1% for the Nickel Plate to 58.5% for the New Haven. For all five roads, 4,693 trains, or 34.7%, of all trains operated during the week were way or local trains, the balance being classified as through trains. Similarly of the trains containing Southern business, 25.9% were way or local trains. On the basis of the foregoing facts and my general experience I conclude that Official-Southern interterritorial traffic is not confined to through trains on Eastern lines. In this respect, Official-Southern interterritorial traffic is indistinguishable from traffic generally.

Exhibit B is a detailed system map of The Pennsylvania Railroad. The map shows the network of lines over which the Pennsylvania operates and permits the accurate location of points shown on the schematic train diagrams which I shall now describe.

As I stated above, certain studies were conducted under my supervision in order to determine the relationship of Official-Southern traffic to other traffic and to illustrate the degree of commingling of cars and interdependence of selected trains handling a substantial volume of interterritorial business to and from Southern connections with other trains operated by the Pennsylvania. Accordingly, I understook to trace Pennsylvania Railroad freight trains operated between the Cincinnati and Potomac Yard gateways, on the one hand, and important interior East-

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ern terminals of that line on the other. For this purpose I selected March 16, 1956, as a typical day on which the subject trains might fairly be traced. This was the day during the traffic study month on which the volume of traffic moving through Potomac Yard most approached the aver-

age. The trains selected include both long-distance preference trains of the type described in paragraphs 1 and 2 above and shorter-haul preference trains of the type described in paragraph 3. In order to present a comprehensive picture of the assembly, operation and distribution of the principal trains operated by the Pennsylvania to and from the two major Southern gateways, Cincinnati, Ohio; and Potomac Yard, Va.; my studies embrace the following trains, all of which either arrived at or were dispatched from Cincinnati or Potomac Yard, as the case may be, on March 16, 1956:

Exhibit C—PRR Freight Train CIN-1, Enola (Harrisburg) to Cincinnati.

Exhibit D—PRR Freight Train CIN-2, Cincinnati to Enola.

Exhibit E—PRR Freight Train LM-5, Columbus to Cincinnati.

Exhibit F—PRR Freight Train LM-4, Cincinnati to Columbus.

Exhibit G—PRR Freight Train MD-12, Potomac Yard to Harsimus Cove.

Exhibit H—PRR Freight Train CS-1, Harsimus Cove to Potomac Yard.

Exhibit I—PRR Freight Train EC-5, Potomac Yard to Enola.

Exhibit J—PRR Freight Train B-6, Enola to Potomac Yard.

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Exhibit K—PRR Freight Train MD-18, Potomac Yard to Greenville.

Exhibit L—PRR Freight Train MD-1, Greenville to Potomac Yard.

Exhibit M—PRR Freight Train MD-6, Potomac Yard to Greenville.

Exhibit N—PRR Freight Train MD-13, Greenville to Potomac Yard.

Exhibit O—PRR Freight Train BP-2, Potomac Yard to Philadelphia.

Exhibit P—PRR Freight Train BP-5, Philadelphia to Potomac Yard.

These several charts show in precise detail the manner in which cars of Official-Southern business moving through the two principal gateways are assembled or distributed, as the case may be, and moved over the Pennsylvania Railroad in association with other traffic. The obvious necessity for a merger of traffic, making it possible to handle all traffic efficiently and economically on a volume basis, becomes evident upon analysis of the train charts.

In each case I have traced from Pennsylvania Railroad origins or connections, or to Pennsylvania Railroad destinations, or connections, as the case may be, every car, whether or not of Southern interterritorial character which was at any time a part of the consist of the subject train. In each instance the loaded and empty cars of Official-Southern traffic included in the study train are shown in brackets following the indicated total consist of the train. The tracing is outlined on the exhibits by showing train symbols or, in the case of extra trains, locomotive

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numbers, with an abbreviated statement of the loaded and empty cars traced to or from each of the affected trains at every stage of the movement of that train. Where cars originate or terminate or are interchanged at a particular station, the diagram so indicates with respect to that location. The route of the study train itself is readily identified by the heavy black line; the lighter lines represent the other Pennsylvania Railroad trains involved in the ultimate disposition or initial origination, as the case may be, of the cars at any time part of the consist of the study trains.

While the tracing of the study cars and involved trains on each of the schematic diagrams is often quite detailed, such detail is vital in my opinion to an understanding of the varied operations and coordination of schedules and services required to enable a modern railroad to meet the service demands of its many shippers in an efficient manner. Indeed the very intricacy of these operations, as shown by the train diagrams, itself demonstrates the indistinguishable nature of general traffic such as here involved on Eastern lines which renders impracticable, if not impossible, the segregation of any particular category of that traffic from the total for purposes of determining costs of service.

Train CIN-1

Exhibit C, as previously identified, is a chart based upon a study of Pennsylvania Railroad Freight Train CIN-1, from Enola Yard near Harrisburg, Pa., to Cincinnati, Ohio, arriving on March 16, 1956. This Exhibit C shows schematically the Pennsylvania Railroad origins of all cars, whether or not destined to Southern Territory, which made up

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Train CIN-1 and the disposition of such cars at any time a part of the study train. As I previously stated, this chart, and those which outline the operations of the other study trains to be described hereafter, shows the route of each involved train by a thin line, that for the study train, in this case CIN-1, being a heavy black line. The identifying designation of each train is also shown. Pick ups and deliveries at various terminals are indicated in the squares set forth under the name of the terminal. The consist of the study train is shown between each terminal so that the changes in that consist are fully reflected. In addition to the total consist showing both loaded and empty cars, similar figures in brackets indicate the number of loaded and empty Official-Southern or Southern-Official cars, as the case may be, dependent upon the direction of movement.

It can be seen that the traffic gathered at Enola for Train CIN-1 originated at many different points in Eastern Territory and moved over the Pennsylvania to Enola in a number of different Pennsylvania Railroad trains. This widespread dispersion and consequent service demand was also evident in the Official-Southern traffic included in CIN-1.

Of the 15 loaded cars of Southern-interterritorial traffic included in CIN-1 upon departure from Enola, 10 cars destined to the South originated at such widespread points as Cromby, Waverly, Beverly, Philadelphia, Lebanon, Marietta, Eddystone, Pa., and Inwood, W. Va., or,

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in interchange, at White Marsh Junction. In addition, this train provides an interesting feature in that the other 5 cars were received at Potomac Yard from Southern connections for Official Territory destinations, so that CIN-1 upon departure from Enola contained 10 cars destined to the South via the Cincinnati gateway and 5 cars received from the South via the Potomac Yard gateway. The latter cars were delivered at Springdale, Pa.; East Liberty, Try Street (Pittsburgh), Pa.; and Weirton Junction on the Pennsylvania while the remaining load terminated at McKeesport, Pa., on the Pittsburgh & Lake Erie. Concurrent with the distribution en route of the five cars from the South, CIN-1 picked up two loaded cars for movement to the South at Altoona, originating in Williamsport, and an additional five loaded cars and an empty car at Scully, four of those loads having originated at 11th Street, Pittsburgh, and the remaining one at Oil City. Upon arrival at Cincinnati therefore, the total consist of CIN-1 was 35 loaded cars and 18 empty cars, of which 17 loads and 10 empties, or 51%, of the total consist were delivered to Southern carriers at that terminal.

Analysis of the chart, particularly at the terminals, gives some indication of the cost incident to assembling and distributing the cars in the study train. For example,

23 trains of various character brought 93 cars into Enola to be assembled into CIN-1 at that point. At Pitcairn Yard en route, 20 trains were required to dispose of the 51 cars set off from CIN-1 at that terminal. Official-Southern traffic participated in this service.

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In all, Exhibit C shows that a total of 75 trains were required to assemble and distribute the cars that were at one time a part of the consist of CIN-1. A total of 105 cars were handled by CIN-1 during its west-bound movement, representing an average of 1.40 cars in each of the 75 auxiliary trains without regard to any particular break-up or make-up point. The trains upon which CIN-1 was dependent were of all types and included through freight trains, local freight trains, both symbol trains and extra trains, and transfer, turn-around and mine runs. Furthermore, the operations of Train CIN-1 should be viewed in conjunction with those of Train LM-5 described in my Exhibit E, inasmuch as CIN-1 transports traffic from the East to much of the interior area served by LM-5 from Columbus and supplements the service of the latter train by handling freight originating in the same territory routed to and through the Cincinnati gateway.

Train CIN-2

Exhibit D depicts in similar schematic fashion the operations of Train CIN-2 dispatched from Cincinnati to Enola on March 16, 1956, and the manner in which the cars moved by that train were distributed to their ultimate Eastern destinations. Train CIN-2 is typical of the longer-haul preference trains operated by the Pennsylvania and is operated primarily to move traffic, including that delivered by Southern connections, from the Cincinnati gateway to Eastern points.

Upon departure from Cincinnati, CIN-2 contained 50 loaded cars and 10 empty cars, of which 31 loads and 3 empties, or 57%, were

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Southern-Official interterritorial traffic. Upon arrival at Enola, the final terminal of the study train, CIN-2 contained 17 loaded and 1 empty Southern-Official cars, or 35% of its then consist of 45 loads and 4 empties. The disposition of cars, both those of Southern origin and others, at points intermediate between Cincinnati and Enola is shown on the chart. The following table provides some indication of the continuous dispersion of the consist of CIN-2 as the eastward movement of this train progressed.

	No. of Trains	No. of Cars	No. Cars Per Train	No. O-S Cars	No. O-S Cars Per Train	No. Cars Term or Interchanged All	No. Cars Term or Interchanged O-S
Columbus	11	13	1.2	9	0.8	4	1
Pitcairn	11	12	1.1	5	0.5	1	1
Altoona	1	1	1.0	1	1.0	2	1
Enola	21	48	2.3	18	0.9	5	–

I wish to make it plain, in showing the foregoing distribution of cars, that my failure to show the entire consist of the many trains required to effect distribution of CIN-2's complement of cars obviously does not warrant the assumption that such other trains did not also include other non-study cars in their make-up. On the contrary, it must be clear that the operation of such trains could not possibly be justified merely to provide the means of distribution of the cars interchanged from the subject train. It is significant, however, as the foregoing tabulation shows, that by virtue of the many trains required and the small number of former CIN-2 cars per train, particularly those of

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Southern origin, Southern-Official traffic reaches numerous points on the Pennsylvania Railroad, many of which are also served by other Northern carriers competing with the Pennsylvania for this interterritorial business.

Of the 14 loaded cars of Southern-Official business which were distributed from CIN-2 at points intermediate

to Enola, one load was terminated at Columbus and 5 loads were switched at Columbus to Train VL-6 operated via Weirton Junction, at which point one load was cut out for movement to destination at Martins Ferry in Trains PH-111 and Extra 9029. The 4 loads of Southern traffic remaining in Train VL-6 continued to Scully Yard, where two loads were interchanged to the Pittsburgh, Chartiers & Youghiogheny, one load switched to Train PH-26 for movement in Train PG-34 and Extra 2021 via Pitcairn and Conemaugh Yards to Seward, Pa., and the remaining load moved in Extras 8603 and 8837 via Shire Oaks to Donora.

In addition to the loaded cars of Southern traffic from CIN-2 which departed from Columbus in Train VL-6, 2 carloads of the involved traffic from the study train, moved from Columbus in Train PH-4, operating to Dennison, Ohio, via Newark and Trinway. One of these cars terminated at Newark while the other was interchanged at Trinway to Train ZB-1 for delivery at Zanesville, Ohio. It might be noted that the two empty Southern-Official cars cut out of CIN-2, at Columbus also moved to Newark in Train PH-4. Thus, Train CIN-2 departed from Columbus with only 23 loads and 1 empty of the 31 loads and 3 empties of interterritorial business with which it had left Cincinnati. Six of

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the remaining 23 loaded cars were dispersed en route between Columbus and Enola. Again a number of intermediate handlings and a variety of trains were required to effect this distribution. Three loads were set out at Pitcairn and moved on two different days in Train PG-10 via Altoona and Enola to Waverly and Greenville Yards, N. J. Another loaded Southern car moved from Pitcairn in Train WP-20 via Island Avenue and Kiski Junction for interchange to the Bessemer & Lake Erie at Butler, Pa. Another Southern car was delivered by yard engine from Pitcairn to East Pittsburgh. Between Pitcairn and Altoona 18 loaded Southern cars, in addition to the remaining empty car, moved in

CIN-2. One loaded Southern car in CIN-2 was terminated at Altoona while the 17 then remaining in the train moved on to Enola.

The distribution of the consist of Train CIN-2 east of Enola again required a large number of trains owing to the wide dispersion of this traffic. Considering only the dispersion of the 20 loaded cars of Southern-Official traffic which were moved to Enola in Trains CIN-2 and PG-10, 2 loads terminated at Burlington, N. J., 2 loads were interchanged to the Pennsylvania-Reading Seashore Lines at Camden, N. J., 1 load terminated at Harsimus Cove Yard, N. J., 4 loads terminated at Port Newark, 1 load terminated at Greenville Yard, N. J., 2 loads were interchanged at Greenville by carfloat for movement to the Long Island Rail Road and 1 load for movement by water to the New Haven Railroad, 7 loads moved to Baltimore for delivery in two different trains and the remaining empty Southern car terminated at Thurlow Yard.

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Exhibit D and the table above show that there are intermediate terminal operations throughout the entire eastward movement of CIN-2 and that the dispersion of the consist of that train requires the use of through-freight trains serving interior terminals such as VL-6 operating from Columbus to Scully; local freight trains illustrated by Train ZB-1, Trinway to Zanesville, and A-35, Trenton to Bordentown; mine runs exemplified by Extras 2021-9528-21, Conemaugh to Seward; transfer runs such as that required for the movement of three Southern-Official cars from Newark to Port Newark; interchange runs like that required for the delivery of two loaded Southern-Official cars to the Pittsburgh, Chartiers & Youghiogheny at Scully and the movement of three loads and an empty to the Reading Company at Harrisburg. Carfloat service, as shown by the transfer of Southern-Official cars, was provided separately to the Long Island and the New Haven from Greenville

Yard. Yard service was performed at Columbus, Pitcairn, Altoona, Enola, Philadelphia and Jersey City and is also required for such movements as that from Weirton Junction to Weirton, Pitcairn to East Pittsburgh, Washington to Ivy City and at many other points.

In addition, the diagram for Train CIN-2 includes a table of the points of origin of the 18 loaded and 2 empty cars added to the consist of that train at Pitcairn. The number of trains required to move these cars to Pitcairn for dispatchment in CIN-2 is also shown. To avoid duplication and to simplify this exhibit to the degree permitted by the facts,

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I have not sketched those trains on the exhibit. It is important to note, however, that the cars received by CIN-2 at Pitcairn from the various origins listed, none of which were Southern-Official traffic, were merged at that point with Southern-Official traffic and other traffic in the original consist of CIN-2 upon departure from Cincinnati. Such a combination of traffic from various points of origin is typical of modern railroad operating practices. Not only is it important to gather traffic from all sources in order to create a reasonable train load but the degree of this commingling of traffic affords a vivid demonstration of the impracticality of any effort to isolate the services provided on any particular territorial category of traffic.

Train LM-5

Exhibit E shows the operations of Pennsylvania Railroad Freight Train LM-5, operated from Columbus to Cincinnati on March 16, 1956, and its associated trains. This train is typical of the through trains operated between terminals of the Pennsylvania Railroad intermediate to the extremes of the system. The purpose of this diagram is to show the manner in which Southern-Official traffic is gathered from its various Eastern origin points, together with

other traffic, for incorporation into one of these typical shorter-haul through trains. This train moves from Columbus traffic brought to that terminal from the same areas in Ohio, Western Pennsylvania and Western New York which, it will be seen, are served by its counterpart Train LM-4 in the distribution of Southern

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originated traffic. The scope of the area providing traffic for LM-5 may be approximated from the diagram and by reference to the system map, my Exhibit B. On the study day, cars for Train LM-5 originated at 25 different points in four states. Among these points, it might be noted that one loaded car destined for Southern Territory was received from the New York Central at Buffalo and moved to Columbus in a series of trains via Erie and Canton while another load moved from Thurlow Yard (Marcus Hook, Pa.) on the Eastern Seaboard through Harrisburg, Altoona, Conway and Canton. In addition to the loaded cars, 44 empty cars en route South were gathered at various points for inclusion in LM-5.

Departing from Columbus, LM-5 contained 30 loaded cars and 47 empty cars, of which 19 loads and 44 empties were destined to Southern Territory. Additional cars, including some Official Southern traffic, were picked up en route at Morrow, Ohio. Of the five loaded Southern cars added to LM-5 at that point, one originated on the branch line at Zanesville, two at Junction City, one at Lancaster and one at Circleville, Ohio. After inclusion of the traffic received at Morrow from Train ZB-15 and its connecting trains, LM-5 arrived at Cincinnati with a total of 89 cars (39 L, 50 E), of which 68 (24 L, 44 E), or 76%, were destined to points in Southern Territory. Significantly, 20 different Pennsylvania Railroad trains were required to accumulate the 89 cars in the consist of LM-5 on arrival at its Cincinnati terminal.

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Train LM-4

My Exhibit F is a schematic diagram of the counterpart in the opposite direction of Train LM-5, previously described, and shows the distribution within Official Territory of the traffic at one time a part of Pennsylvania Railroad Freight Train LM-4 operated from Cincinnati to Columbus on March 16, 1956. Train LM-4 serves generally the same Ohio, Western Pennsylvania and Western New York territory from which the bulk of the traffic originated by LM-5 was found to move. The purpose of this exhibit is to outline the manner in which traffic originating in Southern Territory destined to Official Territory points via the Cincinnati gateway is distributed to shorter-haul interior points.

In order to accomplish this fanning out of the cars from Cincinnati to the many Official Territory destinations shown on Exhibit F, Train LM-4 must have available the services of various other freight trains of all classes, both from intermediate points and, more particularly, from its final terminal at Columbus. In this instance the cars set off at Morrow for points on the Zanesville Branch originated in Indiana, Illinois and Western and Southwestern states. Southern-originated cars destined to points on this branch would, of course, be handled in the same manner. Of the 12 cars of Southern-Official traffic included in the consist of LM-4 upon departure from Cincinnati, 2 loaded cars were delivered en route at Xenia, Ohio, and 3 loads and 4 empties terminated at Columbus, leaving 3 loads for movement beyond.

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A total of 37 cars of all traffic moved to Columbus in Train LM-4, of which 23 required further transportation beyond that point. These 23 cars dispersed beyond Columbus to such an extent that 15 different trains were needed to

effect their disposition. The three loaded Southern-Official cars in LM-4 destined to points beyond Columbus moved from that terminal in Train NW-82 via Pitcairn and Altoona to Enola; thence in Train NY-8 to Waverly Yard, Newark, for delivery. Thus, it can be seen that, while the general purpose of LM-4, as stated, is to serve shorter-haul interior points, in practice it is impossible to completely confine all shorter-haul traffic to this train and all longer-haul traffic to other trains such as CIN-2. Nonetheless, in order to provide adequate service to the public and to expedite movements to more distant terminals, it is necessary to establish trains, in part, over the same routes between terminals of varying distances in order to avoid indiscriminate mingling of short-haul and long-haul traffic. This operating requirement is demonstrated even more clearly by certain of the expedited trains to and from Potomac Yard, such as MD-12 and CS-1, to be later described.

Trains CIN-1, CIN-2, LM-5 and LM-4, traced in my Exhibits C through F, are typical of the operations conducted by the Pennsylvania Railroad in providing service to and from the Cincinnati gateway through which moves a substantial portion of Southern interterritorial traffic. I have made similar studies of trains operated to and from Potomac Yard, the other principal gateway on Southern traffic for the Pennsylvania and Eastern lines which I shall hereafter describe.

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It should first be understood that in order to adequately meet the demands and industrial requirements of the huge consuming area in the Northeastern portion of the United States, sufficient service must be provided to handle a tremendous volume of goods of various types. The quantity of such traffic moving by rail has substantially declined in recent years. At one time it was possible for the Pennsylvania Railroad, for example, to operate solid trains of perishables during portions of the shipping season from Potomac Yard to the Jersey City area. The following

statement showing the proportions of perishable traffic in the three principal perishable trains operated between these points during the in-season week of March 11-17, 1956, demonstrates that this is no longer the case:

Train	Cars Perishables	Total Cars	Percent Perishables
MD-12	455	784	58.0
MD-18	163	653	25.0
MD-6	416	821	50.7

Nevertheless, while the volume of traffic has somewhat diminished, service demands have substantially increased. It is just as necessary today, as formerly, to schedule perishable deliveries to satisfy market and auction arrival requirements. Indeed, the challenge of competitive modes of transportation has created an even greater demand for expedited service. It will be seen that such service can only be provided by sacrificing economies of operation in terms of fewer trains that might otherwise be accomplished.

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For the foregoing reasons, the nature and operations of the trains principally concerned in the origination and distribution of Official-Southern traffic routed via Potomac Yard, particularly for delivery to Eastern markets, is somewhat different from that provided on such interterritorial cars interchanged through the Cincinnati gateway. Traffic for the New York, Jersey City and Newark areas, and beyond to New England points, is segregated at Potomac Yard, so that it may be forwarded in through Pennsylvania Railroad trains terminating, in the case of former areas at Harsimus Cove Yard and, in the case of New England and Long Island at Greenville Yard. Similar service from these yards is provided on cars moving from New York or New England-Long Island, respectively, to the South. As will be seen, with the exception of Trains MD-12 and CS-1, the gathering and ultimate distribution of cars in the study

trains occurs to a substantial degree on other Eastern railroads. The cars in Trains MD-12 and CS-1 move for the most part to or from Manhattan and require extensive carfloat service across New York Harbor, as well as substantial classification work in the yard on the New Jersey side.

Providing expedited service to and from points such as New York, however, does not satisfy the service requirements at other important consuming and production areas intermediate to the end terminal of the particular train. Thus, additional trains over the same routes are needed under this method of operation to transport traffic to and from the inter-

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mediate points through which the more expedited trains are relayed. Trains terminating in such cities as Baltimore, Philadelphia and Camden, or at Enola Yard, not only move cars to and from those points but, in addition, set off or pick up cars at intermediate terminals which are distributed to or received from other trains at the terminals of those trains. The effect of such service demands upon the Pennsylvania and other Eastern roads in the industrial and highly competitive northeast is clearly illustrated by the diagrams of the trains operated to and from Potomac Yard to which I shall now refer.

Each of these study trains was either dispatched from or arrived at Potomac Yard on March 16, 1956. As I previously explained, I selected March of that year because of its inclusion in the Eastern lines' traffic study. March 16 was the day in that month when the total of the cars received at and dispatched from Potomac Yard most nearly equaled the average daily performance at that yard for the month.

Train MD-12

Exhibit G diagrams the operations of Train MD-12, Potomac Yard to Harsimus Cove Yard, which I previously explained was established primarily to transport Southern

perishable traffic to the New York City markets. In former years this train at least during certain seasons consisted almost exclusively of perishables and was sometimes operated in several sections. Today, as the table above shows, that condition no

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longer exists and, as a matter of fact, the operation of this train has on occasion been discontinued during various off-season periods.

As shown by Exhibit G, Train MD-12 departed from Potomac Yard with 109 loaded cars and 1 empty car, of which 97 loaded cars contained Southern-Official traffic. This train operated directly to Waverly Yard (Newark, N.J.), avoiding the delay incident to performing service at intermediate terminals such as Baltimore, Philadelphia and Trenton. At Waverly Yard, there was some distribution of the consist of MD-12 to nearby points served by local freight trains, as well as the interchange of some cars to connections. Eleven of the loaded Southern cars terminated at Waverly Yard. An additional four such cars were distributed out of that yard in three different local trains for delivery at Linden and Rahway, N. J. The interchange movement to which I referred was made on two Southern cars with the Central Railroad of New Jersey at Oak Island Junction for delivery to Newark and Grasselli, N. J., respectively.

Leaving Waverly Yard with 93 loads, of which 81 were Southern-Official traffic, MD-12 moved via Meadows Yard to Harsimus Cove Yard. Passing through Meadows Yard, "hold" cars and those for interchange with three connecting railroads were set off. A total of 22 Southern-Official cars were interchanged from Meadows Yard to the Delaware, Lackawanna & Western; New York, Susquehanna & Western; and the Erie for movement to final destination. The 58 loaded cars remaining in Train MD-12, of which 57 originated in the South, continued to Harsimus Cove Yard.

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The distribution of these cars, all but one of which represented Southern traffic, from Harsimus Cove Yard very clearly demonstrates the degree to which costly water service must be provided on Southern originated cars. Of the 57 loaded Southern-Official cars which arrived at this yard in the study train, 32 loads moved by carfloat for delivery to Manhattan and an additional two loads were delivered by carfloat to the New York Central at 70th Street. The remaining Southern cars terminated at Harsimus Cove or were interchanged to connections, with the exception of two loaded cars which moved to Brooklyn and an additional car relayed to Greenville Yard for movement by carfloat to the New Haven. The effect of holding arrangements and reconsignment and icing service is also well illustrated by the distribution of the cars which were not terminated at Harsimus Cove Yard itself.

Train CS-1

My Exhibit H is a diagram of Pennsylvania Railroad Freight Train CS-1, dispatched from Harsimus Cove Yard on March 16, 1956, to Potomac Yard. In a sense this is a counterpart of Train MD-12 just described which provided expedited service on Southern perishable traffic to the New York City area. Train CS-1 is operated to afford expedited through transporation of southbound less-carload and forwarder traffic from the New York area via the Potomac Yard gateway. Just as was the case with MD-12, the problem there being one of distribution, the significant considerations with respect to Train CS-1 are,

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first, prior gathering service necessary to create the train and, secondly, the necessity for expeditiously relaying CS-1 through intermediate points such as Trenton and Philadelphia to meet competitive demands, thus requiring additional trains to serve those points.

Of the 80 cars in the total of CS-1 upon departure from Harsimus Cove Yard, 72 cars required carfloat service and 2 cars lighterage service on the Pennsylvania and an additional 4 cars were received in carfloat service from the New York Central via its 70th Street float bridges. As shown, virtually all of the cars in CS-1 were destined to Southern Territory, including the additional loaded car picked up en route at Baltimore. Upon arrival at Potomac Yard, 74 of the 77 cars in CS-1, all but one being loads, or 96%, were interchanged for movement to points in the South.

It should also be emphasized that, whereas a load for the South was picked up en route at Baltimore, CS-1 was relayed through Trenton and Philadelphia in order to expedite the movement of the predominantly less-carload and forwarded traffic to the South. This necessitated the operation of additional service over the same route between Harsimus Cove and Potomac Yard in order to pick up and deliver cars at intermediate points. Thus, the expedited service of CS-1, like that of MD-12, can only be furnished by imposing upon other trains the burden of serving intermediate points.

Train EC-5

Exhibit I is a schematic diagram of Pennsylvania Railroad Freight

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Train EC-5, dispatched from Potomac Yard to Enola on March 16, 1956. This train provides a typical illustration of the manner in which Southern-Official traffic destined to northern, western and northeastern destinations beyond the terminal of the train in Enola is distributed as part of the general service pattern. While, as shown, EC-5 operated in a through movement from Potomac Yard to Enola, the subsequent scattering of the cars from that train in a wide variety of service is most striking. Generally speaking, no

carload traffic terminates or originates at Enola so that all cars hauled into that yard, such as those here included in the consist of Train EC-5, must be further classified and dispersed. Enola Yard is a major classification center for the Pennsylvania, much like the hub of a wheel, and trains converge upon and are dispatched from this yard in all directions.

In the case of Train EC-5, which arrived at Enola with 44 Southern-Official cars out of a total consist of 59 cars virtually all loaded, it required six trains to the west, one train to the southwest and five trains to the north, northwest and northeast, or a total of 12 Pennsylvania trains out of Enola to progress the cars from EC-5 toward their ultimate destinations. It should be noted that this consist included cars moving as far west as Chicago, northeast to Maine and northward to Buffalo for local delivery and for connections through Canada to Detroit, as well as perishable shipments to the 43rd Street Yard at Pittsburgh. A total of 25 cars from EC-5, of which 17 were loaded

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cars from Southern Territory, moved through the Wilkes-Barre gateway to the Delaware & Hudson for delivery to New England lines. This demonstrates that the Pennsylvania Railroad must provide service to and from New England on Southern interterritorial traffic routed via Wilkes-Barre, as well as through Greenville Yard, Jersey City, previously described in connection with the diagrams of Trains MD-18, MD-6, MD-13 and MD-1. Inasmuch as some of these cars are distributed in New England at points common to both the Wilkes-Barre and Greenville routes, the delivering carrier in these instances must also provide alternative service.

Further, it should be noted that while the cars from Train EC-5 departed from Enola in 12 different trains, a total of 25 different Pennsylvania road trains were eventually involved before the 59 cars in EC-5 were ultimately disposed of by the Pennsylvania through delivery or inter-

change. It can be seen that these 25 trains were of all types and classes, including through trains and way trains, runner crews and yard crews and that both main line and branch line operations were involved.

Train B-6

My Exhibit J is a schematic diagram of Pennsylvania Railroad Freight Train B-6, operated from Enola to Potomac Yard arriving on March 16, 1956. This train illustrates in the reverse direction the operating conditions discussed above with respect to Train EC-5 from Potomac Yard to Enola. In the case of B-6, as Exhibit J amply demonstrates, the

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gathering service necessary to assemble this train at Enola is comparable to that required for distribution of the cars in EC-5.

After setting off 36 loaded cars en route at Baltimore, Train B-6 arrived at Potomac Yard with a total of 94 cars, of which 65 (41 loads, 24 empties), or 69% of the then train consist, were cars involved in this proceeding destined for Southern Territory. These 65 Official-Southern cars were part of a total consist of 130 cars dispatched from Enola. Exhibit J shows that 40 Pennsylvania Railroad freight trains were required to transport these 130 cars to Enola for assembly and dispatchment in Train B-6. As was the case with the cars distributed by Train EC-5, the consist of Train B-6 included cars from west of Chicago, East St. Louis and Buffalo at one extreme and New England on the other, as well as from the vast territory in between.

The full gamut of service was also involved in providing the cars for B-6 at Enola. Some of the cars moved in fast-scheduled trains such as NW-82, operating from Chicago to Enola. Others moved in slow local trains, such as M-23, from Sand Company to Mount Union, Pa., and OB-1, from Bradford, Pa., to Olean, N. Y.

The 130 cars at one time part of the consist of B-6 originated at 27 cities on the Pennsylvania Railroad and at many offline stations. They included cars of perishables, livestock, sand, merchandise, coal, liquor, rayon, auto parts, cereals, paper, feed, wood pulp, meat and others. As a consequence, the weight of the lading and the classes of the cars

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required varied considerably, as did the inspection services performed and the motive power used to move the traffic. All of these varied services are available and regularly furnished to Southern traffic as an indivisible part of the overall train service of the railroad.

Train MD-18

My Exhibit K is a schematic diagram of Pennsylvania Railroad Freight Train MD-18, dispatched from Potomac Yard to Greenville on March 16, 1956. MD-18, like MD-12 previously described, furnishes expedited northbound transportation of perishables and commodities demanding similar service. In this instance, however, whereas a substantial part of the traffic of MD-12 is hauled to Harsimus Cove for delivery in the New York City area, MD-18 was established primarliy to insure rapid interchange through Greenville Yard of traffic destined to New England points.

As was true of Train MD-12, shown in my Exhibit G, MD-18 operated through to Waverly Yard in Newark before its consist was broken. At Waverly cars requiring local freight service, for example, the load of Southern-Official traffic delivered at Woodbridge, or transfer service such as that to Port Newark, Meadows Yard, Harsimus Cove Yard or to connecting lines were cut out of MD-18. It should be pointed out that the Southern cars transferred from the study train at Waverly to Harsimus Cove Yard moved beyond that yard by Pennsylvania Railroad carfloat to the New York Central and to New York for PRR delivery just as was true of such cars in MD-12.

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The 80 loaded cars remaining in MD-18 upon departure from Waverly Yard, of which 51 cars contained Southern-Official traffic, were delivered as follows: 55 cars to the New Haven by carfloat on five different days, 20 cars to the Long Island by carfloat and the remaining 5 cars by water for Pennsylvania Railroad delivery in New York City.

In view of the substantial number of cars included in MD-18 which were interchanged to other Eastern lines, I have included in Exhibit K a table showing the disposition, by states, of the cars interchanged through Greenville Yard to the New Haven and Long Island railroads. In all, 75 cars, of which 49 originated in Southern Territory, moved to 41 different destinations in New York, New England and Canada. This distribution is significant because it demonstrates that whereas the operation of Train MD-18 on the Pennsylvania was a continuous through movement as far as Waverly Yard, the cars included in that train were thereafter widely dispersed by other Eastern lines throughout New York State and New England.

Train MD-1

My Exhibit L is a schematic diagram of Train MD-1, operated from Greenville Yard, Jersey City, N. J., to Potomac Yard arriving on March 16, 1956. Primarily, MD-1 is operated to provide service on cars from New England and Canada received by the Pennsylvania from the New Haven. However, it also includes cars from the Long Island Rail Road moving via Greenville Yard and from other connections via Waverly Yard.

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In this instance the most significant operating condition, and one which, of course, substantially affects the costs of Eastern lines, is the extent of the carfloat service necessary to the prior gathering of the cars from which the train is assembled. The table on the bottom of Exhibit

L indicates the states and number of stations originating the loaded cars received in the Jersey City area which were thereafter made up into the consist of Train MD-1. This table shows that the 51 loaded cars originating in the United States came from 36 different stations in 7 states and required the services of a number of other Eastern carriers. In addition, MD-1 also included 36 empty cars for Southern connections, the offline origins of which could not accurately be determined by this study on the Pennsylvania. Certainly many additional locations and services would be involved in gathering those empty cars for return South.

While most of the traffic of Train MD-1 was received from connections via Greenville or Waverly Yards, it should also be noted that individual cars of Southern traffic were moved into Waverly from Perth Amboy and also picked up en route at New Brunswick, so that the consist of MD-1 on arrival at Potomac Yard was 76% Official-Southern traffic as compared to 63% of such traffic upon departure from Greenville.

Train MD-6

Exhibit M is a diagram of the operations and distribution of cars of Train MD-6 operated from Potomac Yard to Greenville Yard on

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March 16, 1956. As previously stated, Train MD-6, like Train MD-18, has as its primary mission the expedited movement of Southern traffic to New England and Long Island Rail Road destinations. The table on Exhibit M shows that the cars included in the consist of MD-6 were ultimately delivered by Eastern connections of the Pennsylvania at 34 different destinations in six states, with additional cars moving on to Canada.

Of the 135 cars, virtually all loaded cars handled in Train MD-6 to Greenville, 93 cars, or 70% of the consist, were of Southern-Official traffic involved in this proceeding.

All but two of the cars in this train moved to points beyond Greenville Yard by carfloat service of the New Haven and Long Island Railroads. Inasmuch as the carfloats to the New Haven each have a maximum capacity of 19 to 22 cars, dependent upon the length of the cars, while those used in the water service to Long Island City for Long Island Rail Road delivery have a maximum capacity of 17 to 19 cars, it is obvious that the consist of MD-6 required a number of moves across New York Harbor at the high costs traditionally associated with such water service. And Train MD-6 is, of course, not the only Pennsylvania Railroad train furnishing cars for interchange at Greenville by carfloat service to connections.

It should again be noted with respect to Train MD-6 that, like Trains MD-12 and CS-1, among others, the need for expedited handling of the traffic consigned to this train requires that it be relayed through the intermediate terminals, such as Baltimore, Philadelphia and

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Newark, shown on Exhibit M. As a consequence, additional trains must be scheduled to provide service at those intermediate points and the requirement for expedited handling is, of course, equally applicable to the northern connections of the Pennsylvania on this study traffic. For example, 20 of the Southern-Official cars interchanged from MD-6 by water to the New Haven contained perishable commodities for delivery in Boston, Mass., hence requiring an expedited movement on that carrier and again imposing additional burdens upon the other service of the New Haven at points intermediate to Boston.

Train MD-13

My Exhibit N is a schematic diagram of Pennsylvania Railroad Freight Train MD-13, operated from Greenville Yard to Potomac Yard. Like Train MD-1 previously described in my Exhibit L, MD-13 received most of its consist

from connections by carfloat. As shown by the table contained in the exhibit, the Official-Southern traffic included in this train originated at 17 different locations in New York and six New England states and an additional station on the Long Island Rail Road. Departing from Greenville Yard, MD-13 contained 55 loaded cars and 25 empty cars, of which 30 loads and 8 empties were Official-Southern traffic. Of the latter, 3 empties were received from the Long Island, 27 loads and 5 empties from the New Haven, 1 load from the BEDT, 1 load from Bush Terminal Docks and 2 loads originated at Greenville. Additional cars, including Southern traffic, were picked up en route at Waverly Yard, some of which originated at points on

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the Erie and Lehigh Valley. Two loaded cars for the south were also added to MD-13 at Philadelphia. Upon arrival at Potomac Yard, MD-13 contained 45 loaded cars and 19 empties, of which 42 loads and 14 empties, or 96% of the total consist, were delivered to Southern connections.

While Train MD-13 performed more intermediate service than did MD-1, to which its operations are quite similar, it is again important to point out the onerous nature of the service necessary to assemble this train at Greenville. Not only did the traffic originate at numerous locations on various connecting lines but a substantial part of the consist of this train moved to Greenville in costly New York Harbor water service.

Train BP-2

Exhibit O is a diagram, prepared in a manner similar to those previously described, of Train BP-2, dispatched from Potomac Yard to Philadelphia on March 16, 1956. This train affords an example of the service which must be provided to intermediate terminals that might otherwise be performed by trains from the same origin terminal to a more distant destination were it not necessary to relay the

latter trains through the intermediate terminals in order to provide more expedited service.

BP-2 is one of the trains established primarily to provide service to and from Philadelphia, particularly on perishable traffic from the South. This train is so scheduled that such perishable traffic arrives in Phila-

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delphia in time to meet the demands of the produce trade. The operation of BP-2 and of similar trains serving Baltimore and Camden, N. J., from Potomac Yard permits the through movement of trains MD-12, MD-18 and MD-6, previously described, to the New York area by relieving those trains of intermediate work. Like those trains, BP-2 moves to the Wilmington and Philadelphia areas billed for delivery at widely separated points.

Exhibit O shows that cars for Wilmington, points on the Delmarva Peninsula and for the Eastern zone extending to Chester, Pa., were set off at Edgemoor Yard (Wilmington) for further movement to those areas. Similarly, some of the traffic moving through to Philadelphia in BP-2 moved out in local trains to such points as Pottstown and Coatesville, Pa. Other cars from the study train including those of Southern origination were moved from Philadelphia for interchange to other Eastern lines.

The Delmarva Peninsula relies upon trains such as BP-2 to receive commodities from the South. The distribution of such traffic in that territory invariably requires extensive local freight service. Outbound traffic for the East originated at stations on the Peninsula also moves in BP-2 after assembly at Edgemoor Yard.

Exhibit O gives some indication of the extensive and costly terminal operations required to effect delivery within the metropolitan areas of large cities such as Philadelphia. It was impossible, however, in this chart, and even more so in my other exhibits showing the over-the-road movement of the study traffic, to accurately portray the extensive ter-

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minal service required to gather and distribute cars simply shown on these exhibits as originated or terminated at a given terminal.

Train BP-5

Exhibit P shows in chart form the movement of Train BP-5 operated from South Philadelphia to Potomac Yard arriving on March 16, 1956, together with the trains associated in the movement of the cars contained in the study train. This train is the counterpart, in the reverse direction, of Train BP-2 shown in Exhibit O.

Train BP-5 departed from South Philadelphia with 45 loaded and 12 empty cars, of which 33 loads and 8 empties involved Official-Southern traffic. Of particular significance, however, is the extensive service required to assemble traffic for this train both at the origin, Philadelphia, and at Edgemoor Yard, where cars for BP-5 were added en route. As shown, the origin area for BP-5 extended to Trenton, N.J., and nearby Pennsylvania points, such as Fairless. In addition, traffic originated in the Schuylkill Valley section, Mount Carbon and points intermediate also moves southbound from Philadelphia in this train. At Edgemoor Yard at Wilmington, BP-5 picked up Southern traffic originated on the Delmarva Peninsula at a number of different points and moved in a network of trains to that yard for pick up by BP-5. As shown, this service extended to the very extremity of the Peninsula, Cape Charles and across Chesapeake Bay by carfloat, a distance of 26 miles, to Norfolk, Va.

At one time or another during its operation a total of 99 cars were

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included in the consist of Train BP-2. Upon arrival at Potomac Yard there were a total of 51 loaded cars and 25 empty cars, of which 37 loads and 15 empties were delivered to Southern connections.

In my opinion, based both upon my experience and observations over many years, and upon the studies just described which very clearly corroborate my views, it is clear that, at least so far as Eastern railroads are concerned, and I know of no radical differences on Southern lines, the Official-Southern interterritorial traffic here involved is an inseparable part of the whole, and possesses no transportation characteristics which are distinguishable from those of traffic generally. Not only does this interterritorial traffic utilize the transportation facilities of Eastern railroads in the same manner as other traffic but, even where it is possible to identify the former by tracing it to particular trains, it is found that both those trains and other trains must be operated in a coordinated manner and for the benefit of each other so that it is impossible to determine the costs of handling traffic in one train without consideration of the costs of other related trains.

In view of the coordinated and interrelated nature of railroad operations in the East, it is my considered opinion that the following conclusions may properly be drawn:

1. A car of Official-Southern interterritorial traffic has available to it and utilizes to the same degree as any other car irrespective of origin

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or destination, the transportation facilities and services of Eastern railroads.

2. Eastern lines' handling of Official-Southern interterritorial traffic is no less complex than that of traffic generally, since differences in the territorial location of origins and destinations in no way alter the transportation characteristics and requirements of the traffic within Eastern territory.

3. Official-Southern traffic is not transported independently of other traffic but rather is so commingled with such traffic on Eastern lines that it is erroneous to conclude that Eastern lines' costs of handling Southern traffic,

if possible of determination, are any different from their average costs of handling traffic generally.

4. Official-Southern interterritorial traffic, by virtue of its integration into the general traffic pattern, receives substantial cost benefits as a consequence of the existence of the other traffic with which it is merged for transportation. Clearly, were it not for the handling of North-South cars on the Eastern railroads as part of a greater and virtually indistinguishable mass, the costs of providing service on Southern traffic as a separate transportation entity would be very substantially greater than is the case where the lower unit costs resulting from volume operations are shared by the Southern cars.

5. The services rendered by Eastern lines on Official-Southern interterritorial traffic creates corresponding burdens upon the other traffic handled by those lines, the costs of which are completely ignored

[44]

when attempt is made to compartmentalize the service costs of the particular segment of traffic.

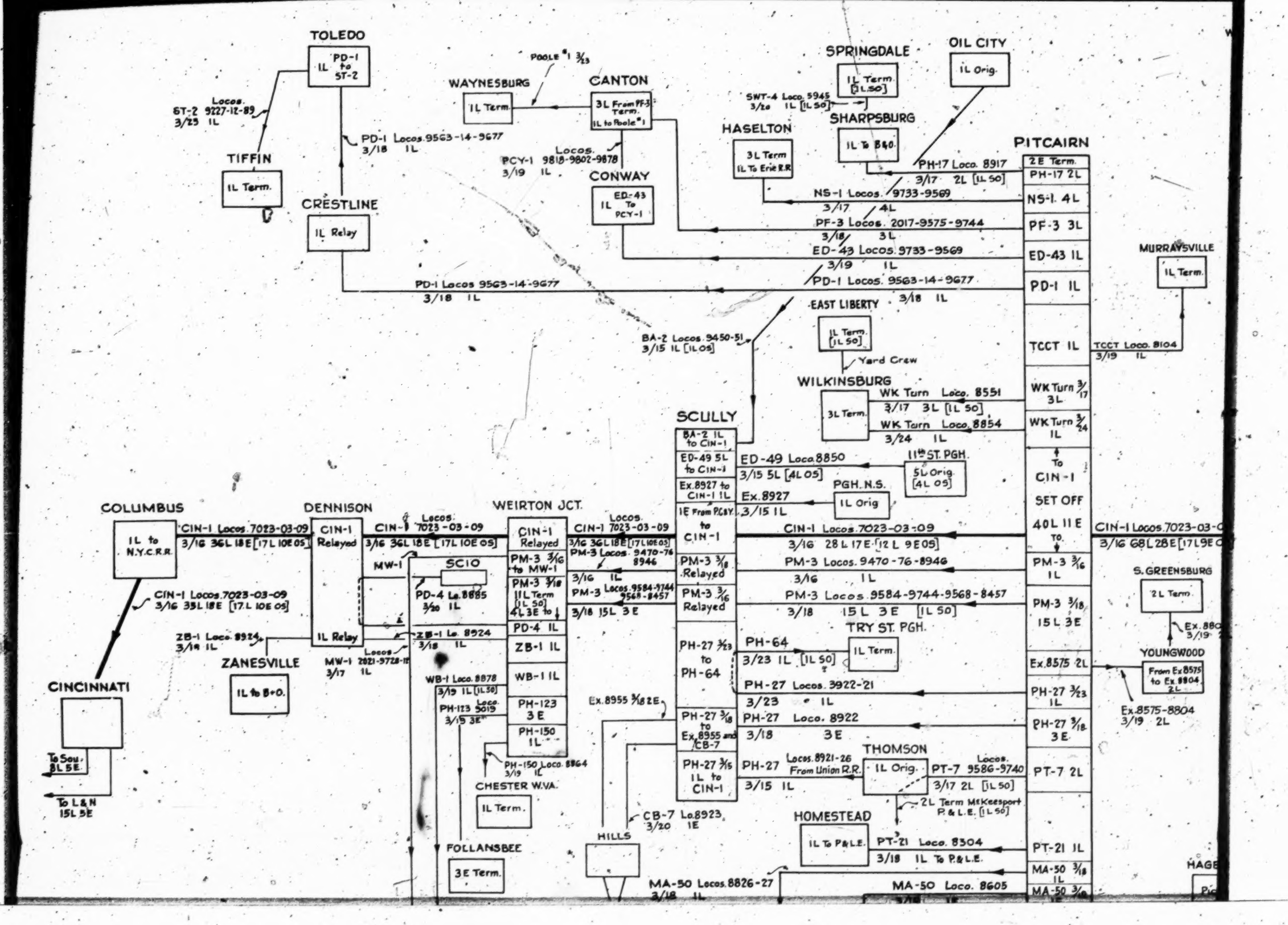
In summary, therefore, it is my considered judgment that any effort to segregate Eastern lines' costs in handling Official-Southern traffic is highly impractical and cannot be meaningful in view of the impossibility of measuring the cost effect of the inevitable interrelation of all traffic, that is, both the burdens cast upon other traffic by the handling of Southern traffic and cost savings shared by Southern traffic as a consequence of the existence of other traffic. In my opinion Eastern lines are fully justified in attributing to the Official-Southern traffic the average costs of handling all traffic. I believe that my testimony and exhibits fairly demonstrate that the involved interterritorial traffic is average traffic (except in relation to heavy-volume coal and ore traffic) judged by every criterion of service, and hence may properly be measured by the Eastern District and Southern Region costs attributed to all traffic.

Exhibit A:

TRAIN UTILIZATION STUDY

Comparison of Trains Handling Loaded Freight Cars, Trains Handling Loaded Freight Cars of Southern Traffic, and Percent of Trains Handling Southern Traffic to Total Trains

Railroad 1	Period of check Year 1959 2	Total Loaded Freight Trains Operated					Freight Trains With Official-Southern Traffic					Percent Trains With Official-Sou. Traffic		
		Thru 3	Total 4	Local 5	Total 6	Total 7	Thru 8	Total 9	Local 10	Total 11	Total 12	Thru % 13	Local % 14	Total % 15
PRR	May 3-9	3997	62.6	2392	37.4	6389	1747	67.6	836	32.4	2583	43.7	34.9	40.4
B & O	May 20-26	2344	70.1	1001	29.9	3345	1280	79.9	323	20.1	1603	54.6	32.3	47.9
Erie	May 17-23	1032	68.0	485	32.0	1517	436	74.7	148	25.3	584	42.2	30.5	38.5
NKP	May 10-16	1078	84.9	192	15.1	1270	707	96.3	27	3.7	734	65.6	14.1	57.8
NYNH&H	May 3-9	467	41.5	659	58.5	1126	352	59.2	243	40.8	595	75.4	36.9	52.8
Total		8918	65.3	4729	34.7	13647	4522	74.1	1577	25.9	6099	50.7	33.4	44.7


TOLEDO
PD-1 IL to ST-2
ST-2 Locos. 9227-12-89 3/23 IL
TIFFIN
IL Term.
CRESTLINE
IL Relay
PD-1 Locos. 9563-14-9677 3/18 IL
WAYNESBURG
IL Term.
POOLE #1 3/23
CANTON
3L From PF-3 Term. IL to Poole #1
PCY-1 Locos. 9818-9802-9878 3/19 IL
CONWAY
ED-43 IL To PCY-1
SPRINGDALE
1L Term. [1L 50]
SWT-4 Loco. 5945 3/20 1L [1L 50]
OIL CITY
1L Orig.
HASELTON
3L Term IL To Erie R.R.
SHARPSBURG
1L To B&O
PH-17 Loco. 8917 3/17 2L [1L 50]
NS-1 Locos. 9733-9569 3/17 4L
PF-3 Locos. 2017-9575-9744 3/18 3L
ED-43 Locos. 9733-9569 3/19 1L
PD-1 Locos. 9563-14-9677 3/18 1L
PITCAIRN
2E Term.
PH-17 2L
NS-1 4L
PF-3 3L
ED-43 1L
PD-1 1L
TCCT 1L
WK Turn 3/17 3L
WK Turn 3/24 1L
To CIN-1 SET OFF 40L 11E To.
PM-3 3/16 1L
PM-3 3/18 15L 3E
Ex.8575 2L
PH-27 3/23 1L
PH-27 3/18 3E
PT-7 2L
PT-21 1L
MA-50 3/18 1L
MA-50 3/19
MURRAYSVILLE
1L Term.
TCCT Loco. 8104 3/19 1L
EAST LIBERTY
1L Term. [1L 50]
Yard Crew
BA-2 Locos. 9450-51 3/15 1L [1L 05]
WILKINSBURG
3L Term.
WK Turn Loco. 8551 3/17 3L [1L 50]
WK Turn Loco. 8854 3/24 1L
SCULLY
BA-2 1L to CIN-1
ED-49 5L to CIN-1
Ex.8927 to CIN-1 1L
1E From PG&Y. to CIN-1
PM-3 3/18 Relayed
PM-3 3/16 Relayed
PH-27 3/23 to PH-64
PH-27 3/18 to Ex.8955 and CB-7
PH-27 3/15 1L to CIN-1
ED-49 Loco. 8850 3/15 5L [4L 05]
11th ST. PGH.
5L Orig. [4L 05]
Ex.8927 3/15 1L
PGH. N.S.
1L Orig
CIN-1 Locos. 7023-03-09 3/16 28L 17E [12L 9E 05]
PM-3 Locos. 9470-76-8946 3/16 1L
PM-3 Locos. 9584-9744-9568-8457 3/18 15L 3E [1L 50]
TRY ST. PGH.
PH-64 3/23 1L [1L 50]
1L Term.
PH-27 Locos. 3922-21 3/23 1L
PH-27 Loco. 8922 3/18 3E
THOMSON
PH-27 Locos. 8921-26 From Union R.R. 3/15 1L
1L Orig.
PT-7 Locos. 9586-9740 3/17 2L [1L 50]
2L Term McKeesport P. & L.E. [1L 50]
HOMESTEAD
1L To P&L.E.
PT-21 Loco. 8304 3/18 1L To P&L.E.
MA-50 Locos. 8826-27 3/18 1L
MA-50 Loco. 8605
CIN-1 Locos. 7023-03-09 3/16 68L 28E [17L 9E 0
S. GREENSBURG
2L Term.
Ex.88 3/19 2
YOUNGWOOD
From Ex.8575 to Ex.8804 2L
Ex.8575-8804 3/19 2L
HAGE
COLUMBUS
1L to N.Y.C.R.R.
CIN-1 Locos. 7023-03-09 3/16 36L 18E [17L 10E 05]
CINCINNATI
To Sou. 8L 5E
To L&N 15L 3E
DENNISON
CIN-1 Relayed
1L Relay
ZB-1 Loco. 8924 3/19 1L
ZANESVILLE
1L to B+O.
CIN-1 Locos. 7023-03-09 3/16 36L 18E [17L 10E 05]
MW-1
MW-1 Locos. 2821-9728-12 3/17 1L
WEIRTON JCT.
CIN-1 Relayed
PM-3 3/16 to MW-1
PM-3 3/18 1L Term [1L 50] 4L 3E to
PD-4 1L
ZB-1 1L
WB-1 1L
PH-123 3E
PH-150 1L
SCIO
PD-4 Loco. 8885 3/20 1L
ZB-1 Loco. 8924 3/18 1L
WB-1 Loco. 8878 3/19 1L [1L 30]
PH-123 Loco. 9019 3/15 3E
PH-150 Loco. 8864 3/19 1L
CHESTER W.VA.
1L Term.
FOLLANSBEE
3E Term.
CIN-1 Locos. 7023-03-09 3/16 36L 18E [17L 10E 05]
PM-3 Locos. 9470-76-8946 3/16 1L
PM-3 Locos. 9584-9744-9568-8457 3/18 15L 3E
Ex.8955 3/18 2E
CB-7 Loco. 8923 3/20 1E
HILLS

TIFFIN
1L Term.

CRESTLINE
1L Relay

3/18 1L

PCY-1 9818-9802-9878
3/19 1L

CONWAY
ED-43 1L To PCY-1

3L Terminal IL To Erie R.R.

1L to B&O.

PH-17 Loco. 8917
3/17 2L [1L 50]

NS-1 Locos. 9733-9569
3/17 4L

PF-3 Locos. 2017-9575-9744
3/18 3L

ED-43 Locos. 9733-9569
3/19 1L

PD-1 Locos. 9563-14-9677
3/18 1L

PD-1 Locos. 9563-14-9677
3/18 1L

PITCAIRN
2E Term.
PH-17 2L
NS-1 4L
PF-3 3L
ED-43 1L
PD-1 1L
TCCT 1L
WK Turn 3/ 3L
WK Turn 3/24 1L
To CIN-1 SET OFF
40L 11E To
PM-3 3/16 1L
PM-3 3/18 15L 3E
Ex.8575 2L
PH-27 3/23 1L
PH-27 3/18 3E
PT-7 2L
PT-21 1L
MA-50 3/18 1L
MA-50 3/19 1E
MA-50 3/24 1E
Ex 8605 1E
MA-50 3/23 1L

MURRAYSVILLE
1L Term.
TCCT Loco. 8104
3/19 1L

BEL
BA-15 Loc
3/14 2L

EAST LIBERTY
1L Term. [1L 50]
Yard Crew

BA-2 Locos. 9450-51
3/15 1L [1L 05]

WILKINSBURG
3L Term.
WK Turn Loco. 8551
3/17 3L [1L 50]
WK Turn Loco. 8854
3/24 1L

SCULLY
BA-2 1L to CIN-1
ED-49 5L to CIN-1
Ex.8927 to CIN-1 1L
1E From PGBY. to CIN-1
PM-3 3/18 Relayed
PM-3 3/16 Relayed
PH-27 3/23 to PH-64
PH-27 3/18 to Ex.8955 and CB-7
PH-27 3/15 1L to CIN-1

ED-49 Loco.8850
3/15 5L [4L 05]

11th ST. PGH.
5L Orig. [4L 05]

PGH. N.S.
1L Orig

Ex.8927
3/15 1L

CIN-1 Locos. 7023-03-09
3/16 28L 17E [12L 9E 05]

PM-3 Locos. 9470-76-8946
3/16 1L

PM-3 Locos. 9584-9744-9568-8457
3/18 15L 3E [1L 50]

TRY ST. PGH.

PH-64
3/23 1L [1L 50]

1L Term.

PH-27 Locos. 3922-21
3/23 1L

PH-27 Loco. 8922
3/18 3E

PH-27 Locos. 8921-26 From Union R.R.
3/15 1L

THOMSON
1L Orig.

PT-7 Locos. 9586-9740
3/17 2L [1L 50]

2L Term McKeesport P. & L.E. [1L 50]

HOMESTEAD
1L To P&L.E.

PT-21 Loco. 8304
3/18 1L To P&L.E.

MA-50 Locos. 8826-27
3/18 1L

MA-50 Loco. 8605
3/19 1E

MA-50 Loco. 8992
3/24 1E

Ex. 8605
3/19 1E

MA-50 Loco. 8825
3/23 1L

WILSON
1E Term MA-50
1E "MA-50 3/24
1E "Ex.8605

3E to Union R.R. at Clairton

PETERS CREEK
To P&W. Va. at Clairton

ALTOONA
BA-15 2L to CIN-1
Ex.3690-1126 1L to CIN-1
BA-15
3/14 2
Ex. 9
CIN-1
3/16

CIN-1 Locos. 7023-03-09
3/16 68L 28E [17L 9E 05]

S. GREENSBURG
2L Term.
Ex. 8804
3/19 2L

YOUNGWOOD
From Ex 8575 to Ex 8804 2L

Ex.8575-8804
3/19 2L

CV-88 Locos
3/14 11L

HAGERSTOWN
Picked up 1L

CV-94 Loco. 877
3/14 10L

CUMBO
From B&O 4L

CV-94 Loco. 8777
3/14 6L [1L 05]

INWOOD
Originate 6L

COLUMBUS
1L to N.Y.C.R.R.

CIN-1 Locos. 7023-03-09
3/16 36L 18E [17L 10E 05]

CIN-1 Locos. 7023-03-09
3/16 33L 18E [17L 10E 05]

CINCINNATI

To Sou. 8L 5E

To L&N 15L 5E

ZB-1 Loco. 8924
3/19 1L

ZANESVILLE
1L to B&O.

DENNISON
CIN-1 Relayed

1L Relay

MW-1 Locos 2821-9728-15
3/17 1L

CIN-1 Locos. 7023-03-09
3/16 36L 18E [17L 10E 05]

MW-1

SCIO

PD-4 Loco. 8885
3/20 1L

ZB-1 Lo. 8924
3/18 1L

WB-1 Loco. 8878
3/19 1L [1L 50]

PH-123 Loco. 5019
3/19 3E

PH-150 Loco. 8864
3/19 1L

CHESTER W.VA.
1L Term.

FOLLANSBEE
3E Term.

WELLSBURG
1L Term.

BENWOOD
1L Term.

WEIRTON JCT.
CIN-1 Relayed
PM-3 3/16 to MW-1
PM-3 3/18 1L Term. [1L 50] 4L 3E to
PD-4 1L
ZB-1 1L
WB-1 1L
PH-123 3E
PH-150 1L

CIN-1 Locos. 7023-03-09
3/16 36L 18E [17L 10E 05]

PM-3 Locos. 9470-76-8946
3/16 1L

PM-3 Locos. 9584-9744-9568-8457
3/18 15L 3E

Ex.8955 3/18 2E

CB-7 Lo. 8923
3/20 1E

HILLS

3E to Montour R.R.

SHIRE OAKS
1L From MA-50 To Ex.9585-2022

Ex.9585-2022
3/19 1L

CHARLEROI
1L Term.

I.C.C. Docket 29885
Witness H.L.Nancarrow
Exhibit C To V5-8

WILLIAMSPORT
2L Orig.

POTTSTOWN
Picked Up 1L 1E

Locos. 5574 S-6 8726-27 3/14 1L

BIRDSBORO
1L Orig.

MT. CARBON
1L Orig.

S-8 Locos. 8768-67 3/13 1L

Locos. S-6 5574-8726-27 3/14 2L 1E [1E OS]

NORRISTOWN
To White Marsh 7L 2E

PHOENIXVILLE
Picked Up 1L

CROMBY
Picked Up 2L 1E

READING
S-8 to S-12 2L

HAMBURG
Picked Up 1L

SWEDELAND
1L 3E Orig

1L 3E From UM&P.R.R.

WHITE MARSH JCT.

S-12 Loco. 8728 3/13 5L 1E [2L OS]

S-12 Loco. 8728 3/13 4L 1E [2L OS]

S-12 Loco. 8728 3/13 2L

S-8 Loco. 8768-67 3/13 2L

HARSIMUS COVE YD.

ENOLA

Yard Loco.

EM-1 13L 5E	EM-1 Locos. 4713-81 3/15 13L 5E [2L 1E OS]	5L Originated
P-1 1E	Same Consist	1E Relayed
WC-1 3L	Same Consist	3L Relayed
PG-11 2E	Same Consist	2E Relayed
SWC-1 3/10 1E	Same Consist	1E Relayed
SWC-1 3/14 2L	Same Consist	2L Relayed

METUCHEN
1E orig.

P-1 Locos. 4755-89-22 3/14 1E [1E OS]

WAVERLY YD. (NEWARK)

3L Relay	
2E Orig.	
1E Relay	
2L Relay	

WC-1 3/15 Locos. 4725-07 3L

WC-1 Locos. 4725-07 3/15 3L

GREENVILLE YD.
1L Orig.

From L.I.R.R. 1E. [1E OS]

From N.Y.N.H.&H. 1L [1L OS]

SWC-1 Loco. 4718 3/10 1E [1E OS]

SWC-1 Locos. 4819-18 3/14 2L [1L OS]

PG-11 3/14 Locos. 4714-15 2E [2E OS]

SWC-1 3/10 Loco. 4718 1E [1E OS]

SWC-1 3/14 Locos. 4819-18 2L [1L OS]

BELLEFONTE
1L Orig.

BT-1 Locos. 9431-29 3/15 1L

BA-15 Locos. 2071-2112 3/14 2L [2L OS]

COATESVILLE
2L From Rdg. Co.

P-468 Lo. 8526 3/14 2L

THORNDALE
2L From P-468 to P-19

PHILADELPHIA

P-19 Locos. 4760-49 3/15 2L

P-19 4L	P-19 4L	Relay 2L
P-19B 2E	P-19B Loco. 4775 2E	Relay 2E
P-7 3E	P-7 3/14 Loco. 4826 3E [3E OS]	Originated 3E [3E OS]
AP-19 1L	AP-19 3/14 Loco. 4718 1L [1L OS]	Relay 1L [1L OS]
P-17 1L	P-17 3/14 Loco. 4709 1L	Orig. 1L
AP-9 6L	AP-9 3/14 Loco. 4712 6L [1L OS]	Originated 6L [1L OS]

CAMDEN

2L	From P.R.S.L. To P-19 3/15 2L
2E	From P.R.S.L. To P-19 3/14 2E
A-39 to AP-19 1L [1L OS]	

P-19B Locos. 4775 3/14 2E

AP-19 Loco. 4718 3/14 1E [1L OS]

BEVERLY, N.J.
1L Orig.

A-39 Lo. 8794 3/14 1L [1L OS]

HARRISBURG
Runners 1E [1E OS] From S.H.

LEBANON
2L Orig.

From Rdg. 1L

P-23 Loco. 5538 3/14 2L [1L OS]

STEELTON
1E Orig.

Runners 3L 1E	
1L Orig.	
P-85 1L	P-85 Locos. 4761-16 3/15 1L [1L OS]
CIN-1 Picked Up	CIN-1 Locos. 7023-03-09 3/16 6L 2E [1L 9E OS]
TH-3 4L 3E	TH-3 Loco. 4788 3/14 4L 3E [1L OS]
TH-1C 1L	TH-1C Loco. 4815 3/14 1L
B-5 6E	B-5 Loco. 4758 3/14 6E
B-9 3L	B-9 Locos. 4790-24 3/14 3L [2L OS]
EC-5 3L	EC-5 Locos. 4772-28 3/15 3L [3L OS]
AB-9 1E	AB-9 Lo. 4132 3/14 1E
B-1 2L 3E	B-1 Lo. 4747 3/15 2L 3E
CV-88 1L	
YE-1 6L	

LANCASTER

MARIETTA
1L Orig.

Locos. P-84 4765-74 3/15 1L [1L OS]

EDGE MOOR YD.

TH-3 Relay 4L 3E	TH-3 Loco. 4788 3/14 4L 3E [1L OS]
D-2 to TH-1C 1L	

THURLOW YD.

Originated
1L 3E at Chester, Pa.
3L at Eddystone, Pa.

ALTOONA

BA-15 2L to CIN-1	BA-15 Lo. 2071-2112 3/14 2L [2L OS]
Ex. 9690-1126 1L to CIN-1	Ex. 9690-1126 1L

2L Relay BT-1 To Ex 9690 1L

TYRONE

CIN-1 Locos. 7023-03-09 3/16 6L 2E [1L 9E OS]

7023-03-09 3E [17L 9E OS]

ENSBURG
Term.

Ex. 8804 3/19 2L

NGWOOD
Ex. 8575 Ex. 8804 2L

8804

CV-88 Locos. 9610-08-19 3/14 1L

YE-1 Locos. 8773-66-74 3/15 6L [1L OS]

YORK
6L Orig

BALTIMORE

B-1 Orig. 2L 3E	B-1
AB-9 Relay 1E	AB-9
EC-5 Relay 3L	EC-5
B-9 Relay 1E	B-9
B-5 Orig. 6E	B-5

AB-9 Loco. 4132 3/14 1E

Same Consist

HAGERSTOWN
Picked Up 1L

CV-94 Loco. 8777 3/14 1L

CUMBO

BENNING YD.

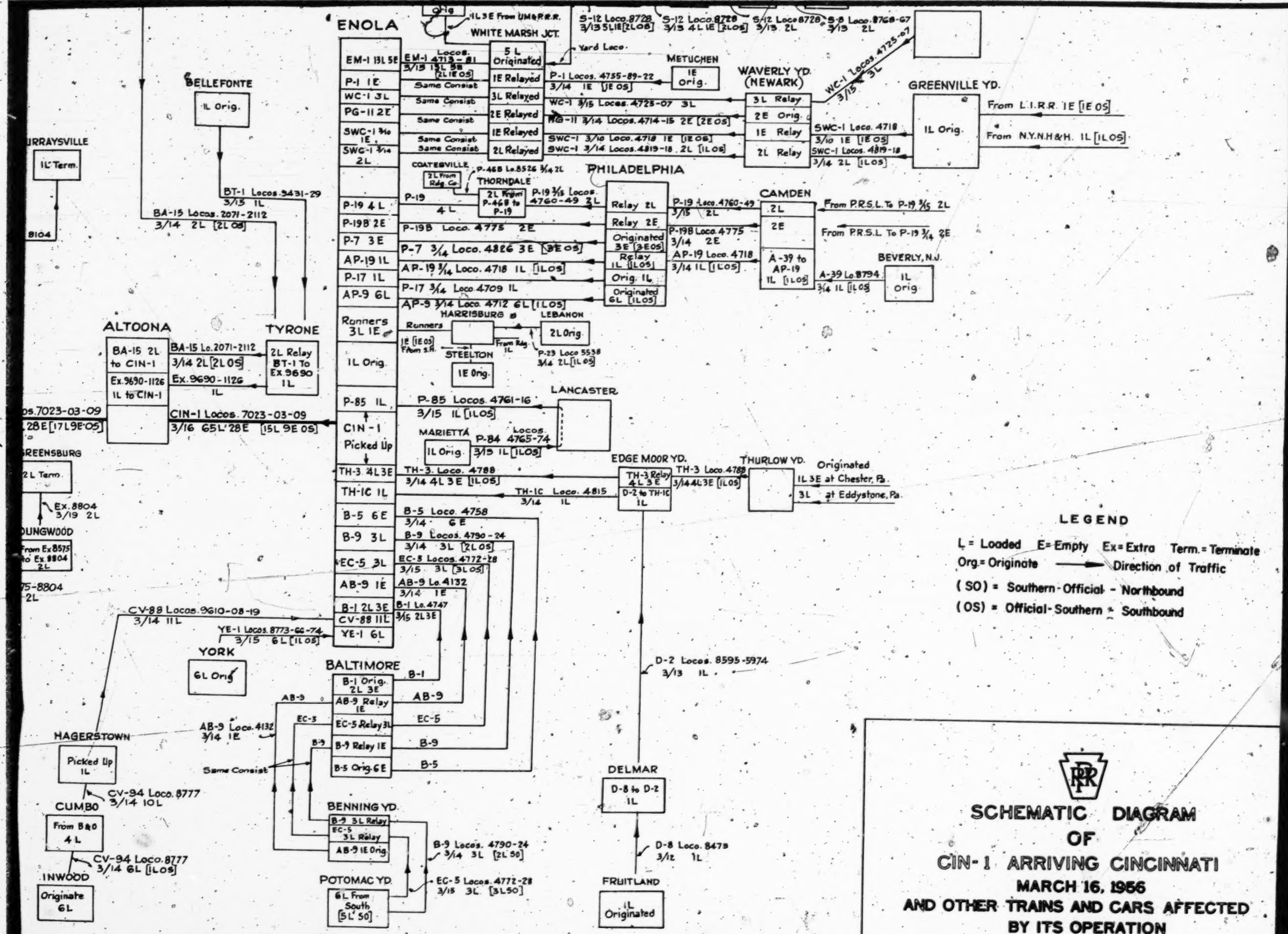
D-2 Locos. 8595-5974 3/13 1L

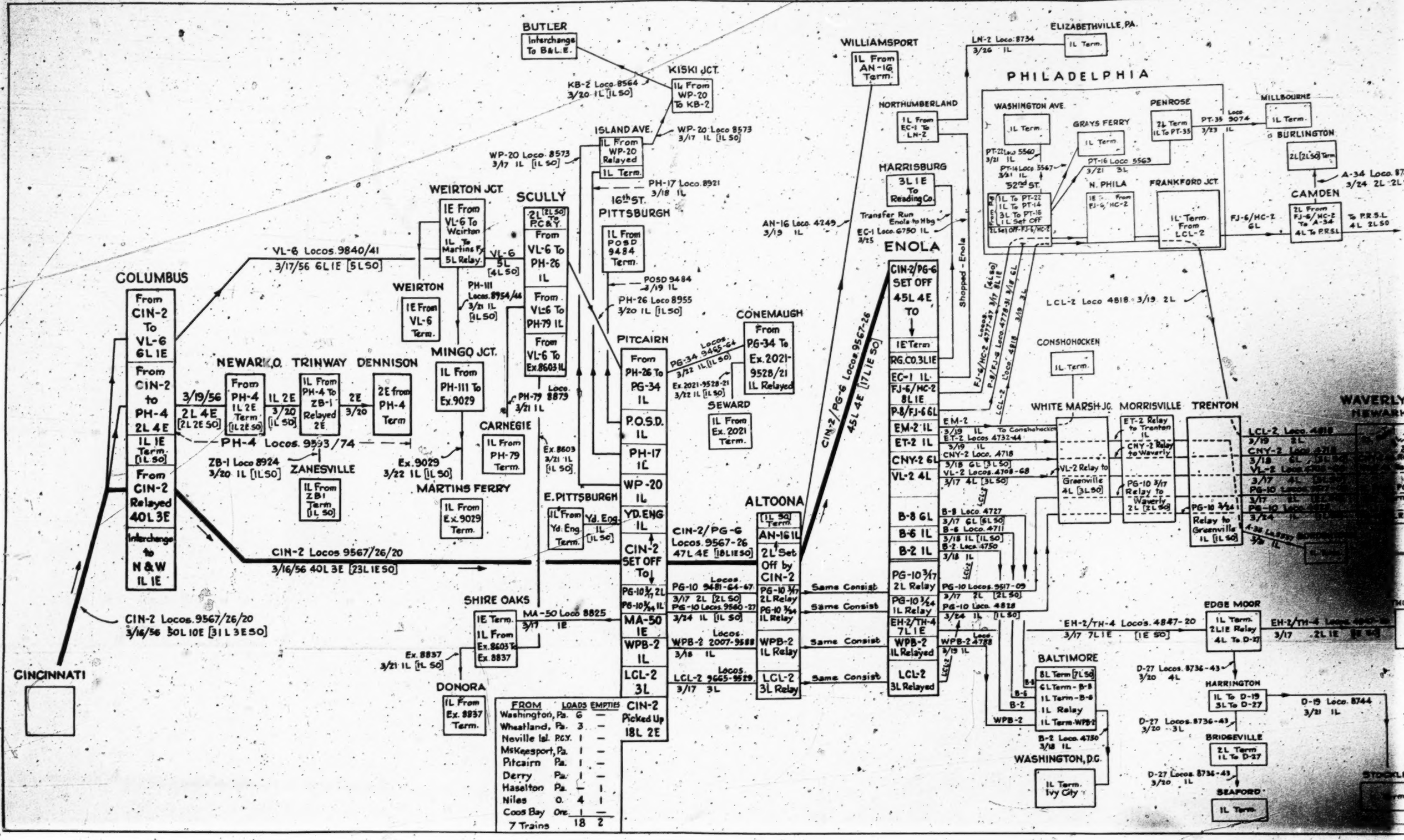
DELMAR
D-8 to D-2 1L

LEGEND

L = Loaded E = Empty Ex = Extra Term. = Terminate
Org. = Originate → Direction of Traffic
(SO) = Southern-Official - Northbound
(OS) = Official-Southern - Southbound

SCHEMATIC DIAGRAM


ENOLA
EM-1 1L 5E
P-1 1E
WC-1 3L
PG-11 2E
SWC-1 3/10 1E
SWC-1 3/14 2L
P-19 4L
P-19B 2E
P-7 3E
AP-19 1L
P-17 1L
AP-9 6L
Runners 3L 1E
1L Orig.
P-85 1L
CIN-1 Picked Up
TH-3 4L 3E
TH-1C 1L
B-5 6E
B-9 3L
EC-5 3L
AB-9 1E
B-1 2L 3E
CV-88 1L
YE-1 6L
Orig
1L 3E From U.M.&R.R.R.
WHITE MARSH JCT.
5 L Originated
1E Relayed
3L Relayed
2E Relayed
1E Relayed
2L Relayed
Locos. EM-1 4713-81 3/15 1L 5E [2L1E OS]
Same Consist
Same Consist
Same Consist
Same Consist
Yard Loco.
S-12 Loco. 8728 3/13 5L1E [2L OS]
S-12 Loco. 8728 3/13 4L1E [2L OS]
S-12 Loco. 8728 3/13 2L
S-12 Loco. 8728-67 3/13 2L
METUCHEN
1E Orig.
P-1 Locos. 4755-89-22 3/14 1E [1E OS]
WAVERLY YD. (NEWARK)
3L Relay
2E Orig.
1E Relay
2L Relay
WC-1 Locos. 4725-07 3L
WC-1 3/15 Locos. 4725-07 3L
HG-11 3/14 Locos. 4714-15 2E [2E OS]
SWC-1 3/10 Loco. 4718 1E [1E OS]
SWC-1 3/14 Locos. 4819-18 2L [1L OS]
WC-1 Locos. 4725-07 3/13 3L
SWC-1 Loco. 4718 3/10 1E [1E OS]
SWC-1 Locos. 4819-18 3/14 2L [1L OS]
GREENVILLE YD.
1L Orig.
From L.I.R.R. 1E [1E OS]
From N.Y.N.H.&H. 1L [1L OS]
COATESVILLE
2L From Rdg. Co.
P-468 Lo. 8526 3/14 2L
THORNDALE
2L From P-468 to P-19
P-19 4L
P-19 3/15 Locos. 4760-49 2L
PHILADELPHIA
Relay 2L
Relay 2E
Originated 3E [3E OS]
Relay 1L [1L OS]
Orig. 1L
Originated 6L [1L OS]
P-19 Loco. 4760-49 3/15 2L
P-19B Loco. 4775 3/14 2E
AP-19 Loco. 4718 3/14 1L [1L OS]
CAMDEN
2L
2E
A-39 to AP-19 1L [1L OS]
From P.R.S.L. To P-19 3/15 2L
From P.R.S.L. To P-19 3/14 2E
BEVERLY, N.J.
1L Orig.
A-39 Lo. 8794 3/14 1L [1L OS]
P-19B Loco. 4775 2E
P-7 3/14 Loco. 4826 3E [3E OS]
AP-19 3/14 Loco. 4718 1L [1L OS]
P-17 3/14 Loco. 4709 1L
AP-9 3/14 Loco. 4712 6L [1L OS]
HARRISBURG
Runners 1E [1E OS] From S.H.
From Rdg. 1L
STEELTON
1E Orig.
LEBANON
2L Orig.
P-23 Loco. 5538 3/14 2L [1L OS]
LANCASTER
P-85 Locos. 4761-16 3/15 1L [1L OS]
MARIETTA
1L Orig.
P-84 Locos. 4765-74 3/15 1L [1L OS]
EDGE MOOR YD.
TH-3 Relay 4L 3E
D-2 to TH-1C 1L
TH-3 Loco. 4788 3/14 4L 3E [1L OS]
TH-1C Loco. 4815 3/14 1L
THURLOW YD.
Originated 1L 3E at Chester, Pa.
3L at Eddystone, Pa.
TH-3 Loco. 4788 3/14 4L 3E [1L OS]
B-5 Loco. 4758 3/14 6E
B-9 Locos. 4790-24 3/14 3L [2L OS]
EC-5 Locos. 4772-28 3/15 3L [3L OS]
AB-9 Lo. 4132 3/14 1E
B-1 Lo. 4747 3/15 2L 3E
D-2 Locos. 8595-5974 3/13 1L
BELLEFONTE
1L Orig.
BT-1 Locos. 9431-29 3/13 1L
BA-15 Locos. 2071-2112 3/14 2L [2L OS]
URRAYSVILLE
1L Term.
8104
ALTOONA
BA-15 2L to CIN-1
Ex. 9690-1126 1L to CIN-1
BA-15 Lo. 2071-2112 3/14 2L [2L OS]
Ex. 9690-1126 1L
TYRONE
2L Relay BT-1 To Ex. 9690 1L
CIN-1 Locos. 7023-03-09 3/16 6L 2E [5L 9E OS]
os. 7023-03-09
. 2E [17L 9E OS]
REENSBURG
2L Term.
Ex. 8804 3/19 2L
OUNGWOOD
From Ex. 8575 to Ex. 8804 2L
75-8804 2L
CV-88 Locos. 9610-08-19 3/14 1L
YE-1 Locos. 8773-66-74 3/15 6L [1L OS]
YORK
6L Orig.
HAGERSTOWN
Picked Up 1L
CV-94 Loco. 8777 3/14 10L
CUMBO
From B&O 4L
CV-94 Loco. 8777 3/14 6L [1L OS]
INWOOD
Originate 6L
BALTIMORE
B-1 Orig. 2L 3E
AB-9 Relay 1E
EC-5 Relay 3L
B-9 Relay 1E
B-5 Orig. 6E
B-1
AB-9
EC-5
B-9
B-5
AB-9
EC-3
B-9
AB-9 Loco. 4132 3/14 1E
Same Consist
BENNING YD.
B-9 3L Relay
EC-5 3L Relay
AB-9 1E Orig.
B-9 Locos. 4790-24 3/14 3L [2L 50]
EC-5 Locos. 4772-28 3/15 3L [3L 50]
POTOMAC YD.
6L From South [5L 50]
DELMAR
D-8 to D-2 1L
D-8 Loco. 8479 3/12 1L
FRUITLAND
1L Originated
LEGEND
L = Loaded E = Empty Ex = Extra Term. = Terminate
Org. = Originate ——► Direction of Traffic
(SO) = Southern-Official - Northbound
(OS) = Official-Southern - Southbound
SCHEMATIC DIAGRAM
OF
CIN-1 ARRIVING CINCINNATI
MARCH 16, 1956
AND OTHER TRAINS AND CARS AFFECTED
BY ITS OPERATION


CINCINNATI
COLUMBUS
From CIN-2 To VL-6 6L 1E
From CIN-2 to PH-4 2L 4E
1L 1E Term. [1L SO]
From CIN-2 Relayed 40L 3E
Interchange to N&W 1L 1E
VL-6 Locos. 9840/41 3/17/56 6L 1E [5L SO]
CIN-2 Locos. 9567/26/20 3/16/56 50L 10E [31L 3E SO]
CIN-2 Locos 9567/26/20 3/16/56 40L 3E [23L 1E SO]
NEWARK, O.
3/19/56 2L 4E [2L 2E SO]
From PH-4 1L 2E Term. [1L 2E SO]
TRINWAY
1L From PH-4 To ZB-1 Relayed 2E
3/20 [1L SO]
1L 2E
DENNISON
2E 3/20
2E from PH-4 Term
PH-4 Locos. 9593/74
ZB-1 Loco 8924 3/20 1L [1L SO]
ZANESVILLE
1L From ZB1 Term. [1L SO]
WEIRTON
1E From VL-6 Term.
WEIRTON JCT.
1E From VL-6 To Weirton 1L To Martins Fy. 5L Relay.
VL-6 5L [4L SO]
PH-111 Locos. 8954/46 3/21 1L [1L SO]
MINGO JCT.
1L From PH-111 To Ex. 9029
Ex. 9029 3/22 1L [1L SO]
MARTINS FERRY
1L From Ex. 9029 Term.
BUTLER
Interchange To B&L.E.
KB-2 Loco 8564 3/20 1L [1L SO]
KISKI JCT.
1L From WP-20 To KB-2
WP-20 Loco 8573 3/17 1L [1L SO]
ISLAND AVE.
1L From WP-20 Relayed
1L Term.
PH-17 Loco. 8921 3/18 1L
16th ST. PITTSBURGH
1L From POSD 9484 Term.
POSD 9484 3/19 1L
PH-26 Loco 8955 3/20 1L [1L SO]
SCULLY
2L [2L SO] To P.C.&Y.
From VL-6 To PH-26 1L
From VL-6 To PH-79 1L
From VL-6 To Ex. 8603 1L
PH-79 Loco. 8879 3/21 1L
Ex. 8603 3/21 1L [1L SO]
CARNEGIE
1L From PH-79 Term.
E. PITTSBURGH
1L From Yd. Eng. Term.
Yd. Eng. 1L [1L SO]
SHIRE OAKS
1E Term.
1L From Ex. 8603 To Ex. 8837
MA-50 Loco 8825 3/17 1E
Ex. 8837 3/21 1L [1L SO]
DONORA
1L From Ex. 8837 Term.
PITCAIRN
From PH-26 To PG-34 1L
P.O.S.D. 1L
PH-17 1L
WP-20 1L
YD. ENG 1L
CIN-2 SET OFF To
PG-10 3/17 2L
PG-10 3/24 1L
MA-50 1E
WPB-2 1L
LCL-2 3L
CIN-2 Picked Up 18L 2E
PG-34 Locos. 9465-64 3/22 1L [1L SO]
Ex. 2021-9528-21 3/22 1L [1L SO]
SEWARD
1L From Ex. 2021 Term.
CONEMAUGH
From PG-34 To Ex. 2021-9528/21 1L Relayed
CIN-2/PG-6 Locos. 9567-26 47L 4E [18L 1E SO]
ALTOONA
[1L SO] Term.
AN-16 1L
2L Set Off by CIN-2
PG-10 3/17 2L Relay
PG-10 3/24 1L Relay
WPB-2 1L Relay
LCL-2 3L Relay
PG-10 9481-64-67 3/17 2L [2L SO]
PG-10 Locos. 9560-27 3/24 1L [1L SO]
WPB-2 Locos. 2007-9588 3/18 1L
LCL-2 Locos. 9665-9529 3/17 3L
Same Consist
WILLIAMSPORT
1L From AN-16 Term.
AN-16 Loco. 4249 3/19 1L
ENOLA
CIN-2/PG-6 SET OFF 45L 4E TO
1E Term
RG. CO. 3L 1E
EC-1 1L
FJ-6/HC-2 8L 1E
P-8/FJ-6 6L
EM-2 1L
ET-2 1L
CNY-2 6L
VL-2 4L
B-8 6L
B-6 1L
B-2 1L
PG-10 3/17 2L Relay
PG-10 3/24 1L Relay
EH-2/TH-4 7L 1E
WPB-2 1L Relayed
LCL-2 3L Relayed
Shopped - Enola
NORTHUMBERLAND
1L From EC-1 To LN-2
HARRISBURG
3L 1E To Reading Co.
Transfer Run Enola to Hbg
EC-1 Loco. 6750 1L 3/25
LN-2 Loco. 8734 3/26 1L
ELIZABETHVILLE, PA.
1L Term.
PHILADELPHIA
WASHINGTON AVE.
1L Term.
PT-22 Loco 5560 3/21 1L
PT-14 Loco 5567 3/21 1L
GRAYS FERRY
1L Term.
PT-16 Loco 5563 3/21 3L
52nd ST.
1L To PT-22
1L To PT-14
3L To PT-16
1L Set Off
2L Set Off FJ-6/HC-2
N. PHILA
1E From FJ-6/HC-2
PENROSE
2L Term 1L To PT-35
PT-35 Loco 9074 3/23 1L
FRANKFORD JCT.
1L Term. From LCL-2
MILLBOURNE
1L Term.
BURLINGTON
2L [2L SO] Term
CAMDEN
2L From FJ-6/HC-2 To A-34 4L To P.R.S.L
A-34 Loco. 87 3/24 2L
To P.R.S.L 4L 2L SO
FJ-6/HC-2 6L
LCL-2 Loco 4818 3/19 2L
CONSHOHOCKEN
1L Term.
WHITE MARSH JC.
EM-2 3/19 1L To Conshohocken
ET-2 Locos. 4732-44 3/19 1L
CNY-2 Loco. 4718 3/18 6L [3L SO]
VL-2 Locos. 4708-68 3/17 4L [3L SO]
VL-2 Relay to Greenville 4L [3L SO]
MORRISVILLE
ET-2 Relay to Trenton 1L
CNY-2 Relay to Waverly
PG-10 3/17 Relay to Waverly 2L [2L SO]
TRENTON
PG-10 3/24 Relay to Greenville 1L [1L SO]
B-8 Loco. 4727 3/17 6L [6L SO]
B-6 Loco. 4711 3/18 1L [1L SO]
B-2 Loco. 4750 3/18 1L
PG-10 Locos. 9517-09 3/17 2L [2L SO]
PG-10 Loco. 4828 3/24 1L [1L SO]
WPB-2 Locos. 4788 3/19 1L
EH-2/TH-4 Loco's. 4847-20 3/17 7L 1E [1E SO]
EDGE MOOR
1L Term. 2L 1E Relay 4L To D-27
BALTIMORE
8L Term [7L SO]
6L Term - B-8
1L Term - B-6
1L Relay
1L Term - WPB-2
B-2 Loco. 4750 3/18 1L
WASHINGTON, D.C.
1L Term. Ivy City
D-27 Locos. 8736-43 3/20 4L
HARRINGTON
1L To D-19 3L To D-27
D-19 Loco. 8744 3/21 1L
D-27 Locos. 8736-43 3/20 3L
BRIDGEVILLE
2L Term 1L To D-27
D-27 Locos. 8736-43 3/20 1L
SEAFORD
1L Term.
WAVERLY
NEWARK
LCL-2 Loco. 4818 3/19 2L
CNY-2 Loco. 4718 3/18 6L [3L SO]
VL-2 Loco. 4708 3/17 4L [3L SO]
PG-10 Locos. 9517-09 3/17 2L [2L SO]
PG-10 Loco. 4828 3/24 1L [1L SO]
3/24 1L
4-36 Loco. 8877 3/25 1L
STOCKLI
FROM LOADS EMPTIES
Washington, Pa. 6 —
Wheatland, Pa. 3 —
Neville Isl. P.C.Y. 1 —
McKeesport, Pa. 1 —
Pitcairn Pa. 1 —
Derry Pa. 1 —
Haselton Pa. — 1
Niles O. 4 1
Coos Bay Ore. 1 —
7 Trains 18 2

I.C.C. DOCKET 29885
Witness H.L. Nancarrow
Exhibit D To VS-8

BUTLER
Interchange To B&L.E.

KB-2 Loco. 8564 3/20 1L [1L SO]

KISKI JCT.
1L From WP-20 To KB-2

WP-20 Loco 8573 3/17 1L [1L SO]

ISLAND AVE.
1L From WP-20 Relayed
1L Term.

WP-20 Loco. 8573 3/17 1L [1L SO]

PH-17 Loco. 8921 3/18 1L

16th ST. PITTSBURGH
1L From P.O.S.D. 9484 Term.

POSD 9484 3/19 1L

PH-26 Loco 8955 3/20 1L [1L SO]

WEIRTON JCT.
1E From VL-6 To Weirton
1L To Martins Fy 5L Relay.

VL-6 5L [4L SO]

SCULLY
2L [2L SO] To P.C.&Y.
From VL-6 To PH-26 1L
From VL-6 To PH-79 1L
From VL-6 To Ex. 8603 1L

PH-111 Locos. 8754/46 3/21 1L [1L SO]

MINGO JCT.
1L From PH-111 To Ex. 9029

PH-79 Loco. 8879 3/21 1L

Ex. 8603 3/21 1L [1L SO]

CARNEGIE
1L From PH-79 Term.

MARTINS FERRY
1L From Ex. 9029 Term.

E. PITTSBURGH
1L From Yd. Eng. Term.

Yd. Eng. 1L [1L SO]

PITCAIRN
From PH-26 To PG-34 1L
P.O.S.D. 1L
PH-17 1L
WP-20 1L
YD. ENG 1L
CIN-2 SET OFF To
PG-10 3/17 2L
PG-10 3/24 1L
MA-50 1E
WPB-2 1L
LCL-2 3L
CIN-2 Picked Up 18L 2E

PG-34 Locos. 9465-64 3/22 1L [1L SO]

Ex. 2021-9528-21 3/22 1L [1L SO]

SEWARD
1L From Ex. 2021 Term.

CONEMAUGH
From PG-34 To Ex. 2021-9528/21 1L Relayed

CIN-2/PG-6 Locos. 9567-26 47L 4E [18L 1E SO]

Locos. PG-10 9481-64-67 3/17 2L [2L SO]
PG-10 Locos. 9560-27 3/24 1L [1L SO]

Locos. WPB-2 2007-9588 3/18 1L

Locos. LCL-2 9665-9529 3/17 3L

ALTOONA
[1L SO] Term.
AN-16 1L
2L Set Off by CIN-2
PG-10 3/17 2L Relay
PG-10 3/24 1L Relay
WPB-2 1L Relay
LCL-2 3L Relay

Same Consist
Same Consist
Same Consist
Same Consist

SHIRE OAKS
1E Term.
1L From Ex. 8603 To Ex. 8837
MA-50 Loco 8825 3/17 1E

DONORA
1L From Ex. 8837 Term.

FROM	LOADS	EMPTIES
Washington, Pa.	6	—
Wheatland, Pa.	3	—
Neville Isl. PGY.	1	—
McKeesport, Pa.	1	—
Pitcairn Pa.	1	—
Derry Pa.	1	—
Haselton Pa.	—	1
Niles O.	4	1
Coos Bay Ore.	1	—
7 Trains	18	2

WILLIAMSPORT
1L From AN-16 Term.

NORTHUMBERLAND
1L From EC-1 To LN-2

HARRISBURG
3L 1E To Reading Co.

Transfer Run Enola to Hbg
EC-1 Loco. 6750 1L 3/25

AN-16 Loco. 4249 3/19 1L

ENOLA
CIN-2/PG-6 SET OFF 45L 4E TO
1E Term
RG.CO.3L1E
EC-1 1L
FJ-6/HC-2 8L1E
P-8/FJ-6 6L
EM-2 1L
ET-2 1L
CNY-2 6L
VL-2 4L
B-8 6L
B-6 1L
B-2 1L
PG-10 3/17 2L Relay
PG-10 3/24 1L Relay
EH-2/TH-4 7L1E
WPB-2 1L Relayed
LCL-2 3L Relayed

Shopped - Enola

CIN-2/PG-6 Locos 9567-26 [17L1E SO]

ELIZABETHVILLE, PA.
LN-2 Loco. 8734 3/26 1L
1L Term.

PHILADELPHIA

WASHINGTON AVE.
1L Term.
PT-22 Loco 5560 3/21 1L
PT-14 Loco 5567 3/21 1L
52nd ST.
1L To PT-22
1L To PT-14
3L To PT-16
1L Set Off
3L 1E Off FJ-6/HC-2

GRAYS FERRY
1L Term
PT-16 Loco 5563 3/21 3L

N. PHILA
1E From FJ-6/HC-2

PENROSE
2L Term 1L To PT-35

PT-35 Loco 9074 3/23 1L

FRANKFORD JCT.
1L Term From LCL-2

MILLBOURNE
1L Term.

BURLINGTON
2L [2L SO] Term.

A-34 Loco. 8745 3/24 2L 2L SO

CAMDEN
2L From FJ-6/HC-2 To A-34
4L To PRSL

FJ-6/HC-2 6L

to PRSL 4L 2L SO

LCL-2 Loco 4818 3/19 2L

CONSHOHOCKEN
1L Term.

EM-2 3/19 1L To Conshohocken
ET-2 Locos 4732-44 3/19 1L
CNY-2 Loco. 4718 3/18 6L [3L SO]
VL-2 Locos. 4708-68 3/17 4L [3L SO]

B-8 Loco 4727 3/17 6L [6L SO]
B-6 Loco. 4711 3/18 1L [1L SO]
B-2 Loco 4750 3/18 1L

PG-10 Locos. 9517-09 3/17 2L [2L SO]
PG-10 Loco. 4828 3/24 1L [1L SO]
WPB-2 Loco 4788 3/19 1L

WHITE MARSH JC.
VL-2 Relay to Greenville 4L [3L SO]

MORRISVILLE
ET-2 Relay to Trenton 1L
CNY-2 Relay to Waverly 2L
PG-10 3/17 Relay to Waverly 2L [2L SO]

TRENTON
PG-10 3/24 Relay to Greenville 1L [1L SO]

LCL-2 Loco. 4818 3/19 2L
CNY-2 Loco. 4718 3/18 6L [3L SO]
VL-2 Loco. 4708-68 3/17 4L [3L SO]
PG-10 Locos. 9517-09 3/17 2L [2L SO]
PG-10 Loco 4828 3/24 1L [1L SO]

A-35 Loco 8937 3/21 1L
BORDENTOWN
1L Term.

EH-2/TH-4 Locos. 4847-20 3/17 7L1E [1E SO]

EDGE MOOR
1L Term. 2L1E Relay 4L To D-17

EH-2/TH-4 Locos. 4847-20 3/17 2L 1E [1E SO]

THURLOW YD.
2L1E Term.
1L To Claymont
1L To Chester
1E To Marcus Hook

BALTIMORE
8L Term [7L SO]
6L Term - B-8
1L Term - B-6
1L Relay
1L Term - WPB-2
B-2 Loco. 4750 3/18 3L

WASHINGTON, D.C.
1L Term. Ivy City

D-27 Locos. 8736-43 3/20 4L

HARRINGTON
1L To D-19 3L To D-27

D-19 Loco. 8744 3/21 1L

D-27 Locos. 8736-43 3/20 3L

BRIDGEVILLE
2L Term 1L To D-27

D-27 Locos. 8736-43 3/20 1L

SEAFORD
1L Term.

STOCKLEY
1L Term

HARSIMUS COVE YD.
2L Term - LCL-2
3L Term [1L SO] From CNY-2

LCL-2 2L
CNY-2 3L

WAVERLY YD. NEWARK N.J.
2L Relay
3L
CNY-2 6L Relay
VL-2 4L Relay
1L From PG-10 3/17 Term
PG-10 3/24 1L Relay

Pt. Newark To Frun 3L [3L SO]
VL-2 Locos. 4708-68 3/17 4L [3L SO]
Pt. Newark To Frun 1L [1L SO]
PG-10 Loco 4828 3/24 1L [1L SO]

GREENVILLE
1L From VL-2 Term. [1L SO]

To L.I.R.R. 2L
To N.Y.N.H.&H. 2L

LEGEND
L = Loaded E = Empty Ex = Extra
Org. = Originate ——— Direction of Train
[SO] = Southern - Official - Northbound
(OS) = Official - Southern - Southbound

SCHEMATIC DIAGRAM
OF
CIN-2 DEPARTING CINCINNATI
MARCH 16, 1966
AND OTHER TRAINS AND CARS AFFECTED
BY ITS OPERATION

AT BLACK ROCK

Car for Toronto ← CN-7 Loco. 8457 3/18 IL To C.N.R.R.

MC-7 Loco. 8502 3/18 IL (IL SO) To N.Y.C. → Car for Detroit

BUFFALO

From BF-7 IL to CN-7 -IL (IL SO) to MC-7 | IL (IL SO) Term.

Ex. 2100-04 3/17 IL (IL SO)

BF 7 Locos. 9505-01 3/17 2L (IL SO)

CHICAGO

WC-1 Locos. 9770-73-4825 3/18 IL

FT. WAYNE

WC-1 IL Relayed

WC-1 Locos. 9770-73-4825 3/18 IL

CRESTLINE

WC-1 IL Relayed

WC-1 Locos. 9770-73-9805 3/18 IL

CONWAY

WC-1 IL Relayed

WC-1 Locos. 9770-73-9805 3/17 IL

M-23 Loco. 8529 3/20 IL (IL SO)

KC-1 Locos 9514-23 3/19 (IL SO)

OLEAN

BF-7 2L HL SO) Relayed | EX 2100-04 IL (IL SO) Relayed | IL Term.

BF-7 Locos. 9505-01 3/17 3L (2L SO)

EX. 2100-04 3/17 IL (IL SO)

RENOVO

From BF-5 3L to BF-7 (2L SO) | From BF-5 IL (IL SO) to EX 2100-04

BF-5 Locos 2115-2043 3/16 4L (3L SO)

LOCK HAVEN

From RN-1 IL Term. | BF-5 4L Relayed

RN-1 Loco. 3491 3/17 IL (IL SO)

BF-5 Locos 2115-2095 3/16 4L (3L SO)

ELMIRA

IL (IL SO) From EC-3 Delivered to ERIE RR

EC-3 Locos. 4499-4237 3/17 IL (IL SO)

WILLIAMSPORT

EC-3 IL (IL SO) Relayed | From EC-3 IL(IL SO) to RN-1 | BF-5 4L (3L SO) Relayed | From EC-3 6L IE (6L IE SO) to N.Y.C.R.R.

From EC-3 6L IE (6L IE SO) To N.Y.C.R.R.

HUDSON YARD

Runner Crew 3/17 IL (IL SO)

Runner Crew 3/17 24L (16L SO)

25L (17L SO) (U.S.A.) to D.&H.

BUTTONWOOD YARD

From S-80 IL (IL SO) to Runner Crew | From S-82 (3/17) 24L (16L SO) to Runner Crew | From S-82 (3/18) IL (IL SO) to Wilkes-Barre by Yard Crew

Yard Crew IL (IL SO)

S-80 Locos 9617-30 3/17 IL (IL-SO)

S-82 Locos. 9172-2071 3/17 24L (16 L SO)

S-82 Locos. 2113-07 3/18 IL (IL SO)

SUNBURY

3 Trains Relayed

EX. 8570 3/19 IL (IL SO)

KISKI JCT.

From: WP-17/15 IL(IL SO) to EX 8570 | WC-1 IL Relayed

VANDERGRIFT

IL (IL SO) Term.

VERONA

(IL SO) Relayed

OAKMONT

(IL SO) Term.

43rd ST. YARD PGH.

PG-5 3/16 9L(9L SO) Term. | PG-5 3/17 IL(IL SO) to KC-1

PG-5 3/16

PG-5 3/17

WP-17/15 Locos. 9454-70-78 3/17 IL (IL SO)

WC-1 Locos 9770-73-9805 3/17 IL

PITCARIN

PG-5 (3/16) 9L (9L SO) Relayed | PG-5 (3/17) IL (IL SO) Relayed | From PG-1 2E to PM-3 | From PG-1 IL (IL SO) to P-17 | From PG-1 IL (IL SO) to MA-53

PG-5 Locos. 9719-2016 3/16 9L-(9L SO)

PG-5 Locos. 2016-9591 3/17 IL (IL-SO)

PG-1 Locos 9563-14 9677 3/17 2L-2E-(2L SO)

CONEMAUGH

2L (2L SO) Term.

PG-7 Locos. 8965-08 3/19 2L (2L SO)

MA-52 Loco. 8018 3/20 (IL SO)

PETERS CREEK

MA-52 (IL SO) to MA-53

MA-53 3/21 (IL SO)

ALTOONA

From PG-1/15 (IL SO) to WP-17/15 | IL WC-1 Relayed | 9L PG-5 Relayed | From PG-1/15 2L (2L SO) to. PG-7 | IL(IL SO) PG-5 Relayed | 2L 2E(2L SO) PG-1 Relayed

WC-1 Locos 9563-14-9677 3/17 IL

PG-5 Locos. 9719-2016 3/16 9L (9L-SO)

PG-1/15 Locos. 9514-13-23 3/17 3L (3L SO)

PG-5 Locos. 6736 3/17 IL (IL-SO)

PG-1 Locos. 9563-14-9677 3/17 2L-2E (2L SO)

M-23 Loco. 8529 3/20 IE

MC VEYTOWN

IE Term.

LEWISTOWN

IE M-9 to M-23

M-9 Loco. 6739 3/17 IE

ENOLA

From EC-5 IE to M-9 | From EC-5 IL to WC-1 | From EC-5 9L(9L SO) to PG-5 (3/16) | From EC-5 3L (3L SO) to PG-1/15 | From EC-5 IL (IL SO) to PG-5 (3/17) | From EC-5 2L 2E (2L SO) to PG-1 | From EC-5 4L to BF-5 8L-IE to EC-3 IL to S-80 24L to S-82 (3/17) IL to S-82 (3/18) | From EC-5 IL to CV-61

BF-5 Locos. 2115-2095 3/16 4L (3L SO)

EC-3 Loco. 6907 3/16 8L IE (8L E SO)

S-80 Lo 9617-30 3/17 IL (IL SO)

S-82 Lo 2112-207 3/17 24L (16L SO)

S-82 Locos- 2113-2107 3/18 IL (IL SO)

WEIRTON JCT.

From PM-3 2E to PH-123

PM-3 Locos 9495 9994 3/19 2E

PH-123 Loco 9014 3/18 2E

FOLLANSBEE

2E Term.

(IL SO) Term. PGH. SOUTHSIDE

P-17 Locos. 8304-8576 3/18 (IL SO)

THOMSON

(IL SO) Delivered to Union RR

MANGANSVILLE

IL Term.

CV 61 Loco. 305 3/20 IL

EC-5 Locos. 4759-17 3/16 55 L 4E (43 L IE SO)

POTOMAC YARD

I.C.C. Docket 29885
Witness H.L.Nancarrow
Exhibit I To VS-8

Loco. 8502
L (IL SO) To N.Y.C. — Car for Detroit

F 7 Locos. 9505-01
/17 2L (IL SO)

ELMIRA
IL (IL SO) From EC-3 Delivered to ERIE R.R.

EC-3 Locos. 4499-4237
3/17 IL (IL SO)

RENOVO
From BF-5 3L to BF-7 (2L SO)
From BF-5 IL (IL SO) to EX 2100-04

BF-7 Locos. 9505-01
3/17 3L (2L SO)

EX. 2100-04
3/17 IL (IL SO)

BF-5 Locos 2115-2043
3/16 4L (3L SO)

LOCK HAVEN
From RN-1 1 L Term.
BF-5 4 L Relayed

RN-1 Loco. 3491
3/17 IL (IL SO)

BF-5 Locos 2115-2095
3/16 4L (3L SO)

WILLIAMSPORT
EC-3 IL (IL SO) Relayed
From EC-3 IL(IL SO) to RN-1
BF-5 4L (3L SO) Relayed
From EC-3 6L IE (6L IE SO) to N.Y.C.R.R.

From EC-3 6L IE (6L IE SO) To N.Y.C.R.R.

HUDSON YARD
Runner Crew 3/17 IL (IL SO)
Runner Crew 3/17 24L (16L SO)
25L (17L SO) (U.S.A.) to D.&H.

BUTTONWOOD YARD
From S-80 IL (IL SO) to Runner Crew
From S-82 (3/17) 24L (16L SO) to Runner Crew
From S-82 (3/18) IL (IL SO) to Wilkes-Barre by Yard Crew

WILKES-BARRE
IL (IL SO) to L.V.R.R.

Yard Crew IL (IL SO)

S-80 Locos 9617-30
3/17 IL (IL SO)

S-82 Locos 9172-2071
3/17 24L (16L SO)

S-82 Locos 2113-07
3/18 IL (IL SO)

SUNBURY
3 Trains Relayed

EX. 8570
3/19 IL (IL SO)

KISKI JCT.
From: WP-17/15 IL(IL SO) to EX 8570
WC-1 IL Relayed

VANDERGRIFT
IL (IL SO) Term.

M-23 Loco. 8529
3/20 IE

McVEYTOWN
IE Term.

LEWISTOWN
IE M-9 to M-23

M-9 Loco. 6739
3/17 IE

8529
IL SO)

OAKMONT
(IL SO) Term.

ALTOONA
From PG-1/15 IL (IL SO) to WP-17/15
IL WC-1 Relayed
9L PG-5 Relayed
From PG 1/15 2L (2L SO) to PG-7
IL(IL SO) PG-5 Relayed
2L 2E(2L SO) PG-1 Relayed

WP-17/15 Locos. 9454-70-78
3/17 IL (IL SO)

WC-1 Locos 9770-73-9805
3/17 IL

WC-1 Locos 9563-14-9677
3/17 IL

PG-5 Locos. 9719-2016
3/16 9L (9L SO)

PG-1/15 Locos. 9514-13-23
3/17 3L (3L SO)

PG-5 Locos. 6736
3/17 IL (IL-SO)

PG-1 Locos. 9563-14-9677
3/17 2L-2E (2L SO)

ENOLA
From EC-5 IE to M-9
From EC-5 IL to WC-1
From EC-5 9L(9L SO) to PG-5 (3/16)
From EC-5 3L (3L SO) to PG-1/15
From EC-5 IL (IL SO) to PG-5 (3/17)
From EC-5 2L 2E(2L SO) to PG-1
From EC-5 4L to BF-5 8L-1E to EC-5 IL to S-80 24L to S-82 (3/17) IL to S-82 (3/18)
From EC-5 IL to CV-61

BF-5 Locos. 2115-2095 3/16 4L (3L SO)
EC-3 Loco. 6907 3/16 8L 1E (6L E SO)
S-80 Lo 9617-30 3/17 IL (IL SO)
S-82 Lo 2112-207 3/17 24L (16L SO)
S-82 Locos- 2113-2107 3/18 IL (IL SO)

PITCARIN
PG-5 (3/16) 9L (9L SO) Relayed
PG-5 (3/17) IL (IL SO) Relayed
From PG-1 2E to PM-3
From PG-1 IL (IL SO) to P-17
From PG-1 IL (IL SO) to MA-53

CONEMAUGH
2 L (2L SO) Term.

PG-7 Locos. 8965-08
3/19 2L (2L SO)

PG-5 Locos. 2016-9591
3/17 IL (IL-SO)

PG-1 Locos 9563-14 9677
3/17 2L-2E-(2L SO)

MA-52 Loco. 8018
3/20 (IL SO)

PETERS CREEK
MA-52 (IL SO) to MA-55

MANGANSVILLE
IL Term.

CV 61 Loco. 305
3/20 IL

EC-5 Locos. 4759-17
3/16 55 L 4E (43 L IE SO)

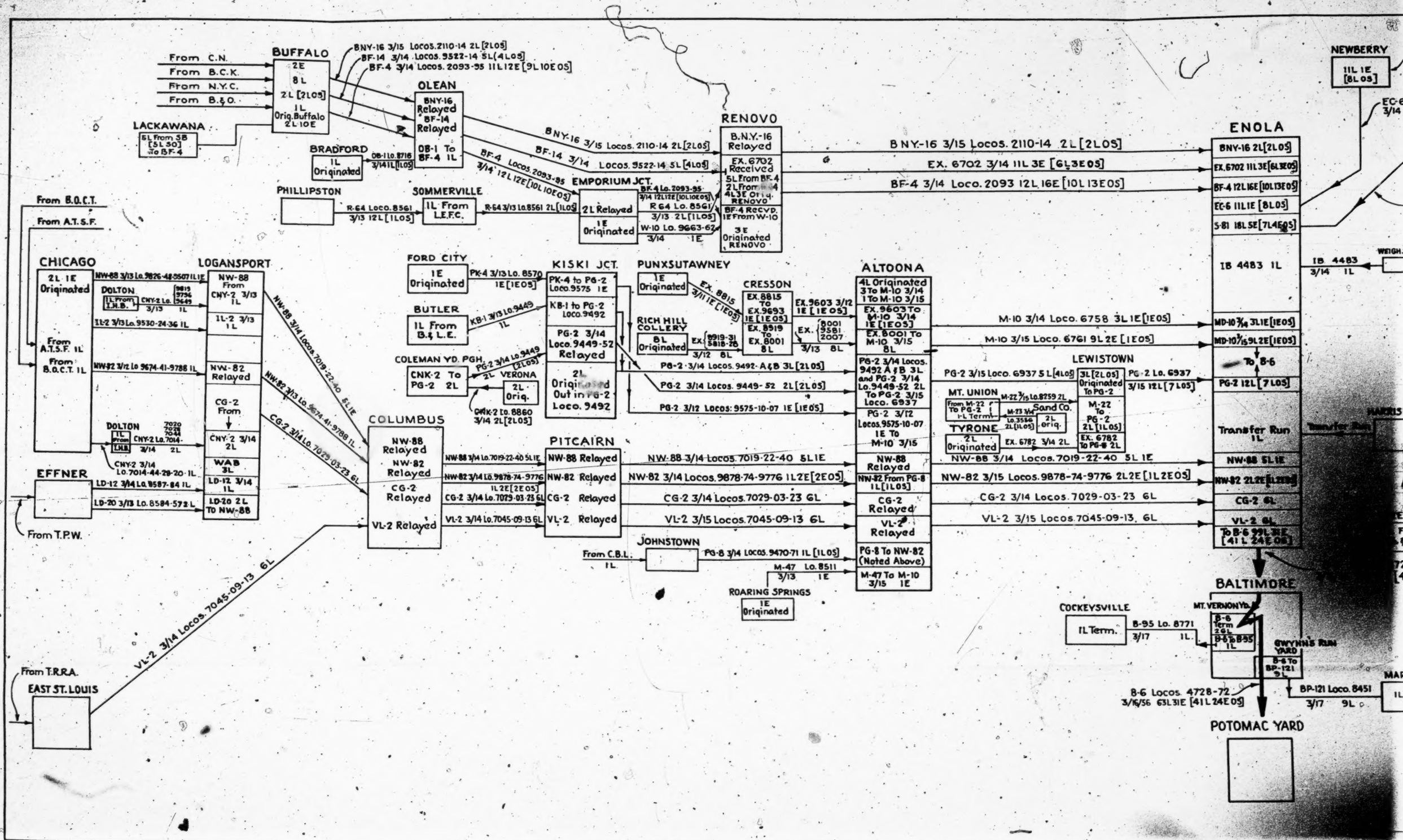
POTOMAC YARD

CARS DELIVERED TO D.&H. AT HUDSON FOR:

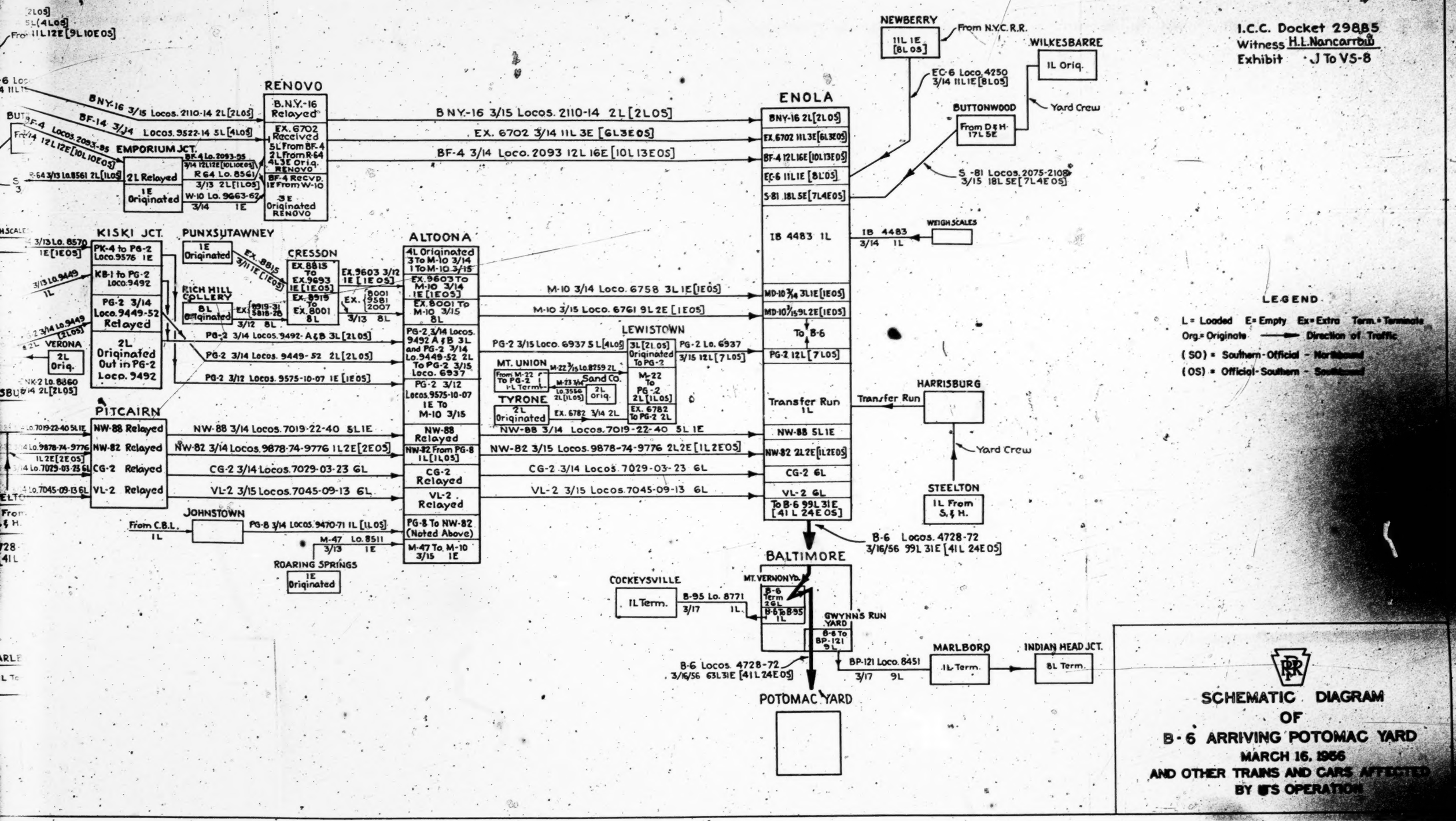
DESTINATION	NUMBER OF CARS	TOTAL
NEW YORK	8	
MASSACHUSETTS	10	
NEW-HAMPSHIRE	1	
MAINE	1	
TOTAL U.S.		20
CANADA		5
GRAND TOTAL		25

LEGEND
L = Loaded E = Empty
Org.= Originate
(SO) = Southern-Official
(OS) = Official-Southern

SCHEMATIC DIAGRAM
OF
EC-5 DEPARTING POTOMAC YARD
MARCH 16, 1956
AND OTHER TRAINS AND CARS AFFECTED
BY ITS OPERATION


From C.N.
From B.C.K.
From N.Y.C.
From B.&O.
BUFFALO
2E
8L
2L [2LOS]
1L
Orig. Buffalo
2L 10E
BNY-16 3/15 Locos. 2110-14 2L [2LOS]
BF-14 3/14 Locos. 9522-14 5L (4LOS]
BF-4 3/14 Locos. 2093-95 11L 12E [9L 10E OS]
LACKAWANA
5L from 38 [5L 50] No BF-4
OLEAN
BNY-16 Relayed
BF-14 Relayed
OB-1 To BF-4 1L
BRADFORD
1L Originated
OB-1 Lo. 8716 3/14 1L [1LOS]
BNY-16 3/15 Locos. 2110-14 2L [2LOS]
BF-14 3/14 Locos. 9522-14 5L [4LOS]
BF-4 Locos. 2093-95 3/14 12L 12E [10L 10E OS]
EMPORIUM JCT.
2L Relayed
1E Originated
BF-4 Lo. 2093-95 3/14 12L 12E [10L 10E OS]
RG4 Lo. 8561 3/13 2L [1LOS]
W-10 Lo. 9663-62 3/14 1E
PHILLIPSTON
R-64 Loco. 8561 3/13 12L [1LOS]
SOMMERVILLE
1L From L.E.F.C.
R-64 3/13 Lo. 8561 2L [1LOS]
RENOVO
B.N.Y.-16 Relayed
EX. 6702 Received
5L From BF-4
2L From [illegible]
4L 3E Orig. RENOVO
BF-4 Recvd. 1E From W-10
3E Originated RENOVO
BNY-16 3/15 Locos. 2110-14 2L [2LOS]
EX. 6702 3/14 11L 3E [6L 3E OS]
BF-4 3/14 Loco. 2093 12L 16E [10L 13E OS]
ENOLA
BNY-16 2L [2LOS]
EX. 6702 11L 3E [6L 3E OS]
BF-4 12L 16E [10L 13E OS]
EC-6 11L 1E [8L OS]
S-81 18L 5E [7L 4E OS]
IB 4483 1L
MD-10 3/14 3L 1E [1E OS]
MD-10 3/15 9L 2E [1E OS]
To B-6
PG-2 12L [7LOS]
Transfer Run 1L
NW-88 5L 1E
NW-82 2L 2E [1L 2E OS]
CG-2 6L
VL-2 6L
To B-6 99L 3E [41L 24E OS]
NEWBERRY
11L 1E [8L OS]
EC-6 3/14
IB 4483 3/14 1L
WEIGH.
From B.O.C.T.
From A.T.S.F.
CHICAGO
2L 1E Originated
From A.T.S.F. 1L
From B.O.C.T. 1L
LOGANSPORT
NW-88 From CNY-2 3/13 1L
1L-2 3/13 1L
NW-82 Relayed
CG-2 From
CNY-2 3/14 2L
WAB 3L
LD-12 3/14 1L
LD-20 2L To NW-88
NW-88 3/13 Lo. 9826-48-9507 1L 1E
DOLTON
1L From T.H.B.
CNY-2 Lo. 9819 9756 9649 3/13 1L
1L-2 3/13 Lo. 9530-24-36 1L
NW-82 3/12 Lo. 9674-41-9788 1L
DOLTON
1L From T.H.B.
CNY-2 Lo. 7020 7028 7044 7014- 3/14 2L
CNY-2 3/14 Lo. 7014-44-29-20 1L
EFFNER
LD-12 3/14 Lo. 8587-84 1L
LD-20 3/13 Lo. 8584-57 2L
From T.P.W.
NW-88 3/14 Locos. 7019-22-40 5L 1E
NW-82 3/14 Lo. 9674-41-9788 1L
CG-2 3/14 Lo. 7029-03-23 6L
VL-2 3/14 Locos. 7045-09-13 6L
From T.R.R.A.
EAST ST. LOUIS
FORD CITY
1E Originated
PK-4 3/13 Lo. 8570 1E [1E OS]
BUTLER
1L From B.&L.E.
KB-1 3/13 Lo. 9449 1L
COLEMAN YD. PGH.
CNK-2 To PG-2 2L
PG-2 3/14 Lo. 9449 [2L OS]
2L VERONA
2L Orig.
CNK-2 Lo. 8860 3/14 2L [2LOS]
KISKI JCT.
PK-4 to PG-2 Loco. 9575 1E
KB-1 to PG-2 Loco. 9492
PG-2 3/14 Loco. 9449-52 Relayed
2L Originated Out in PG-2 Loco. 9492
COLUMBUS
NW-88 Relayed
NW-82 Relayed
CG-2 Relayed
VL-2 Relayed
NW-88 3/14 Lo. 7019-22-40 5L 1E
NW-82 3/14 Lo. 9878-74-9776 1L 2E [2E OS]
CG-2 3/14 Lo. 7029-03-23 6L
VL-2 3/14 Lo. 7045-09-13 6L
PITCAIRN
NW-88 Relayed
NW-82 Relayed
CG-2 Relayed
VL-2 Relayed
PUNXSUTAWNEY
1E Originated
EX. 8815 3/11 1E [1E OS]
RICH HILL COLLERY
8L Originated
EX. 9919-31 5818-76 3/12 8L
CRESSON
EX. 8815 To EX. 9693 1E [1E OS]
EX. 8519 To EX. 8001 8L
EX. 9603 3/12 1E [1E OS]
EX. 8001 9581 2007 3/13 8L
PG-2 3/14 Locos. 9492-A&B 3L [2L OS]
PG-2 3/14 Locos. 9449-52 2L [2L OS]
PG-2 3/12 Locos: 9575-10-07 1E [1E OS]
JOHNSTOWN
From C.B.L. 1L
PG-8 3/14 Locos. 9470-71 1L [1L OS]
M-47 Lo. 8511 3/13 1E
ROARING SPRINGS
1E Originated
NW-88 3/14 Locos. 7019-22-40 5L 1E
NW-82 3/14 Locos. 9878-74-9776 1L 2E [2E OS]
CG-2 3/14 Locos. 7029-03-23 6L
VL-2 3/15 Locos. 7045-09-13 6L
ALTOONA
4L Originated 3 To M-10 3/14 1 To M-10 3/15
EX. 9603 To M-10 3/14 1E [1E OS]
EX. 8001 To M-10 3/15 8L
PG-2 3/14 Locos. 9492 A&B 3L and PG-2 3/14 Lo. 9449-52 2L To PG-2 3/15 Loco. 6937
PG-2 3/12 Locos. 9575-10-07 1E To M-10 3/15
NW-88 Relayed
NW-82 From PG-8 1L [1L OS]
CG-2 Relayed
VL-2 Relayed
PG-8 To NW-82 (Noted Above)
M-47 To M-10 3/15 1E
M-10 3/14 Loco. 6758 3L 1E [1E OS]
M-10 3/15 Loco. 6761 9L 2E [1E OS]
LEWISTOWN
3L [2L OS] Originated To PG-2
PG-2 3/15 Loco. 6937 5L [4L OS]
PG-2 Lo. 6937 3/15 12L [7L OS]
M-22 To PG-2 2L [1L OS]
EX. 6782 To PG-8 2L
MT. UNION
From M-22 To PG-2 1L Term.
M-22 3/15 Lo. 8759 2L
M-23 3/14 Lo. 3584 2L [1L OS]
Sand Co. 2L Orig.
TYRONE
2L Originated
EX. 6782 3/14 2L
NW-88 3/14 Locos. 7019-22-40 5L 1E
NW-82 3/15 Locos. 9878-74-9776 2L 2E [1L 2E OS]
CG-2 3/14 Locos. 7029-03-23 6L
VL-2 3/15 Locos. 7045-09-13, 6L
BALTIMORE
MT. VERNON Yd.
B-6 Term 2 6L
B-6 to B-95 1L
COCKEYSVILLE
1L Term.
B-95 Lo. 8771 3/17 1L
GWYNNS RUN YARD
B-6 To BP-121 9L
8-6 Locos. 4728-72 3/16/56 63L 31E [41L 24E OS]
BP-121 Loco. 8451 3/17 9L
POTOMAC YARD

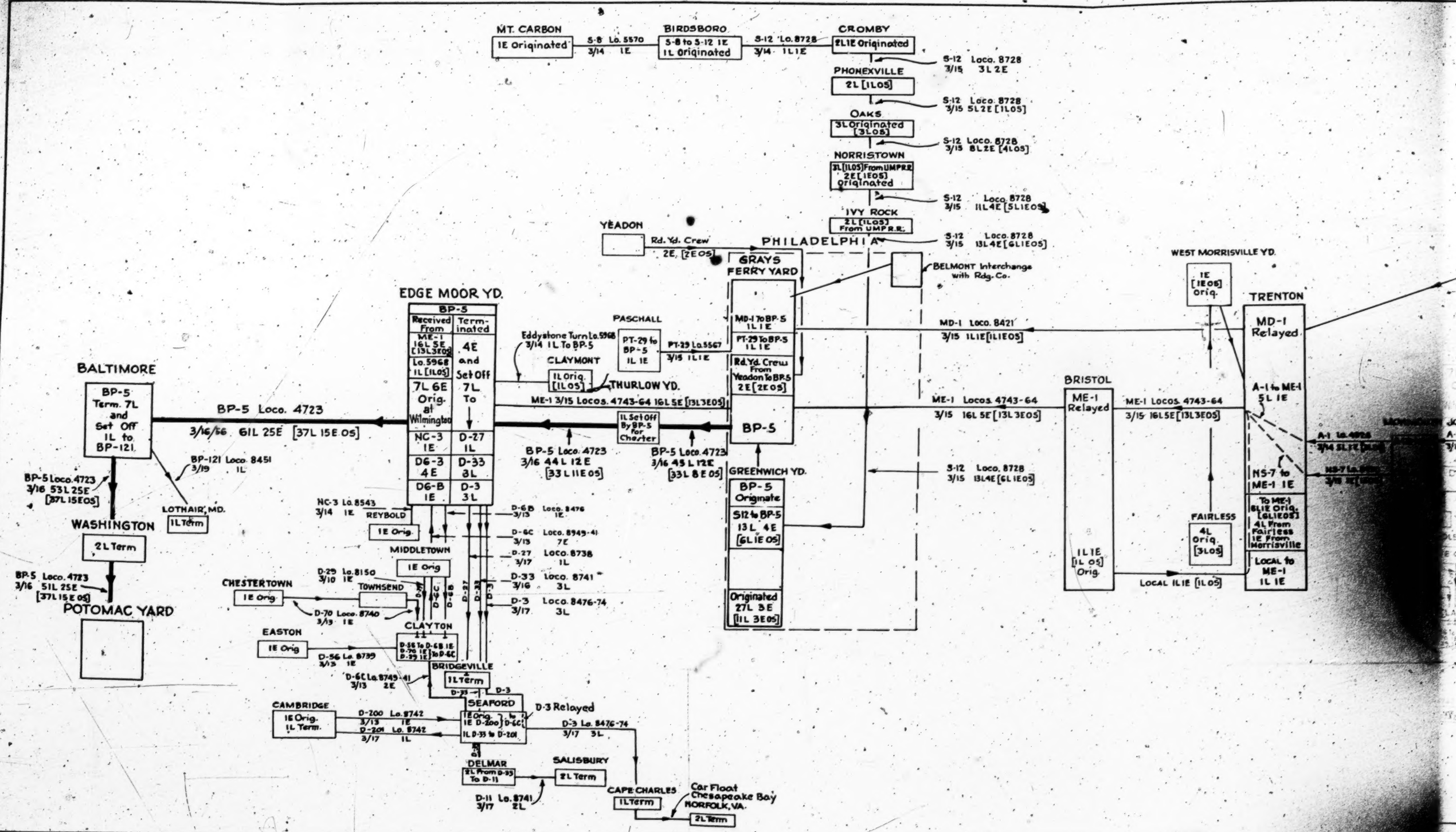
I.C.C. Docket 29885
Witness H.L.Nancarrow
Exhibit J To VS-8



LEGEND

L = Loaded E = Empty Ex = Extra Term. = Terminate
Org. = Originate —— Direction of Traffic
(SO) = Southern-Official - Northbound
(OS) = Official-Southern - Southbound

SCHEMATIC DIAGRAM
OF
B-6 ARRIVING POTOMAC YARD
MARCH 16, 1966
AND OTHER TRAINS AND CARS AFFECTED
BY ITS OPERATION


MT. CARBON
1E Originated
S-8 Lo. 5570
3/14 1E
BIRDSBORO
S-8 to S-12 1E
1L Originated
S-12 Lo. 8728
3/14 1L1E
CROMBY
2L1E Originated
S-12 Loco. 8728
3/15 3L2E
PHONEXVILLE
2L [1L0S]
S-12 Loco. 8728
3/15 5L2E [1L0S]
OAKS
3L Originated [3L0S]
S-12 Loco. 8728
3/15 8L2E [4L0S]
NORRISTOWN
3L [1L0S] From UMPR
2E [1E0S] Originated
S-12 Loco. 8728
3/15 11L4E [5L1E0S]
IVY ROCK
2L [1L0S] From UMP R.R.
S-12 Loco. 8728
3/15 13L4E [6L1E0S]
PHILADELPHIA
YEADON
Rd. Yd. Crew
2E. [2E0S]
GRAYS FERRY YARD
MD-1 To BP-5 1L1E
PT-29 To BP-5 1L1E
Rd. Yd. Crew From Yeadon To BP-5 2E [2E0S]
BP-5
BELMONT Interchange with Rdg. Co.
WEST MORRISVILLE YD.
1E [1E0S] Orig.
TRENTON
MD-1 Relayed
MD-1 Loco. 8421
3/15 1L1E [1L1E0S]
EDGE MOOR YD.
BP-5
Received From
Terminated
ME-1 16L 5E [13L3E0S]
4E and Set Off
Lo. 5968 1L [1L0S]
7L 6E Orig. at Wilmington
7L To
NC-3 1E
D-27 1L
D6-3 4E
D-33 3L
D6-B 1E
D-3 3L
PASCHALL
PT-29 to BP-5 1L 1E
PT-29 Lo. 5567
3/15 1L1E
Eddystone Turn Lo. 5968
3/14 1L To BP-5
CLAYMONT
1L Orig. [1L0S]
THURLOW YD.
ME-1 3/15 Locos. 4743-64 16L5E [13L3E0S]
BP-5 Loco. 4723
3/16 44L 12E [33L11E0S]
1L Set Off By BP-5 for Chester
BP-5 Loco. 4723
3/16 45L 12E [33L8E0S]
BALTIMORE
BP-5 Term. 7L and Set Off 1L to BP-121
BP-5 Loco. 4723
3/16/56 61L 25E [37L15E0S]
BP-121 Loco. 8451
3/19 1L
BP-5 Loco. 4723
3/16 53L 25E [37L15E0S]
LOTHAIR, MD.
1L Term
WASHINGTON
2L Term
BP-5 Loco. 4723
3/16 51L 25E [37L15E0S]
POTOMAC YARD
NC-3 Lo. 8543
3/14 1E
REYBOLD
1E Orig.
D-6B Loco. 8476
3/13 1E
D-6C Loco. 8949-41
3/13 7E
D-27 Loco. 8738
3/17 1L
D-33 Loco. 8741
3/16 3L
D-3 Loco. 8476-74
3/17 3L
MIDDLETOWN
1E Orig.
D-29 Lo. 8150
3/10 1E
CHESTERTOWN
1E Orig.
TOWNSEND
D-70 Loco. 8740
3/13 1E
CLAYTON
D-56 To D-6B 1E
D-70 1E To D-6C
D-29 1E
EASTON
1E Orig.
D-56 Lo. 8739
3/13 1E
D-6C Lo. 8749-41
3/13 2E
BRIDGEVILLE
1L Term
SEAFORD
1E Orig. 1E D-200 to D-6C
1L D-33 to D-201
D-3 Relayed
D-3 Lo. 8476-74
3/17 3L
CAMBRIDGE
1E Orig.
1L Term.
D-200 Lo. 8742
3/13 1E
D-201 Lo. 8742
3/17 1L
DELMAR
2L From D-33 To D-11
SALISBURY
2L Term
D-11 Lo. 8741
3/17 2L
CAPE CHARLES
1L Term
Car Float Chesapeake Bay
NORFOLK, VA.
2L Term
GREENWICH YD.
BP-5 Originate
S12 to BP-5 13L 4E [6L1E0S]
Originated 27L 3E [11L3E0S]
ME-1 Locos. 4743-64
3/15 16L 5E [13L3E0S]
S-12 Loco. 8728
3/15 13L4E [6L1E0S]
BRISTOL
ME-1 Relayed
1L1E [1L0S] Orig.
ME-1 Locos. 4743-64
3/15 16L5E [13L3E0S]
FAIRLESS
4L Orig. [3L0S]
LOCAL 1L1E [1L0S]
A-1 to ME-1 5L 1E
NS-7 to ME-1 1E
To ME-1 6L1E Orig. [6L1E0S] 4L From Fairless 1E From Morrisville
LOCAL to ME-1 1L 1E

I.C.C. Docket 29888
Witness H.L.Nancarrow
Exhibit P To VS-8

MT. CARBON
1E Originated
S-8 Lo. 5570 3/14 1E
BIRDSBORO
S-8 to S-12 1E 1L Originated
S-12 Lo. 8728 3/14 1L1E
CROMBY
2L1E Originated
S-12 Loco. 8728 3/15 3L2E
PHOENIXVILLE
2L [1L05]
S-12 Loco. 8728 3/15 5L2E [1L05]
OAKS
3L Originated [3L05]
S-12 Loco. 8728 3/15 8L2E [4L05]
NORRISTOWN
3L [1L05] From UMPRR 2E [1E05] Originated
S-12 Loco. 8728 3/15 11L4E [5L1E05]
IVY ROCK
2L [1L05] From UMPRR
S-12 Loco. 8728 3/15 13L4E [6L1E05]
YEADON
Rd. Yd. Crew 2E [2E05]
PHILADELPHIA
GRAYS FERRY YARD
BELMONT Interchange with Rdg. Co.
MOOR YD.
BP-5
Terminated
4E and Set Off 7L To
D-27 1L
D-33 3L
D-3 3L
Eddystone Turn Lo.5968 3/14 1L To BP-5
CLAYMONT
1L Orig. [1L05]
PASCHALL
PT-29 to BP-5 1L 1E
PT-29 Lo.5567 3/15 1L1E
THURLOW YD.
MD-1 To BP-5 1L1E
PT-29 To BP-5 1L1E
Rd. Yd. Crew From Yeadon To BP-5 2E [2E05]
BP-5
ME-1 3/15 Locos. 4743-64 16L5E [13L3E05]
1L Set Off By BP-5 for Chester
BP-5 Loco. 4723 3/16 4L 12E [3L 11E05]
BP-5 Loco. 4723 3/16 4L 12E [3L 8E05]
GREENWICH YD.
BP-5 Originate
5L2 to BP-5 13L 4E [6L1E05]
Originated 2L 3E [1L 3E05]
MD-1 Loco. 8421 3/15 1L1E [1L1E05]
ME-1 Locos. 4743-64 3/15 16L 5E [13L 3E05]
S-12 Loco. 8728 3/15 13L4E [6L1E05]
BRISTOL
ME-1 Relayed
1L1E [1L05] Orig.
ME-1 Locos. 4743-64 3/15 16L5E [13L3E05]
LOCAL 1L1E [1L05]
WEST MORRISVILLE YD.
1E [1E05] Orig.
FAIRLESS
4L Orig. [3L05]
TRENTON
MD-1 Relayed
A-1 to ME-1 5L 1E
NS-7 to ME-1 1E
To ME-1 6L1E Orig. [6L1E05] 4L From Fairless 1E From Morrisville
LOCAL to ME-1 1L 1E
MD-1 Loco 4821 3/15 1L1E [1L1E05]
GREENVILLE YD.
1L From L.I.R.R.
1E From N.Y.N.H.&H.
1L From L.I.R.R.
1E From N.Y.N.H.&H.
SOUTH AMBOY
From R.R.R.R. 2L [1L05]
2L From R.R. Railroad
1L1E NB-52 To A-1
HELMETTA
2L Originated [2L05]
A-1 Lo.4926 3/14 3L1E [3L05]
A-1 Lo.4926 3/14 3L1E [3L05]
MONMOUTH JCT.
A-1 Lo. 4926 3/14 5E1E [3L05]
A-1 Relayed
1E Orig.
NS-7 Lo. 8490 3/13 1E [1E05]
A-1 Loco. 4926 3/14 5L1E [3L05]
JAMESBURG
A-1 Relayed
NB-52 Lo.5649 3/13 1L1E
FREEHOLD
1L1E Originated
NB-52 Loco. 3/13
N.Y.L.&W.R.R.
D-6B Loco. 8476 3/13 1E
D-6C Loco. 8949-41 3/13 7E
D-27 Loco. 8738 3/17 1L
D-33 Loco. 8741 3/16 3L
D-3 Loco. 8476-74 3/17 3L
D-6B 1E to D-6C
BRIDGEVILLE
1L Term
SEAFORD
1E Orig. 1E D-20o to D-6C 1L D-33 to D-20i
D-3 Relayed
D-3 Lo. 8476-74 3/17 3L
DELMAR
2L From D-33 To D-11
D-11 Lo. 8741 3/17 2L
SALISBURY
2L Term
CAPE CHARLES
1L Term
Car Float Chesapeake Bay NORFOLK, VA.
2L Term

LEGEND
L = Loaded E = Empty Ex = Extra
Org. = Originate → Direction
(SO) = Southern - Official - Northbound
(OS) = Official - Southern - Southbound

SCHEMATIC DIAGRAM OF BP-5 ARRIVING POTOMAC YARD MARCH 16, 1956 AND OTHER TRAINS AND CARS AFFECTED BY ITS OPERATION

ALL CARLOAD DB 465 TRAFFIC (DOES NOT INCLUDE COAL, COKE MADE FROM COAL, -KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIAL)
(INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004; EX-CANADA AND TO CANADA TRAFFIC, CODE 006)

PERIOD: JULY 1958 THROUGH JUNE 1959 INTERLINE ACCOUNTS.
BETWEEN: OFFICIAL TERRITORY AND SOUTHERN TERRITORY.

2	3	4	5	6	7	8	9	10	11	12	13	14	15
	CARS	TONS	REVENUE AS SETTLED ARBITR'S.	REVENUE AS SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI-PER TON (10/4)	AVG. SL MI-PER CAR (8/3)	CENTS CAR-MI. (6/8)	MILLS TON-MI. (6/10)
NORTH	444,379	11,315,697.6	53,280	97,586,147	44.42	151,205,349	40.73	3,561,615,707	41.27	315	340	64.54	27.40
SOUTH	444,379	11,315,697.6	823,091	122,121,454	55.58	220,034,569	59.27	5,067,912,344	58.73	448	495	55.50	24.10
TOTAL	444,379	11,315,697.6	876,371	219,707,601	100.00	371,239,918	100.00	8,629,528,051	100.00	763	835	59.18	25.46
NORTH	713	45,284.9		45,302	33.33	26,381	53.62	1,675,541	53.62	37	37	171.72	27.04
SOUTH	713	45,284.9		90,603	66.67	22,816	46.38	1,449,116	46.38	32	32	397.10	62.52
TOTAL	713	45,284.9		135,905	100.00	49,197	100.00	3,124,657	100.00	69	69	276.25	43.49
NORTH	728	12,341.9		218,057	53.72	323,956	58.13	5,620,006	58.00	455	445	67.31	38.80
SOUTH	728	12,341.9		187,839	46.28	233,336	41.87	4,070,405	42.00	330	321	80.50	46.15
TOTAL	728	12,341.9		405,896	100.00	557,292	100.00	9,690,411	100.00	785	766	72.83	41.89
NORTH	445,820	11,373,324.4	53,280	97,849,506	44.43	151,555,686	40.76	3,568,911,254	41.30	314	340	64.56	27.42
SOUTH	445,820	11,373,324.4	823,091	122,399,396	55.57	220,290,721	59.24	5,073,431,865	58.70	446	494	55.56	24.13
TOTAL	445,820	11,373,324.4	876,371	220,249,402	100.00	371,846,407	100.00	8,642,343,119	100.00	760	834	59.23	25.48
NORTH	519,011	16,621,824.5	6,121	122,826,394	44.99	206,929,644	42.25	6,526,877,707	41.45	393	399	59.36	18.82
SOUTH	519,011	16,621,824.5	470,770	150,157,138	55.01	282,804,338	57.75	9,220,305,229	58.55	555	545	53.10	16.29
TOTAL	519,011	16,621,824.5	476,891	272,983,532	100.00	489,733,982	100.00	15,747,182,936	100.00	947	944	55.74	17.34
NORTH	496	8,194.2		94,365	42.74	156,196	28.13	2,577,561	28.22	315	315	60.41	36.61
SOUTH	496	8,194.2		126,400	57.26	398,988	71.87	6,555,210	71.78	800	804	31.68	19.28
TOTAL	496	8,194.2		220,765	100.00	555,184	100.00	9,132,771	100.00	1115	1119	39.76	24.17
NORTH	2,227	52,377.6		600,675	47.40	1,138,865	47.35	26,794,680	45.61	512	511	52.74	22.42
SOUTH	2,227	52,377.6	12,443	666,687	52.60	1,266,339	52.65	31,948,342	54.39	610	569	52.65	20.87
TOTAL	2,227	52,377.6	12,443	1,267,362	100.00	2,405,204	100.00	58,743,022	100.00	1122	1080	52.69	21.57
NORTH	521,734	16,682,396.3	6,121	123,521,434	45.00	208,224,705	42.26	6,556,249,948	41.46	393	399	59.32	18.84
SOUTH	521,734	16,682,396.3	483,213	150,950,225	55.00	284,469,665	57.74	9,253,808,781	58.54	555	545	53.06	16.30
TOTAL	521,734	16,682,396.3	489,334	274,471,659	100.00	492,694,370	100.00	15,815,058,729	100.00	948	944	55.71	17.36
NORTH	963,390	27,937,522.1	59,401	220,412,541	44.74	358,134,993	41.60	10,088,493,414	41.39	361	372	61.54	21.85
SOUTH	963,390	27,937,522.1	1,293,861	272,278,592	55.26	502,838,907	58.40	14,288,217,573	58.61	511	522	54.15	19.06
TOTAL	963,390	27,937,522.1	1,353,262	492,691,133	100.00	860,973,900	100.00	24,376,710,987	100.00	873	894	57.22	20.21
NORTH	1,209	53,479.1		139,667	39.16	182,577	30.21	4,253,102	34.70	80	151	76.50	32.84
SOUTH	1,209	53,479.1		217,003	60.84	421,804	69.79	8,004,326	65.30	150	349	51.45	27.11
TOTAL	1,209	53,479.1		356,670	100.00	604,381	100.00	12,257,428	100.00	229	500	59.01	29.10
NORTH	2,955	64,719.5		818,732	48.93	1,462,821	49.38	32,414,686	47.37	501	495	55.97	25.26
SOUTH	2,955	64,719.5	12,443	854,526	51.07	1,499,675	50.62	36,018,747	52.63	557	508	56.98	23.72
TOTAL	2,955	64,719.5	12,443	1,673,258	100.00	2,962,496	100.00	68,433,433	100.00	1057	1003	56.48	24.45
NORTH	967,554	28,055,720.7	59,401	221,370,940	44.75	359,780,391	41.62	10,125,161,202	41.40	361	372	61.53	21.86
SOUTH	967,554	28,055,720.7	1,306,304	273,350,121	55.25	504,760,386	58.38	14,332,240,646	58.60	511	522	54.15	19.07
TOTAL	967,554	28,055,720.7	1,365,705	494,721,061	100.00	864,540,777	100.00	24,457,401,848	100.00	872	894	57.22	20.23

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SUPREME COURT, U. S.
Volume III
(Pages 393 to 712)

Supreme Court of the United States

October Term, 1968

No. 13

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,

Appellants,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees.

No. 15

INTERSTATE COMMERCE COMMISSION,

Appellant,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees.

Appeals From the United States District Court for the Eastern District of Louisiana, New Orleans Division.

Filed December 18 and 21, 1967.
Probable jurisdiction noted March 4, 1968.

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INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFF

SOUTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
1	ALBERTA, VA.	NORTH	1,664	.37	44,422.3	.39		539,185	56.39	1,002,471	58.47
		SOUTH	1,664	.37	44,422.3	.39	3,905	417,071	43.61	712,106	41.53
		TOTAL	1,664	.37	44,422.3	.39	3,905	956,256	100.00	1,714,577	100.00
2	ALEXANDRIA, VA.	NORTH									
		SOUTH									
		TOTAL									
3	ALTA VISTA, VA.	NORTH	1,587	.36	37,737.1	.33	802	371,549	58.04	664,749	61.99
		SOUTH	1,587	.36	37,737.1	.33		268,642	41.96	407,619	38.01
		TOTAL	1,587	.36	37,737.1	.33	802	640,191	100.00	1,072,368	100.00
4	BRISTOL, VA.-TENN.	NORTH	9,991	2.24	384,624.8	3.38		1,938,900	47.01	2,411,550	47.57
		SOUTH	9,991	2.24	384,624.8	3.38	1,075	2,185,403	52.99	2,668,795	52.53
		TOTAL	9,991	2.24	384,624.8	3.38	1,075	4,124,303	100.00	5,080,345	100.00
5	BURKEVILLE, VA.	NORTH	520	.12	19,659.9	.17		62,648	38.82	51,011	27.99
		SOUTH	520	.12	19,659.9	.17		98,750	61.18	131,253	72.01
		TOTAL	520	.12	19,659.9	.17		161,398	100.00	182,264	100.00
7	CHARLOTTESVILLE, VA.	NORTH	1,082	.24	54,425.6	.48		122,353	43.22	67,084	24.97
		SOUTH	1,082	.24	54,425.6	.48		160,723	56.78	201,543	75.03
		TOTAL	1,082	.24	54,425.6	.48		283,076	100.00	268,627	100.00
14	HARRISONBURG, VA.	NORTH									
		SOUTH									
		TOTAL									
15	JARRATT, VA.	NORTH	1,307	.29	36,639.9	.32		378,140	56.80	811,287	59.19
		SOUTH	1,307	.29	36,639.9	.32	6,899	287,567	43.20	560,416	40.81
		TOTAL	1,307	.29	36,639.9	.32	6,899	665,707	100.00	1,371,703	100.00

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Exhibit R. 16: J. R. Clark 982

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS ov GTWYS	TONS	PCT. OF TOT TONS ov GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI. PER TON 13/6
1,664	.37	44,422.3	.39		539,185	56.39	1,002,471	58.47	25,730,586	58.52	579
1,664	.37	44,422.3	.39	3,905	417,071	43.61	712,106	41.53	18,236,121	41.48	411
1,664	.37	44,422.3	.39	3,905	956,256	100.00	1,714,577	100.00	43,966,707	100.00	990
1,587	.36	37,737.1	.33	802	371,549	58.04	664,749	61.99	15,784,636	61.77	418
1,587	.36	37,737.1	.33		268,642	41.96	407,619	38.01	9,770,603	38.23	259
1,587	.36	37,737.1	.33	802	640,191	100.00	1,072,368	100.00	25,555,239	100.00	677
9,991	2.24	384,624.8	3.38		1,938,900	47.01	2,411,550	47.47	67,312,401	40.99	175
9,991	2.24	384,624.8	3.38	1,075	2,185,403	52.99	2,668,795	52.53	96,887,937	59.01	252
9,991	2.24	384,624.8	3.38	1,075	4,124,303	100.00	5,080,345	100.00	164,200,338	100.00	427
520	.12	19,659.9	.17		62,648	38.82	51,011	27.99	1,675,655	25.01	85
520	.12	19,659.9	.17		98,750	61.18	131,253	72.01	5,024,416	74.99	256
520	.12	19,659.9	.17		161,398	100.00	182,264	100.00	6,700,071	100.00	341
1,082	.24	54,425.6	.48		122,353	43.22	67,084	24.97	3,374,388	25.14	62
1,082	.24	54,425.6	.48		160,723	56.78	201,543	75.03	10,046,251	74.86	185
1,082	.24	54,425.6	.48		283,076	100.00	268,627	100.00	13,420,639	100.00	247
1,307	.29	36,639.9	.32		378,140	56.80	811,287	59.14	21,900,019	60.22	598
1,307	.29	36,639.9	.32	6,899	287,567	43.20	560,416	40.86	14,464,558	39.78	395
1,307	.29	36,639.9	.32	6,899	665,707	100.00	1,371,703	100.00	36,364,577	100.00	992

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TION A

ALL CARLOAD DB 465 TRAFFIC (DOES NOT INCLUDE COAL, COKE MADE FROM COAL, -KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIAL)
(INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004; EX-CANADA AND TO CANADA TRAFFIC, CODE 006)

PERIOD: JULY 1958 THROUGH JUNE 1959 INTERLINE ACCOUNTS.
BETWEEN: OFFICIAL TERRITORY AND SOUTHERN TERRITORY.

1	2	3	4	5	6	7	8	9	10	11	12
				REVENUE AS SETTLED							
		CARS	TONS	ARBITR'S.	REMAINDER	PER-CENT.	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI-PER TON (10/4)
SOUTHBOUND											
DB 465 (GENERAL)	NORTH	444,379	11,315,697.6	53,280	97,506,147	44.42	151,205,349	40.73	3,561,615,707	41.27	315
	SOUTH	444,379	11,315,697.6	823,091	122,121,454	55.58	220,034,569	59.27	5,067,912,344	58.73	448
	TOTAL	444,379	11,315,697.6	876,371	219,707,601	100.00	371,239,918	100.00	8,629,528,051	100.00	763
VACATED ORDER TRAFFIC (CODE 004 - SODA FROM SALTVILLE, VA.)	NORTH	713	45,284.9		45,302	33.33	26,381	53.62	1,675,541	53.62	37
	SOUTH	713	45,284.9		90,603	66.67	22,816	46.38	1,449,116	46.38	32
	TOTAL	713	45,284.9		135,905	100.00	49,197	100.00	3,124,657	100.00	69
EX-CANADA TRAFFIC (CODE 006)	NORTH	728	12,341.9		218,057	53.72	323,956	58.13	5,620,006	58.00	455
	SOUTH	728	12,341.9		187,839	46.28	233,336	41.87	4,070,405	42.00	330
	TOTAL	728	12,341.9		405,896	100.00	557,292	100.00	9,690,411	100.00	785
TOTAL OF LINES 1 TO 3	NORTH	445,820	11,373,324.4	53,280	97,849,506	44.43	151,555,686	40.76	3,568,911,254	41.30	314
	SOUTH	445,820	11,373,324.4	823,091	122,399,896	55.57	220,290,721	59.24	5,073,431,865	58.70	446
	TOTAL	445,820	11,373,324.4	876,371	220,249,402	100.00	371,846,407	100.00	8,642,343,119	100.00	760
NORTHBOUND											
DB 465 (GENERAL)	NORTH	519,011	16,621,824.5	6,121	122,826,394	44.99	206,929,644	42.25	6,526,877,707	41.45	393
	SOUTH	519,011	16,621,824.5	470,770	150,157,138	55.01	282,804,338	57.75	9,220,305,229	58.55	555
	TOTAL	519,011	16,621,824.5	476,891	272,983,532	100.00	489,733,982	100.00	15,747,182,936	100.00	947
VACATED ORDER TRAFFIC (CODE 003 - PEACHES AND VEG. TO N. Y. PIERS)	NORTH	496	8,194.2		94,365	42.74	156,196	28.13	2,577,561	28.22	315
	SOUTH	496	8,194.2		126,400	57.26	398,988	71.87	6,555,210	71.78	800
	TOTAL	496	8,194.2		220,765	100.00	555,184	100.00	9,132,771	100.00	1115
TO CANADA TRAFFIC (CODE 006)	NORTH	2,227	52,377.6		600,675	47.40	1,138,865	47.35	26,794,680	45.61	512
	SOUTH	2,227	52,377.6	12,443	666,687	52.60	1,266,339	52.65	31,948,342	54.39	610
	TOTAL	2,227	52,377.6	12,443	1,267,362	100.00	2,405,204	100.00	58,743,022	100.00	1122
TOTAL OF LINES 5 TO 7	NORTH	521,734	16,682,396.3	6,121	123,521,434	45.00	208,224,705	42.26	6,556,249,948	41.46	393
	SOUTH	521,734	16,682,396.3	483,213	150,950,225	55.00	284,469,665	57.74	9,253,808,781	58.54	555
	TOTAL	521,734	16,682,396.3	489,334	274,471,659	100.00	492,694,370	100.00	15,815,058,729	100.00	948
SOUTHBOUND AND NORTHBOUND											
DB 465 (GENERAL)	NORTH	963,390	27,937,522.1	59,401	220,412,541	44.74	358,134,993	41.60	10,088,493,414	41.39	361
	SOUTH	963,390	27,937,522.1	1,293,861	272,278,592	55.26	502,838,907	58.40	14,288,217,573	58.61	511
	TOTAL	963,390	27,937,522.1	1,353,262	492,691,133	100.00	860,973,900	100.00	24,376,710,987	100.00	873
VACATED ORDER TRAFFIC (CODE 003 - 004)	NORTH	1,209	53,479.1		139,667	39.16	182,577	30.21	4,253,102	34.70	80
	SOUTH	1,209	53,479.1		217,003	60.84	421,804	69.79	8,004,326	65.30	150
	TOTAL	1,209	53,479.1		356,670	100.00	604,381	100.00	12,257,428	100.00	229
TO OR FROM CANADA (CODE 006)	NORTH	2,955	64,719.5		818,732	48.93	1,462,821	49.38	32,414,686	47.37	501
	SOUTH	2,955	64,719.5	12,443	854,526	51.07	1,499,675	50.62	36,018,747	52.63	557
	TOTAL	2,955	64,719.5	12,443	1,673,258	100.00	2,962,496	100.00	68,433,433	100.00	1057
TOTAL OF LINES 9 TO 11	NORTH	967,554	28,055,720.7	59,401	221,370,940	44.75	359,780,391	41.62	10,125,161,202	41.40	361
	SOUTH	967,554	28,055,720.7	1,306,304	273,350,121	55.25	504,760,386	58.38	14,332,240,646	58.60	511
	TOTAL	967,554	28,055,720.7	1,365,705	494,721,061	100.00	864,540,777	100.00	24,457,401,848	100.00	872

TABULATION B

ALL CARLOAD DB 465 TRAFFIC -DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MAT
-INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006.-

PERIOD. JULY 1958 THROUGH JUNE 1959 INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY

SHOWING REVENUE AND CAR-MILES AND TON-MILES OF SERVICE NORTH OF DIVISIONAL GATEWAYS AND SOUTH OF DIVISIONAL GATEWAYS, BASED ON USE OF SHORT LINE DISTANCES, AS COMPARED WITH ACTUAL ROUTE OF MOVEMENT DISTANCES.

1	2	3	4	5	6	7	8	9	
			REVENUE AS SETTLED			BASED ON USE OF SHORT LINE MILES			
	CARS	TONS	ARBITRS.	REMAINDER	PER-CENT	CAR-MILES	PER-CENT	TON-MILES	P C
SOUTHBOUND									
NORTH	445,820	11,373,324.4	53,280	97,849,506	44.43	151,555,686	40.76	3,568,911,254	4
SOUTH	445,820	11,373,324.4	823,091	122,399,896	55.57	220,290,721	59.24	5,073,431,865	5
TOTAL	445,820	11,373,324.4	876,371	220,249,402	100.00	371,846,407	100.00	8,642,343,119	10
						BASED ON USE OF MILES OVER ACTUAL ROUTE			
NORTH	445,820	11,373,324.4	53,280	97,849,506	44.43	169,730,870	41.51	4,026,147,809	4
SOUTH	445,820	11,373,324.4	823,091	122,399,896	55.57	239,119,040	58.49	5,520,760,230	5
TOTAL	445,820	11,373,324.4	876,371	220,249,402	100.00	408,849,910	100.00	9,546,908,039	10
NORTHBOUND									
						BASED ON USE OF SHORT LINE MILES			
NORTH	521,734	16,682,396.3	6,121	123,521,434	45.00	208,224,705	42.26	6,556,249,948	4
SOUTH	521,734	16,682,396.3	483,213	150,950,225	55.00	284,469,665	57.74	9,258,808,781	5
TOTAL	521,734	16,682,396.3	489,334	274,471,659	100.00	492,694,370	100.00	15,815,058,729	10
						BASED ON USE OF MILES OVER ACTUAL ROUTE			
NORTH	521,734	16,682,396.3	6,121	123,521,434	45.00	236,663,810	43.35	7,475,625,251	4
SOUTH	521,734	16,682,396.3	483,213	150,950,225	55.00	309,333,989	56.65	10,104,595,353	5
TOTAL	521,734	16,682,396.3	489,334	274,471,659	100.00	545,997,799	100.00	17,580,220,604	1
SOUTHBOUND AND NORTHBOUND									
						BASED ON USE OF SHORT LINE MILES			
NORTH	967,554	28,055,720.7	59,401	221,370,940	44.75	359,780,391	41.62	10,125,161,202	
SOUTH	967,554	28,055,720.7	1,306,304	273,350,121	55.25	504,760,386	58.38	14,332,240,646	
TOTAL	967,554	28,055,720.7	1,365,705	494,721,061	100.00	864,540,777	100.00	24,457,401,848	1
						BASED ON USE OF MILES OVER ACTUAL ROUTE			
NORTH	967,554	28,055,720.7	59,401	221,370,940	44.75	406,394,680	42.56	11,501,773,060	
SOUTH	967,554	28,055,720.7	1,306,304	273,350,121	55.25	548,453,029	57.44	15,625,355,583	
TOTAL	967,554	28,055,720.7	1,365,705	494,721,061	100.00	954,847,709	100.00	27,127,128,643	

ALL CARLOAD DB 465 TRAFFIC -DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS-
-INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006.-

PERIOD. JULY 1958 THROUGH JUNE 1959 INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY

SHOWING REVENUE AND CAR-MILES AND TON-MILES OF SERVICE NORTH OF DIVISIONAL GATEWAYS AND SOUTH OF DIVISIONAL GATEWAYS, BASED ON USE OF SHORT LINE DISTANCES, AS COMPARED WITH ACTUAL ROUTE OF MOVEMENT DISTANCES.

2	3	4	5	6	7	8	9	10	11	12	13	14
					BASED ON USE OF SHORT LINE MILES							
CARS	TONS	REVENUE AS SETTLED ARBITRS.	REMAINDER	PER-CENT	CAR-MILES	PER-CENT	TON-MILES	PER-CENT	AVG. MI-PER TON. 9 / 3	AVG. MI-PER CAR 7 / 2	CENTS CAR-MI. 5 / 7	MILLS TON-MI. 5 / 9
445,820	11,373,324.4	53,280	97,849,506	44.43	151,555,686	40.76	3,568,911,254	41.30	314	340	64.56	27.42
445,820	11,373,324.4	823,091	122,399,896	55.57	220,290,721	59.24	5,073,431,865	58.70	446	494	55.56	24.13
445,820	11,373,324.4	876,371	220,249,402	100.00	371,846,407	100.00	8,642,343,119	100.00	760	834	59.23	25.48
					BASED ON USE OF MILES OVER ACTUAL ROUTE OF MOVEMENT							
445,820	11,373,324.4	53,280	97,849,506	44.43	169,730,870	41.51	4,026,147,809	42.17	354	381	57.65	24.30
445,820	11,373,324.4	823,091	122,399,896	55.57	239,119,040	58.49	5,520,760,230	57.83	485	536	51.19	22.17
445,820	11,373,324.4	876,371	220,249,402	100.00	408,849,910	100.00	9,546,908,039	100.00	839	917	53.67	23.07
					BASED ON USE OF SHORT LINE MILES							
521,734	16,682,396.3	6,121	123,521,434	45.00	208,224,705	42.26	6,556,249,948	41.46	393	399	59.32	18.84
521,734	16,682,396.3	483,213	150,950,225	55.00	284,469,665	57.74	9,258,808,781	58.54	555	545	53.06	16.30
521,734	16,682,396.3	489,334	274,471,659	100.00	492,694,370	100.00	15,815,058,729	100.00	948	944	55.71	17.36
					BASED ON USE OF MILES OVER ACTUAL ROUTE OF MOVEMENT							
521,734	16,682,396.3	6,121	123,521,434	45.00	236,663,810	43.35	7,475,625,251	42.52	448	454	52.19	16.52
521,734	16,682,396.3	483,213	150,950,225	55.00	309,333,989	56.65	10,104,595,353	57.48	606	593	48.80	14.94
521,734	16,682,396.3	489,334	274,471,659	100.00	545,997,799	100.00	17,580,220,604	100.00	1054	1047	50.27	15.61
					BASED ON USE OF SHORT LINE MILES							
967,554	28,055,720.7	59,401	221,370,940	44.75	359,780,391	41.62	10,125,161,202	41.40	361	372	61.53	21.86
967,554	28,055,720.7	1,306,304	273,350,121	55.25	504,760,386	58.38	14,332,240,646	58.60	511	522	54.15	19.07
967,554	28,055,720.7	1,365,705	494,721,061	100.00	864,540,777	100.00	24,457,401,848	100.00	872	894	57.22	20.23
					BASED ON USE OF MILES OVER ACTUAL ROUTE OF MOVEMENT							
967,554	28,055,720.7	59,401	221,370,940	44.75	406,394,680	42.56	11,501,773,060	42.40	410	420	54.47	19.25
967,554	28,055,720.7	1,306,304	273,350,121	55.25	548,453,029	57.44	15,625,355,583	57.60	557	567	49.84	17.49
967,554	28,055,720.7	1,365,705	494,721,061	100.00	954,847,709	100.00	27,127,128,643	100.00	967	987	51.81	18.24

TABULATION C — ALL CARLOAD DB 469 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFI

SOUTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS ARBITR S.	SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
20	LYNCHBURG, VA.	NORTH	9,857	2.21	390,348.8	3.43		1,795,213	50.01	2,517,184	50.24
		SOUTH	9,857	2.21	390,348.8	3.43		1,794,484	49.99	2,492,847	49.76
		TOTAL	9,857	2.21	390,348.8	3.43		3,589,697	100.00	5,010,031	100.00
22	MEHERRIN, VA.	NORTH									
		SOUTH									
		TOTAL									
24	NORFOLK, VA.	NORTH	5,787	1.30	140,154.5	1.23	70	1,133,628	41.56	1,831,002	38.44
		SOUTH	5,787	1.30	140,154.5	1.23	546	1,594,082	58.44	2,932,086	61.56
		TOTAL	5,787	1.30	140,154.5	1.23	616	2,727,710	100.00	4,763,088	100.00
25	NORTON, VA.	NORTH	2,457	.55	86,704.9	.76		593,552	52.99	891,857	58.16
		SOUTH	2,457	.55	86,704.9	.76		526,539	47.01	641,488	41.84
		TOTAL	2,457	.55	86,704.9	.76		1,120,091	100.00	1,533,345	100.00
26	PETERSBURG, VA.	NORTH	12,677	2.84	428,435.9	3.77		2,389,130	49.69	4,877,212	50.44
		SOUTH	12,677	2.84	428,435.9	3.77	11,024	2,419,364	50.31	4,791,929	49.56
		TOTAL	12,677	2.84	428,435.9	3.77	11,024	4,808,494	100.00	9,669,141	100.00
27	PORTSMOUTH, VA.	NORTH	196	.04	10,096.8	.09		55,841	62.02	63,328	73.56
		SOUTH	196	.04	10,096.8	.09		34,192	37.98	22,768	26.44
		TOTAL	196	.04	10,096.8	.09		90,033	100.00	86,096	100.00
28	POTOMAC YARD, VA.	NORTH	52,981	11.88	1,134,407.2	9.97	4,407	9,630,109	38.10	14,223,759	30.79
		SOUTH	52,981	11.88	1,134,407.2	9.97	36,670	15,642,773	61.90	31,978,490	69.21
		TOTAL	52,981	11.88	1,134,407.2	9.97	41,077	25,272,882	100.00	46,202,249	100.00
29	RICHMOND, VA.	NORTH	77,418	17.37	1,625,781.5	14.29	568	16,783,591	43.75	30,681,949	39.44
		SOUTH	77,418	17.37	1,625,781.5	14.29	402,606	21,577,494	56.25	47,107,945	60.56
		TOTAL	77,418	17.37	1,625,781.5	14.29	403,174	38,361,085	100.00	77,789,894	100.00

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4 CARS	5 PCT. OF TOT CARS BY GTWYS	6 TONS	7 PCT. OF TOT TONS BY GTWYS	8 REVENUE AS ARBITR S.	9 SETTLED REMAINDER	10 PER-CENT	11 CAR-MILES SHORT LINE	12 PER-CENT	13 TON-MILES SHORT LINE	14 PER-CENT	15 AVG. SL MI. PER TON 13/6
9,857	2.21	390,348.8	3.43		1,795,213	50.01	2,517,184	50.24	75,380,498	43.50	193
9,857	2.21	390,348.8	3.43		1,794,484	49.99	2,492,847	49.76	97,927,536	56.50	251
9,857	2.21	390,348.8	3.43		3,589,697	100.00	5,010,031	100.00	173,308,034	100.00	444
5,787	1.30	140,154.5	1.23	70	1,133,628	41.56	1,831,002	38.44	41,045,809	36.86	293
5,787	1.30	140,154.5	1.23	546	1,594,082	58.44	2,932,086	61.56	70,306,161	63.14	502
5,787	1.30	140,154.5	1.23	616	2,727,710	100.00	4,763,088	100.00	111,351,970	100.00	794
2,457	.55	86,704.9	.76		593,552	52.99	891,857	58.16	25,750,402	51.59	297
2,457	.55	86,704.9	.76		526,539	47.01	641,488	41.84	24,164,740	48.41	279
2,457	.55	86,704.9	.76		1,120,091	100.00	1,533,345	100.00	49,915,142	100.00	576
12,677	2.84	428,435.9	3.77		2,389,130	49.69	4,877,212	50.44	127,358,093	45.67	297
12,677	2.84	428,435.9	3.77	11,024	2,419,364	50.31	4,791,929	49.56	151,522,430	54.33	354
12,677	2.84	428,435.9	3.77	11,024	4,808,494	100.00	9,669,141	100.00	278,880,523	100.00	651
196	.04	10,096.8	.09		55,841	62.02	63,328	73.56	3,327,237	83.45	330
196	.04	10,096.8	.09		34,192	37.98	22,768	26.44	660,052	16.55	65
196	.04	10,096.8	.09		90,033	100.00	86,096	100.00	3,987,289	100.00	395
52,981	11.88	1,134,407.2	9.97	4,407	9,630,109	38.10	14,223,759	30.79	293,175,296	32.14	258
52,981	11.88	1,134,407.2	9.97	36,670	15,642,773	61.90	31,978,490	69.21	619,016,186	67.86	546
52,981	11.88	1,134,407.2	9.97	41,077	25,272,882	100.00	46,202,249	100.00	912,191,482	100.00	804
77,418	17.37	1,625,781.5	14.29	568	16,783,591	43.75	30,681,949	39.44	634,534,647	41.89	390
77,418	17.37	1,625,781.5	14.29	402,606	21,577,494	56.25	47,107,945	60.56	880,315,867	58.11	541
77,418	17.37	1,625,781.5	14.29	403,174	38,361,085	100.00	77,789,894	100.00	1,514,850,514	100.00	932

TABULATION C

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFI

SOUTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
30	RIVERTON, VA.	NORTH	316	.07	6,772.9	.06		13,497	32.18	398	.38
		SOUTH	316	.07	6,772.9	.06		28,440	67.82	104,038	99.62
		TOTAL	316	.07	6,772.9	.06		41,937	100.00	104,436	100.00
31	ROANOKE, VA.	NORTH	13,616	3.05	549,475.6	4.83		2,460,913	47.40	3,372,206	45.59
		SOUTH	13,616	3.05	549,475.6	4.83	7,162	2,730,770	52.60	4,024,814	54.41
		TOTAL	13,616	3.05	549,475.6	4.83	7,162	5,191,683	100.00	7,397,020	100.00
17	KILBY, VA.	NORTH	555	.12	24,396.3	.21		89,555	62.27	148,649	81.81
		SOUTH	555	.12	24,396.3	.21		54,253	37.73	33,055	18.19
		TOTAL	555	.12	24,396.3	.21		143,808	100.00	181,704	100.00
32	ST. PAUL, VA.	NORTH	5,395	1.21	188,307.1	1.66		1,450,366	55.45	2,127,742	60.99
		SOUTH	5,395	1.21	188,307.1	1.66	1,882	1,165,288	44.55	1,360,999	39.01
		TOTAL	5,395	1.21	188,307.1	1.66	1,882	2,615,654	100.00	3,488,741	100.00
33	STRASBURG JCT., VA.	NORTH									
		SOUTH									
		TOTAL									
34	SUFFOLK, VA.	NORTH	511	.13	12,491.4	.13		114,979	75.34	270,557	93.73
		SOUTH	511	.13	12,491.4	.13		37,629	24.66	18,110	6.27
		TOTAL	511	.13	12,491.4	.13		152,608	100.00	288,667	100.00
36	VIRSO, VA.	NORTH									
		SOUTH									
		TOTAL									
TOTAL VIA VA. GATEWAYS		NORTH	197,917	44.39	5,174,882.5	45.50	5,847	39,923,149	43.90	66,013,995	39.72
		SOUTH	197,917	44.39	5,174,882.5	45.50	471,769	51,023,464	56.10	100,190,301	60.28
		TOTAL	197,917	44.39	5,174,882.5	45.50	477,616	90,946,613	100.00	166,204,296	100.00

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS 3
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS ARBITR S.	SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI. PER TON 13/6
316	.07	6,772.9	.06		13,497	32.18	398	.38	8,437	.38	1
316	.07	6,772.9	.06		28,440	67.82	104,038	99.62	2,235,409	99.62	330
316	.07	6,772.9	.06		41,937	100.00	104,436	100.00	2,243,846	100.00	331
13,616	3.05	549,475.6	4.83		2,460,913	47.40	3,372,206	45.59	109,476,388	40.60	199
13,616	3.05	549,475.6	4.83	7,162	2,730,770	52.60	4,824,814	54.41	160,149,150	59.40	291
13,616	3.05	549,475.6	4.83	7,162	5,191,683	100.00	7,397,020	100.00	269,625,538	100.00	491
555	.12	24,396.3	.21		89,555	62.27	148,649	81.81	6,616,770	81.73	271
555	.12	24,396.3	.21		54,253	37.73	33,055	18.19	1,479,271	18.27	61
555	.12	24,396.3	.21		143,808	100.00	181,704	100.00	8,096,041	100.00	332
5,395	1.21	188,307.1	1.66		1,450,366	55.45	2,127,742	60.99	63,532,190	57.68	337
5,395	1.21	188,307.1	1.66	1,882	1,165,288	44.55	1,360,999	39.01	46,622,616	42.32	248
5,395	1.21	188,307.1	1.66	1,882	2,615,654	100.00	3,488,741	100.00	110,154,806	100.00	585
511	.13	12,491.4	.13		114,979	75.34	270,557	93.73	5,995,389	92.90	480
511	.13	12,491.4	.13		37,629	24.66	18,110	6.27	458,120	7.10	37
511	.13	12,491.4	.13		152,608	100.00	288,667	100.00	6,453,509	100.00	517
197,917	44.39	5,174,882.5	45.50	5,847	39,923,149	43.90	66,013,995	39.72	1,521,978,841	40.79	294
197,917	44.39	5,174,882.5	45.50	471,769	51,023,464	56.10	100,190,301	60.28	2,209,287,424	59.21	427
197,917	44.39	5,174,882.5	45.50	477,616	90,946,613	100.00	166,204,296	100.00	3,731,266,265	100.00	721

TABULATION C

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRA

SOUTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS ARBITR S.	SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER CE
6	CAIRO, ILL.	NORTH	19,468	4.37	494,954.6	4.35	1,022	6,037,307	54.78	10,261,307	57.
		SOUTH	19,468	4.37	494,954.6	4.35	13,476	4,982,793	45.22	7,576,262	42.
		TOTAL	19,468	4.37	494,954.6	4.35	14,498	11,020,100	100.00	17,837,569	100.
8	CINCINNATI, OHIO	NORTH	113,344	25.42	2,668,452.3	23.46	43,178	25,037,610	41.17	31,311,270	34.
		SOUTH	113,344	25.42	2,668,452.3	23.46	161,300	35,781,044	58.83	58,897,027	65.
		TOTAL	113,344	25.42	2,668,452.3	23.46	204,478	60,818,654	100.00	90,208,297	100.
9	COVINGTON, KY.	NORTH	20	.00	247.7	.00		3,315	41.97	2,280	18.
		SOUTH	20	.00	247.7	.00		4,583	58.03	9,960	81.
		TOTAL	20	.00	247.7	.00		7,898	100.00	12,240	100.
10	EAST ST. LOUIS, ILL.	NORTH	23,177	5.20	540,472.1	4.75	85	6,135,407	51.37	13,620,299	54.
		SOUTH	23,177	5.20	540,472.1	4.75		5,808,999	48.63	11,400,739	45.
		TOTAL	23,177	5.20	540,472.1	4.75	85	11,944,406	100.00	25,021,038	100.
11	ELKHORN CITY, KY.	NORTH	26,269	5.89	662,060.5	5.82	1,591	6,562,995	47.34	10,830,322	45.
		SOUTH	26,269	5.89	662,060.5	5.82	91,698	7,299,275	52.66	12,874,527	54.
		TOTAL	26,269	5.89	662,060.5	5.82	93,289	13,862,270	100.00	23,704,849	100.
12	EVANSVILLE, IND.	NORTH	15,063	3.38	410,527.6	3.61	436	3,111,518	41.67	4,170,446	36.
		SOUTH	15,063	3.38	410,527.6	3.61	35,018	4,355,928	58.33	7,359,586	63.
		TOTAL	15,063	3.38	410,527.6	3.61	35,454	7,467,446	100.00	11,530,032	100.
13	GALE, ILL.	NORTH	43	.01	2,153.5	.02		13,565	50.00	15,351	49.
		SOUTH	43	.01	2,153.5	.02		13,565	50.00	15,566	50.
		TOTAL	43	.01	2,153.5	.02		27,130	100.00	30,917	100.
16	KELLOGG-FLINTON, ILL.	NORTH	95	.02	2,973.6	.03		26,148	47.31	39,180	47.
		SOUTH	95	.02	2,973.6	.03		29,122	52.69	43,271	52.
		TOTAL	95	.02	2,973.6	.03		55,270	100.00	82,451	100.

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED-ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4 CARS	5 PCT. OF TOT CARS BY GTWYS	6 TONS	7 PCT. OF TOT TONS BY GTWYS	8 REVENUE AS ARBITR S.	9 SETTLED REMAINDER	10 PER-CENT	11 CAR-MILES SHORT LINE	12 PER-CENT	13 TON-MILES SHORT LINE	14 PER-CENT	15 AVG. SL MI. PER TON 13/6
19,468	4.37	494,954.6	4.35	1,022	6,037,307	54.78	10,261,307	57.53	254,636,687	57.37	514
19,468	4.37	494,954.6	4.35	13,476	4,982,793	45.22	7,576,262	42.47	189,210,529	42.63	382
19,468	4.37	494,954.6	4.35	14,498	11,020,100	100.00	17,837,569	100.00	443,847,216	100.00	897
113,344	25.42	2,668,452.3	23.46	43,178	25,037,610	41.17	31,311,270	34.71	740,263,231	36.11	277
113,344	25.42	2,668,452.3	23.46	161,300	35,781,044	58.83	58,897,027	65.29	1,310,039,230	63.89	491
113,344	25.42	2,668,452.3	23.46	204,478	60,818,654	100.00	90,208,297	100.00	2,050,302,461	100.00	768
20	.00	247.7	.00		3,315	41.97	2,280	18.63	28,238	18.63	114
20	.00	247.7	.00		4,583	58.03	9,960	81.37	123,355	81.37	498
20	.00	247.7	.00		7,898	100.00	12,240	100.00	151,593	100.00	612
23,177	5.20	540,472.1	4.75	85	6,135,407	51.37	13,620,299	54.44	260,619,595	48.12	482
23,177	5.20	540,472.1	4.75		5,808,999	48.63	11,400,739	45.56	280,969,900	51.88	520
23,177	5.20	540,472.1	4.75	85	11,944,406	100.00	25,021,038	100.00	541,589,495	100.00	1002
26,269	5.89	662,060.5	5.82	1,591	6,562,995	47.34	10,830,322	45.69	268,193,557	46.11	405
26,269	5.89	662,060.5	5.82	91,698	7,299,275	52.66	12,874,527	54.31	313,468,507	53.89	473
26,269	5.89	662,060.5	5.82	93,289	13,862,270	100.00	23,704,849	100.00	581,662,064	100.00	879
15,063	3.38	410,527.6	3.61	436	3,111,518	41.67	4,170,446	36.17	108,589,676	36.52	265
15,063	3.38	410,527.6	3.61	35,018	4,355,928	58.33	7,359,586	63.83	188,767,363	63.48	460
15,063	3.38	410,527.6	3.61	35,454	7,467,446	100.00	11,530,032	100.00	297,357,039	100.00	724
43	.01	2,153.5	.02		13,565	50.00	15,351	49.65	768,800	49.65	357
43	.01	2,153.5	.02		13,565	50.00	15,566	50.35	779,567	50.35	362
43	.01	2,153.5	.02		27,130	100.00	30,917	100.00	1,548,367	100.00	719
95	.02	2,973.6	.03		26,148	47.31	39,180	47.52	1,337,648	46.76	450
95	.02	2,973.6	.03		29,122	52.69	43,271	52.48	1,523,120	53.24	512
95	.02	2,973.6	.03		55,270	100.00	82,451	100.00	2,860,768	100.00	962

TABULATION C

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AN
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFF

SOUTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS.	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
18	LEXINGTON, KY.	NORTH	1,632	.34	42,746.6	.38		245,481	46.91	287,466	45.94
		SOUTH	1,532	.34	42,746.6	.38		277,848	53.09	338,288	54.06
		TOTAL	1,532	.34	42,746.6	.38		523,329	100.00	625,754	100.00
19	LOUISVILLE, KY.	NORTH	43,722	9.81	1,226,581.6	10.78	948	9,254,590	44.77	12,491,029	39.25
		SOUTH	43,722	9.81	1,226,581.6	10.78	40,243	11,415,491	55.23	19,332,924	60.75
		TOTAL	43,722	9.81	1,226,581.6	10.78	41,191	20,670,081	100.00	31,823,953	100.00
21	MAYSVILLE, KY.	NORTH									
		SOUTH									
		TOTAL									
23	METROPOLIS, ILL.	NORTH	1,180	.26	34,439.7	.30	173	339,540	58.96	566,080	65.15
		SOUTH	1,180	.26	34,439.7	.30	584	236,377	41.04	302,837	34.85
		TOTAL	1,180	.26	34,439.7	.30	757	575,917	100.00	868,887	100.00
35	THEBES, ILL.	NORTH	3,821	.86	107,683.3	.95		1,131,691	49.95	1,915,332	50.21
		SOUTH	3,821	.86	107,683.3	.95	8,454	1,133,879	50.05	1,899,161	49.79
		TOTAL	3,821	.86	107,683.3	.95	8,454	2,265,570	100.00	3,814,493	100.00
37	WINCHESTER, KY.	NORTH	169	.05	5,148.8	.05		27,190	42.01	31,359	38.42
		SOUTH	169	.05	5,148.8	.05	549	37,528	57.99	50,272	61.58
		TOTAL	169	.05	5,148.8	.05	549	64,718	100.00	81,631	100.00
TOTAL VIA OHIO R. ILL.-KY.GTWYS		NORTH	247,903	55.61	6,198,441.9	54.50	47,433	57,926,357	44.80	85,541,691	41.60
		SOUTH	247,903	55.61	6,198,441.9	54.50	351,322	71,376,432	55.20	120,100,420	58.40
		TOTAL	247,903	55.61	6,198,441.9	54.50	398,755	129,302,789	100.00	205,642,111	100.00
GRAND TOTAL VIA ALL GATEWAYS		NORTH	445,820	100.00	11,373,324.4	100.00	53,280	97,849,506	44.43	151,555,686	40.76
		SOUTH	445,820	100.00	11,373,324.4	100.00	823,091	122,399,896	55.57	220,290,721	59.24
		TOTAL	445,820	100.00	11,373,324.4	100.00	876,371	220,249,402	100.00	371,846,407	100.00

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

7.

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI. PER TON 13/6
4,897	.94	189,233.7	1.13		945,243	47.47	1,379,479	43.37	56,505,958	44.74	299
4,897	.94	189,233.7	1.13	1,542	1,046,113	52.53	1,801,394	56.63	69,802,019	55.26	369
4,897	.94	189,233.7	1.13	1,542	1,991,356	100.00	3,180,873	100.00	126,307,977	100.00	667
7,489	1.44	272,143.1	1.63		1,826,493	44.95	3,076,916	42.64	112,008,970	41.93	412
7,489	1.44	272,143.1	1.63		2,237,068	55.05	4,139,064	57.36	155,146,203	58.07	570
7,489	1.44	272,143.1	1.63		4,063,561	100.00	7,215,980	100.00	267,155,173	100.00	982
3,640	.70	122,136.4	.73		772,067	55.97	1,457,460	59.27	48,897,907	58.73	400
3,640	.70	122,136.4	.73		607,398	44.03	1,001,717	40.73	34,364,686	41.27	281
3,640	.70	122,136.4	.73		1,379,465	100.00	2,459,177	100.00	83,262,593	100.00	682
7,797	1.49	305,200.8	1.83		2,022,305	48.70	3,899,064	48.19	162,968,318	46.82	534
7,797	1.49	305,200.8	1.83	2,500	2,130,369	51.30	4,192,119	51.81	185,075,459	53.18	606
7,797	1.49	305,200.8	1.83	2,500	4,152,674	100.00	8,091,183	100.00	348,043,777	100.00	1140
1,125	.22	50,301.7	.30		211,483	44.69	348,981	43.12	13,206,487	34.24	263
1,125	.22	50,301.7	.30		261,763	55.31	460,384	56.88	25,361,865	65.76	504
1,125	.22	50,301.7	.30		473,246	100.00	809,365	100.00	38,568,352	100.00	767
60,890	11.67	1,665,492.2	9.98	1,654	11,504,478	36.63	16,816,107	29.87	465,376,505	29.86	279
60,890	11.67	1,665,492.2	9.98	54,862	19,898,843	63.37	39,483,674	70.13	1,093,286,771	70.14	656
60,890	11.67	1,665,492.2	9.98	56,516	31,403,321	100.00	56,299,781	100.00	1,558,663,276	100.00	936
120,469	23.09	3,473,354.0	20.82		27,426,338	44.69	48,617,084	41.39	1,440,739,000	42.29	415
120,469	23.09	3,473,354.0	20.82	313,278	33,949,483	55.31	68,848,309	58.61	1,965,928,257	57.71	566
120,469	23.09	3,473,354.0	20.82	313,278	61,375,821	100.00	117,465,393	100.00	3,406,667,257	100.00	981

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

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PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS ARBITR S.	SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI. PER T(13/6
1,532	.34	42,746.6	.38		245,481	46.91	287,466	45.94	8,461,913	43.57	198
1,532	.34	42,746.6	.38		277,848	53.09	338,288	54.06	10,958,480	56.43	256
1,532	.34	42,746.6	.38		523,329	100.00	625,754	100.00	19,420,393	100.00	454
43,722	9.81	1,226,581.6	10.78	968	9,254,590	44.77	12,491,029	39.25	335,199,511	39.91	273
43,722	9.81	1,226,581.6	10.78	40,243	11,415,491	55.23	19,332,924	60.75	504,682,478	60.09	411
43,722	9.81	1,226,581.6	10.78	41,191	20,670,081	100.00	31,823,953	100.00	839,881,989	100.00	685
1,180	.26	34,439.7	.30	173	339,540	58.96	566,050	65.15	15,888,550	64.52	461
1,180	.26	34,439.7	.30	584	236,377	41.04	302,837	34.85	8,738,743	35.48	254
1,180	.26	34,439.7	.30	757	575,917	100.00	868,887	100.00	24,627,293	100.00	715
3,821	.86	107,683.3	.95		1,131,691	49.95	1,915,332	50.21	52,192,958	49.46	485
3,821	.86	107,683.3	.95	8,454	1,133,879	50.05	1,899,161	49.79	53,332,291	50.54	495
3,821	.86	107,683.3	.95	8,454	2,265,570	100.00	3,814,493	100.00	105,525,249	100.00	980
169	.05	5,148.8	.05		27,190	42.01	31,359	38.42	752,049	32.66	146
169	.05	5,148.8	.05	549	37,528	57.99	50,272	61.58	1,550,878	67.34	301
169	.05	5,148.8	.05	549	64,718	100.00	81,631	100.00	2,302,927	100.00	447
247,903	55.61	6,198,441.9	54.50	47,433	57,926,357	44.80	85,541,691	41.60	2,046,932,413	41.68	330
247,903	55.61	6,198,441.9	54.50	351,322	71,376,432	55.20	120,100,420	58.40	2,864,144,441	58.32	462
247,903	55.61	6,198,441.9	54.50	398,755	129,302,789	100.00	205,642,111	100.00	4,911,076,854	100.00	792
445,820	100.00	11,373,324.4	100.00	53,280	97,849,506	44.43	151,555,686	40.76	3,568,911,254	41.30	314
445,820	100.00	11,373,324.4	100.00	823,091	122,399,896	55.57	220,290,721	59.24	5,073,431,865	58.70	446
445,820	100.00	11,373,324.4	100.00	876,371	220,249,402	100.00	371,846,407	100.00	8,642,343,119	100.00	760

TABULATION C

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE A
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAF

NORTHBOUND

PERIOD, JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE ARBITR S.	AS SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
1	ALBERTA, VA.	NORTH	2,375	.46	108,801.1	.65		715,228	54.54	1,318,619	55.0
		SOUTH	2,375	.46	108,801.1	.65		596,043	45.46	1,077,822	44.9
		TOTAL	2,375	.46	108,801.1	.65		1,311,271	100.00	2,396,441	100.0
2	ALEXANDRIA, VA.	NORTH	64	.01	2,059.8	.01		5,209	20.41	502	1.1
		SOUTH	64	.01	2,059.8	.01		20,318	79.59	45,200	98.9
		TOTAL	64	.01	2,059.8	.01		25,527	100.00	45,702	100.0
3	ALTA VISTA, VA.	NORTH	638	.12	17,474.0	.10		52,963	33.02	56,756	18.1
		SOUTH	638	.12	17,474.0	.10		107,419	66.98	255,190	81.8
		TOTAL	638	.12	17,474.0	.10		160,382	100.00	311,946	100.0
4	BRISTOL, VA.-TENN.	NORTH	6,182	1.18	188,191.1	1.13	992	1,477,241	49.41	2,502,603	48.4
		SOUTH	6,182	1.18	188,191.1	1.13		1,512,235	50.59	2,664,017	51.5
		TOTAL	6,182	1.18	188,191.1	1.13	992	2,989,476	100.00	5,166,620	100.0
5	BURKEVILLE, VA.	NORTH	341	.07	8,386.0	.05		32,831	30.04	21,476	11.1
		SOUTH	341	.07	8,386.0	.05		76,473	69.96	171,034	88.8
		TOTAL	341	.07	8,386.0	.05		109,304	100.00	192,510	100.0
7	CHARLOTTESVILLE, VA.	NORTH	212	.04	6,194.0	.04		20,470	28.78	6,066	5.9
		SOUTH	212	.04	6,194.0	.04		50,648	71.22	95,576	94.0
		TOTAL	212	.04	6,194.0	.04		71,118	100.00	101,642	100.0
14	HARRISONBURG, VA.	NORTH	39	.01	1,575.6	.01		1,736	26.11	78	.4
		SOUTH	39	.01	1,575.6	.01		4,914	73.89	19,617	99.6
		TOTAL	39	.01	1,575.6	.01		6,650	100.00	19,695	100.0
15	JARRATT, VA.	NORTH	3,117	.60	132,018.3	.79		1,153,720	57.55	2,111,393	59.4
		SOUTH	3,117	.60	132,018.3	.79	2,401	851,086	42.45	1,443,430	40.6
		TOTAL	3,117	.60	132,018.3	.79	2,401	2,004,806	100.00	3,554,823	100.0

ALL CARLOAD "DB 465 TRAFFIC" DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC. CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

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PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI. PER TON 13/6
2,375	.46	108,801.1	.65		715,228	54.54	1,318,619	55.02	60,458,278	55.34	556
2,375	.46	108,801.1	.65		596,043	45.46	1,077,822	44.98	48,781,686	44.66	448
2,375	.46	108,801.1	.65		1,311,271	100.00	2,396,441	100.00	109,239,964	100.00	1004
64	.01	2,059.8	.01		5,209	20.41	502	1.10	17,917	1.40	9
64	.01	2,059.8	.01		20,318	79.59	45,200	98.90	1,264,157	98.60	614
64	.01	2,059.8	.01		25,527	100.00	45,702	100.00	1,282,074	100.00	622
638	.12	17,474.0	.10		52,963	33.02	56,756	18.19	1,564,355	20.87	90
638	.12	17,474.0	.10		107,419	66.98	255,190	81.81	5,933,121	79.13	340
638	.12	17,474.0	.10		160,382	100.00	311,946	100.00	7,497,476	100.00	429
6,182	1.18	188,191.1	1.13	992	1,477,241	49.41	2,502,603	48.44	76,213,681	48.63	405
6,182	1.18	188,191.1	1.13		1,512,235	50.59	2,664,017	51.56	80,515,571	51.37	428
6,182	1.18	188,191.1	1.13	992	2,989,476	100.00	5,166,620	100.00	156,729,252	100.00	833
341	.07	8,386.0	.05		32,831	30.04	21,476	11.16	558,262	12.00	67
341	.07	8,386.0	.05		76,473	69.96	171,034	88.84	4,092,992	88.00	488
341	.07	8,386.0	.05		109,304	100.00	192,510	100.00	4,651,254	100.00	555
212	.04	6,194.0	.04		20,470	28.78	6,066	5.97	177,087	6.00	29
212	.04	6,194.0	.04		50,648	71.22	95,576	94.03	2,771,996	94.00	448
212	.04	6,194.0	.04		71,118	100.00	101,642	100.00	2,949,083	100.00	476
39	.01	1,575.6	.01		1,736	26.11	78	.40	3,151	.40	2
39	.01	1,575.6	.01		4,914	73.89	19,617	99.60	792,527	99.60	503
39	.01	1,575.6	.01		6,650	100.00	19,695	100.00	795,678	100.00	505
3,117	.60	132,018.3	.79		1,153,720	57.55	2,111,393	59.40	92,400,083	57.79	700
3,117	.60	132,018.3	.79	2,401	851,086	42.45	1,443,430	40.60	67,493,308	42.21	511
3,117	.60	132,018.3	.79	2,401	2,004,806	100.00	3,554,823	100.00	159,893,391	100.00	1211

TABULATION C

NORTHBOUND

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE A
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAF

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
20	LYNCHBURG, VA.	NORTH	4,897	.94	189,233.7	1.13		945,243	47.47	1,379,479	43.3
		SOUTH	4,897	.94	189,233.7	1.13	1,542	1,046,113	52.53	1,801,394	56.6
		TOTAL	4,897	.94	189,233.7	1.13	1,542	1,991,356	100.00	3,180,873	100.0
22	MEHERRIN, VA.	NORTH									
		SOUTH									
		TOTAL									
24	NORFOLK, VA.	NORTH	7,489	1.44	272,143.1	1.63		1,826,493	44.95	3,076,916	42.6
		SOUTH	7,489	1.44	272,143.1	1.63		2,237,068	55.05	4,139,064	57.3
		TOTAL	7,489	1.44	272,143.1	1.63		4,063,561	100.00	7,215,980	100.0
25	NORTON, VA.	NORTH	3,640	.70	122,136.4	.73		772,067	55.97	1,457,460	59.2
		SOUTH	3,640	.70	122,136.4	.73		607,398	44.03	1,001,717	40.7
		TOTAL	3,640	.70	122,136.4	.73		1,379,465	100.00	2,459,177	100.0
26	PETERSBURG, VA.	NORTH	7,797	1.49	305,200.8	1.83		2,022,305	48.70	3,899,064	48.1
		SOUTH	7,797	1.49	305,200.8	1.83	2,500	2,130,369	51.30	4,192,119	51.8
		TOTAL	7,797	1.49	305,200.8	1.83	2,500	4,152,674	100.00	8,091,183	100.0
27	PORTSMOUTH, VA.	NORTH	1,125	.22	50,301.7	.30		211,483	44.69	348,981	43.1
		SOUTH	1,125	.22	50,301.7	.30		261,763	55.31	460,384	56.8
		TOTAL	1,125	.22	50,301.7	.30		473,246	100.00	809,365	100.0
28	POTOMAC YARD, VA.	NORTH	60,890	11.67	1,665,492.2	9.98	1,654	11,504,478	36.63	16,816,107	29.8
		SOUTH	60,890	11.67	1,665,492.2	9.98	54,862	19,898,843	63.37	39,483,674	70.1
		TOTAL	60,890	11.67	1,665,492.2	9.98	56,516	31,403,321	100.00	56,299,781	100.0
29	RICHMOND, VA.	NORTH	120,469	23.09	3,473,354.0	20.82		27,426,338	44.69	48,617,084	41.3
		SOUTH	120,469	23.09	3,473,354.0	20.82	313,278	33,949,483	55.31	68,848,309	58.6
		TOTAL	120,469	23.09	3,473,354.0	20.82	313,278	61,375,821	100.00	117,465,393	100.0

TABULATION C

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA, AND TO CANADA TRAFFI

NORTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS ARBITR S.	SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
30	RIVERTON, VA.	NORTH						1,350,019	48.18	2,334,861	48.64
		SOUTH	5,564	1.07	184,710.6	1.11		1,452,091	51.82	2,465,295	51.36
		TOTAL	5,564	1.07	184,710.6	1.11		2,802,110	100.00	4,800,156	100.00
31	ROANOKE, VA.	NORTH	5,564	1.07	184,710.6	1.11		1,350,019	48.18	2,334,861	48.64
		SOUTH	5,564	1.07	184,710.6	1.11		1,452,091	51.82	2,465,295	51.36
		TOTAL	5,564	1.07	184,710.6	1.11		2,802,110	100.00	4,800,156	100.00
17	KILBY, VA.	NORTH	430	.08	10,528.7	.06		158,981	78.90	352,258	94.07
		SOUTH	430	.08	10,528.7	.06		42,509	21.10	22,200	5.93
		TOTAL	430	.08	10,528.7	.06		201,490	100.00	374,458	100.00
32	ST. PAUL, VA.	NORTH	7,245	1.39	289,113.3	1.73		2,037,624	54.92	3,223,364	56.69
		SOUTH	7,245	1.39	289,113.3	1.73	552	1,672,295	45.08	2,462,862	43.31
		TOTAL	7,245	1.39	289,113.3	1.73	552	3,709,919	100.00	5,686,226	100.00
33	STRASBURG JCT., VA.	NORTH									
		SOUTH									
		TOTAL									
34	SUFFOLK, VA.	NORTH	901	.17	26,525.6	.16		310,543	77.67	636,387	96.96
		SOUTH	901	.17	26,525.6	.16		89,295	22.33	19,969	3.04
		TOTAL	901	.17	26,525.6	.16		399,838	100.00	656,356	100.00
36	VIRSO, VA.	NORTH	173	.02	3,919.0	.04		41,697	76.00	110,201	96.52
		SOUTH	173	.02	3,919.0	.04		13,164	24.00	3,979	3.48
		TOTAL	173	.02	3,919.0	.04		54,861	100.00	114,180	100.00
TOTAL VIA VA. GATEWAYS		NORTH	233,588	44.77	7,057,359.0	42.30	2,646	52,066,669	43.87	88,269,655	40.32
		SOUTH	233,588	44.77	7,057,359.0	42.30	375,135	66,619,527	56.13	130,672,852	59.68
		TOTAL	233,588	44.77	7,057,359.0	42.30	377,781	118,686,196	100.00	218,942,507	100.00

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

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PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4 CARS	5 PCT. OF TOT CARS BY GTWYS	6 TONS	7 PCT. OF TOT TONS BY GTWYS	8 REVENUE AS ARBITR S.	9 SETTLED REMAINDER	10 PER-CENT	11 CAR-MILES SHORT LINE	12 PER-CENT	13 TON-MILES SHORT LINE	14 PER-CENT	15 AVG.SL MI.PER TON 13/6
5,564	1.07	184,710.6	1.11		1,350,019	48.18	2,334,861	48.64	78,084,240	46.40	423
5,564	1.07	184,710.6	1.11		1,452,091	51.82	2,465,295	51.36	90,195,546	53.60	488
5,564	1.07	184,710.6	1.11		2,802,110	100.00	4,800,156	100.00	168,279,786	100.00	911
430	.08	10,528.7	.06		158,981	78.90	352,258	94.07	8,633,766	95.16	820
430	.08	10,528.7	.06		42,509	21.10	22,200	5.93	439,330	4.84	42
430	.08	10,528.7	.06		201,490	100.00	374,458	100.00	9,073,096	100.00	862
7,245	1.39	289,113.3	1.73		2,037,624	54.92	3,223,364	56.69	125,323,464	53.10	433
7,245	1.39	289,113.3	1.73	552	1,672,295	45.08	2,462,862	43.31	110,692,851	46.90	383
7,245	1.39	289,113.3	1.73	552	3,709,919	100.00	5,686,226	100.00	236,016,315	100.00	816
901	.17	26,525.6	.16		310,543	77.67	636,387	96.96	18,505,295	96.94	698
901	.17	26,525.6	.16		89,295	22.33	19,969	3.04	583,165	3.06	22
901	.17	26,525.6	.16		399,838	100.00	656,356	100.00	19,088,460	100.00	720
173	.02	3,919.0	.04		41,697	76.00	110,201	96.52	2,496,403	96.52	637
173	.02	3,919.0	.04		13,164	24.00	3,979	3.48	90,137	3.48	23
173	.02	3,919.0	.04		54,861	100.00	114,180	100.00	2,586,540	100.00	660
233,588	44.77	7,057,359.0	42.30	2,646	52,066,669	43.87	88,269,655	40.32	2,764,139,127	41.21	392
233,588	44.77	7,057,359.0	42.30	375,135	66,619,527	56.13	130,672,852	59.68	3,942,611,647	58.79	559
233,588	44.77	7,057,359.0	42.30	377,781	118,686,196	100.00	218,942,507	100.00	6,706,750,774	100.00	950

TABULATION C

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFI

NORTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
6	CAIRO, ILL.	NORTH	39,282	7.53	1,220,895.1	7.32	1,210	12,473,226	56.29	24,049,429	59.09
		SOUTH	39,282	7.53	1,220,895.1	7.32		9,687,473	43.71	16,647,154	40.91
		TOTAL	39,282	7.53	1,220,895.1	7.32	1,210	22,160,699	100.00	40,696,583	100.00
8	CINCINNATI, OHIO	NORTH	110,462	21.17	3,544,190.4	21.25		24,514,333	41.46	36,368,116	36.96
		SOUTH	110,462	21.17	3,544,190.4	21.25	33,361	34,619,706	58.54	62,029,447	63.04
		TOTAL	110,462	21.17	3,544,190.4	21.25	33,361	59,134,039	100.00	98,397,563	100.00
9	COVINGTON, KY.	NORTH	1,095	.21	38,727.9	.23		186,488	35.70	201,703	28.49
		SOUTH	1,095	.21	38,727.9	.23		335,921	64.30	506,318	71.51
		TOTAL	1,095	.21	38,727.9	.23		522,409	100.00	708,021	100.00
10	EAST ST. LOUIS, ILL.	NORTH	32,590	6.25	969,443.8	5.81	1,197	9,689,151	52.15	22,121,151	54.62
		SOUTH	32,590	6.25	969,443.8	5.81		8,888,547	47.85	18,377,605	45.38
		TOTAL	32,590	6.25	969,443.8	5.81	1,197	18,577,698	100.00	40,498,756	100.00
11	ELKHORN CITY, KY..	NORTH	30,025	5.75	1,223,121.9	7.33	888	7,590,286	45.14	12,452,856	41.09
		SOUTH	30,025	5.75	1,223,121.9	7.33	53,237	9,224,859	54.86	17,852,643	58.91
		TOTAL	30,025	5.75	1,223,121.9	7.33	54,125	16,815,145	100.00	30,305,499	100.00
12	EVANSVILLE, IND.	NORTH	14,279	2.74	512,521.2	3.07		3,182,180	42.94	4,181,243	37.14
		SOUTH	14,279	2.74	512,521.2	3.07	12,467	4,228,468	57.06	7,076,879	62.86
		TOTAL	14,279	2.74	512,521.2	3.07	12,467	7,410,648	100.00	11,258,122	100.00
13	GALE, ILL.	NORTH									
		SOUTH									
		TOTAL									
16	KELLOGG-FLINTON, ILL.	NORTH	651	.12	32,570.1	.20		213,882	46.79	306,199	43.48
		SOUTH	651	.12	32,570.1	.20		243,198	53.21	398,007	56.52
		TOTAL	651	.12	32,570.1	.20		457,080	100.00	704,206	100.00

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

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PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI. PER TON 13/6
39,282	7.53	1,220,895.1	7.32	1,210	12,473,226	56.29	24,049,429	59.09	703,543,157	55.79	576
39,282	7.53	1,220,895.1	7.32		9,687,473	43.71	16,647,154	40.91	557,407,682	44.21	457
39,282	7.53	1,220,895.1	7.32	1,210	22,160,699	100.00	40,696,583	100.00	1,260,950,839	100.00	1033
110,462	21.17	3,544,190.4	21.25		24,514,333	41.46	36,368,116	36.96	1,079,700,954	34.55	305
110,462	21.17	3,544,190.4	21.25	33,361	34,619,706	58.54	62,029,447	63.04	2,045,621,170	65.45	577
110,462	21.17	3,544,190.4	21.25	33,361	59,134,039	100.00	98,397,563	100.00	3,125,322,124	100.00	882
1,095	.21	38,727.9	.23		186,488	35.70	201,703	28.49	6,223,591	25.67	161
1,095	.21	38,727.9	.23		335,921	64.30	506,318	71.51	18,020,299	74.33	465
1,095	.21	38,727.9	.23		522,409	100.00	708,021	100.00	24,243,890	100.00	626
32,590	6.25	969,443.8	5.81	1,197	9,689,151	52.15	22,121,151	54.62	664,817,736	53.92	686
32,590	6.25	969,443.8	5.81		8,888,547	47.85	18,377,605	45.38	568,140,539	46.08	586
32,590	6.25	969,443.8	5.81	1,197	18,577,698	100.00	40,498,756	100.00	1,232,958,275	100.00	1272
30,025	5.75	1,223,121.9	7.33	888	7,590,286	45.14	12,452,856	41.09	501,748,838	40.50	410
30,025	5.75	1,223,121.9	7.33	53,237	9,224,859	54.86	17,852,643	58.91	737,114,541	59.50	603
30,025	5.75	1,223,121.9	7.33	54,125	16,815,145	100.00	30,305,499	100.00	1,238,863,379	100.00	1013
14,279	2.74	512,521.2	3.07		3,182,180	42.94	4,181,243	37.14	150,795,482	37.13	294
14,279	2.74	512,521.2	3.07	12,467	4,228,468	57.06	7,076,879	62.86	255,341,108	62.87	498
14,279	2.74	512,521.2	3.07	12,467	7,410,648	100.00	11,258,122	100.00	406,136,590	100.00	792
651	.12	32,570.1	.20		213,882	46.79	306,199	43.48	15,326,323	43.57	471
651	.12	32,570.1	.20		243,198	53.21	398,007	56.52	19,851,722	56.43	610
651	.12	32,570.1	.20		457,080	100.00	704,206	100.00	35,178,045	100.00	1080

TABULATION C

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AN
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFF

NORTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS ARBITR S.	SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
18	LEXINGTON, KY.	NORTH	1,835	.35	74,541.8	.45		403,419	43.91	577,404	41.82
		SOUTH	1,835	.35	74,541.8	.45		515,335	56.09	803,259	58.18
		TOTAL	1,835	.35	74,541.8	.45		918,754	100.00	1,380,663	100.00
19	LOUISVILLE, KY.	NORTH	46,816	8.97	1,595,429.2	9.56	180	9,791,165	42.15	13,894,476	35.82
		SOUTH	46,816	8.97	1,595,429.2	9.56	9,013	13,436,708	57.85	24,896,473	64.18
		TOTAL	46,816	8.97	1,595,429.2	9.56	9,193	23,227,873	100.00	38,790,949	100.00
21	MAYSVILLE, KY.	NORTH	20	.00	358.8	.00		1,131	35.80	1,960	21.63
		SOUTH	20	.00	358.8	.00		2,028	64.20	7,100	78.37
		TOTAL	20	.00	358.8	.00		3,159	100.00	9,060	100.00
23	METROPOLIS, ILL.	NORTH	1,543	.30	58,820.5	.35		635,974	66.87	971,483	75.25
		SOUTH	1,543	.30	58,820.5	.35		315,130	33.13	319,583	24.75
		TOTAL	1,543	.30	58,820.5	.35		951,104	100.00	1,291,066	100.00
35	THEBES, ILL.	NORTH	9,177	1.76	337,809.3	2.02		2,675,726	49.45	4,731,155	49.75
		SOUTH	9,177	1.76	337,809.3	2.02		2,735,764	50.55	4,779,377	50.25
		TOTAL	9,177	1.76	337,809.3	2.02		5,411,490	100.00	9,510,532	100.00
37	WINCHESTER, KY.	NORTH	371	.08	16,607.3	.11		97,804	50.06	97,875	48.73
		SOUTH	371	.08	16,607.3	.11		97,561	49.94	102,968	51.27
		TOTAL	371	.08	16,607.3	.11		195,365	100.00	200,843	100.00
TOTAL VIA OHIO R. ILL.-KY.GTWYS		NORTH	288,146	55.23	9,625,037.3	57.70	3,475	71,454,765	45.87	119,955,050	43.82
		SOUTH	288,146	55.23	9,625,037.3	57.70	108,078	84,330,698	54.13	153,796,813	56.18
		TOTAL	288,146	55.23	9,625,037.3	57.70	111,553	155,785,463	100.00	273,751,863	100.00
GRAND TOTAL VIA ALL GATEWAYS		NORTH	521,734	100.00	16,682,396.3	100.00	6,121	123,521,434	45.00	208,224,705	42.26
		SOUTH	521,734	100.00	16,682,396.3	100.00	483,213	150,950,225	55.00	284,469,665	57.74
		TOTAL	521,734	100.00	16,682,396.3	100.00	489,334	274,471,659	100.00	492,694,370	100.00

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS ARBITR S.	SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI. PER TON 13/6
					403,419	43.91	577,404	41.82	20,444,881	38.02	274
1,835	.35	74,541.8	.45		515,335	56.09	803,259	58.18	33,332,973	61.98	447
1,835	.35	74,541.8	.45		918,754	100.00	1,380,663	100.00	53,777,854	100.00	721
1,835	.35	74,541.8	.45								
46,816	8.97	1,595,429.2	9.56	180	9,791,165	42.15	13,894,476	35.82	443,509,622	33.53	278
46,816	8.97	1,595,429.2	9.56	9,013	13,436,708	57.85	24,896,473	64.18	879,104,167	66.47	551
46,816	8.97	1,595,429.2	9.56	9,193	23,227,873	100.00	38,790,949	100.00	1,322,613,789	100.00	829
					1,131	35.80	1,960	21.63	35,162	21.63	98
20	.00	358.8	.00		2,028	64.20	7,100	78.37	127,374	78.37	355
20	.00	358.8	.00		3,159	100.00	9,060	100.00	162,536	100.00	453
20	.00	358.8	.00								
					635,974	66.87	971,483	75.25	35,470,365	77.67	603
1,543	.30	58,820.5	.35		315,130	33.13	319,583	24.75	10,197,958	22.33	173
1,543	.30	58,820.5	.35		951,104	100.00	1,291,066	100.00	45,668,323	100.00	776
1,543	.30	58,820.5	.35								
					2,675,726	49.45	4,731,155	49.75	166,351,108	47.01	492
9,177	1.76	337,809.3	2.02		2,735,764	50.55	4,779,377	50.25	187,487,491	52.99	555
9,177	1.76	337,809.3	2.02		5,411,490	100.00	9,510,532	100.00	353,838,599	100.00	1047
9,177	1.76	337,809.3	2.02								
					97,804	50.06	97,875	48.73	4,143,602	48.22	250
371	.08	16,607.3	.11		97,561	49.94	102,968	51.27	4,450,110	51.78	268
371	.08	16,607.3	.11		195,365	100.00	200,843	100.00	8,593,712	100.00	517
371	.08	16,607.3	.11								
				3,475	71,454,765	45.87	119,955,050	43.82	3,792,110,821	41.63	394
288,146	55.23	9,625,037.3	57.70	108,078	84,330,698	54.13	153,796,813	56.18	5,316,197,134	58.37	552
288,146	55.23	9,625,037.3	57.70	111,553	155,785,463	100.00	273,751,863	100.00	9,108,307,955	100.00	946
288,146	55.23	9,625,037.3	57.70								
				6,121	123,521,434	45.00	208,224,705	42.26	6,556,249,948	41.46	393
521,734	100.00	16,682,396.3	100.00	483,213	150,950,225	55.00	284,469,665	57.74	9,258,808,781	58.54	555
521,734	100.00	16,682,396.3	100.00	489,334	274,471,659	100.00	492,694,370	100.00	15,815,058,729	100.00	948
521,734	100.00	16,682,396.3	100.00								

TABULATION C

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AN
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFF

SOUTHBOUND AND NORTHBOUND

PERIOD, JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS ARBITR S.	SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
1	ALBERTA, VA.	NORTH	4,039	.42	153,223.4	.55		1,254,413	55.32	2,321,090	56.46
		SOUTH	4,039	.42	153,223.4	.55	3,905	1,013,114	44.68	1,789,928	43.54
		TOTAL	4,039	.42	153,223.4	.55	3,905	2,267,527	100.00	4,111,018	100.00
2	ALEXANDRIA, VA.	NORTH	64	.01	2,059.8	.01		5,209	20.41	502	1.10
		SOUTH	64	.01	2,059.8	.01		20,318	79.59	45,200	98.90
		TOTAL	64	.01	2,059.8	.01		25,527	100.00	45,702	100.00
3	ALTA VISTA, VA.	NORTH	2,225	.23	55,211.1	.20	802	424,512	53.03	721,505	52.12
		SOUTH	2,225	.23	55,211.1	.20		376,061	46.97	662,809	47.88
		TOTAL	2,225	.23	55,211.1	.20	802	800,573	100.00	1,384,314	100.00
4	BRISTOL, VA.-TENN.	NORTH	16,173	1.67	572,815.9	2.04	992	3,416,141	48.02	4,914,153	47.96
		SOUTH	16,173	1.67	572,815.9	2.04	1,075	3,697,638	51.98	5,332,812	52.04
		TOTAL	16,173	1.67	572,815.9	2.04	2,067	7,113,779	100.00	10,246,965	100.00
5	BURKEVILLE, VA.	NORTH	861	.09	28,045.9	.10		95,479	35.27	72,487	19.34
		SOUTH	861	.09	28,045.9	.10		175,223	64.73	302,287	80.66
		TOTAL	861	.09	28,045.9	.10		270,702	100.00	374,774	100.00
7	CHARLOTTESVILLE, VA.	NORTH	1,294	.13	60,619.6	.22		142,823	40.32	73,150	19.76
		SOUTH	1,294	.13	60,619.6	.22		211,371	59.68	297,119	80.24
		TOTAL	1,294	.13	60,619.6	.22		354,194	100.00	370,269	100.00
14	HARRISONBURG, VA.	NORTH	39	.00	1,575.6	.01		1,736	26.11	78	.40
		SOUTH	39	.00	1,575.6	.01		4,914	73.89	19,617	99.60
		TOTAL	39	.00	1,575.6	.01		6,630	100.00	19,695	100.00
15	JARRATT, VA.	NORTH	4,424	.46	168,658.2	.60		1,531,860	57.36	2,922,680	59.33
		SOUTH	4,424	.46	168,658.2	.60	9,300	1,138,653	42.64	2,003,846	40.67
		TOTAL	4,424	.46	168,658.2	.60	9,300	2,670,513	100.00	4,926,526	100.00

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

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PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG.SL MI.PER TON 13/6
4,039	.42	153,223.4	.55		1,254,413	55.32	2,321,090	56.46	86,188,864	56.26	563
4,039	.42	153,223.4	.55	3,905	1,013,114	44.68	1,789,928	43.54	67,017,807	43.74	437
4,039	.42	153,223.4	.55	3,905	2,267,527	100.00	4,111,018	100.00	153,206,671	100.00	1000
64	.01	2,059.8	.01		5,209	20.41	502	1.10	17,917	1.40	9
64	.01	2,059.8	.01		20,318	79.59	45,200	98.90	1,264,157	98.60	614
64	.01	2,059.8	.01		25,527	100.00	45,702	100.00	1,282,074	100.00	622
2,225	.23	55,211.1	.20	802	424,512	53.03	721,505	52.12	17,348,991	52.49	314
2,225	.23	55,211.1	.20		376,061	46.97	662,809	47.88	15,703,724	47.51	284
2,225	.23	55,211.1	.20	802	800,573	100.00	1,384,314	100.00	33,052,715	100.00	599
16,173	1.67	572,815.9	2.04	992	3,416,141	48.02	4,914,153	47.96	143,526,082	44.72	251
16,173	1.67	572,815.9	2.04	1,075	3,697,638	51.98	5,332,812	52.04	177,403,508	55.28	310
16,173	1.67	572,815.9	2.04	2,067	7,113,779	100.00	10,246,965	100.00	320,929,590	100.00	560
861	.09	28,045.9	.10		95,479	35.27	72,487	19.34	2,233,917	19.68	80
861	.09	28,045.9	.10		175,223	64.73	302,287	80.66	9,117,408	80.32	325
861	.09	28,045.9	.10		270,702	100.00	374,774	100.00	11,351,325	100.00	405
1,294	.13	60,619.6	.22		142,823	40.32	73,150	19.76	3,551,475	21.70	59
1,294	.13	60,619.6	.22		211,371	59.68	297,119	80.24	12,818,247	78.30	211
1,294	.13	60,619.6	.22		354,194	100.00	370,269	100.00	16,369,722	100.00	270
39	.00	1,575.6	.01		1,736	26.11	78	.40	3,151	.40	2
39	.00	1,575.6	.01		4,914	73.89	19,617	99.60	792,527	99.60	503
39	.00	1,575.6	.01		6,650	100.00	19,695	100.00	795,678	100.00	505
4,424	.46	168,658.2	.60		1,531,860	57.36	2,922,680	59.33	114,300,102	58.24	678
4,424	.46	168,658.2	.60	9,300	1,138,653	42.64	2,003,846	40.67	81,957,866	41.76	486
4,424	.46	168,658.2	.60	9,300	2,670,513	100.00	4,926,526	100.00	196,257,968	100.00	1164

TABULATION C — ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AN
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFF

SOUTHBOUND AND NORTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS ARBITR S.	SETTLED REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
20	LYNCHBURG, VA.	NORTH	14,754	1.52	579,582.5	2.07		2,740,456	49.10	3,896,663	47.57
		SOUTH	14,754	1.52	579,582.5	2.07	1,542	2,840,597	50.90	4,294,241	52.43
		TOTAL	14,754	1.52	579,582.5	2.07	1,542	5,581,053	100.00	8,190,904	100.00
22	MEHERRIN, VA.	NORTH									
		SOUTH									
		TOTAL									
24	NORFOLK, VA.	NORTH	13,276	1.37	412,297.6	1.47	70	2,960,121	43.59	4,907,918	40.97
		SOUTH	13,276	1.37	412,297.6	1.47	546	3,831,150	56.41	7,071,150	59.03
		TOTAL	13,276	1.37	412,297.6	1.47	616	6,791,271	100.00	11,979,068	100.00
25	NORTON, VA.	NORTH	6,097	.63	208,841.3	.74		1,365,619	54.63	2,349,317	58.84
		SOUTH	6,097	.63	208,841.3	.74		1,133,937	45.37	1,643,205	41.16
		TOTAL	6,097	.63	208,841.3	.74		2,499,556	100.00	3,992,522	100.00
26	PETERSBURG, VA.	NORTH	20,474	2.12	733,636.7	2.61		4,411,435	49.23	8,776,276	49.42
		SOUTH	20,474	2.12	733,636.7	2.61	13,524	4,549,733	50.77	8,984,048	50.58
		TOTAL	20,474	2.12	733,636.7	2.61	13,524	8,961,168	100.00	17,760,324	100.00
27	PORTSMOUTH, VA.	NORTH	1,321	.14	60,398.5	.22		267,324	47.46	412,309	46.04
		SOUTH	1,321	.14	60,398.5	.22		295,955	52.54	483,152	53.96
		TOTAL	1,321	.14	60,398.5	.22		563,279	100.00	895,461	100.00
28	POTOMAC YARD, VA.	NORTH	113,871	11.77	2,799,899.4	9.98	6,061	21,134,587	37.29	31,039,866	30.28
		SOUTH	113,871	11.77	2,799,899.4	9.98	91,532	35,541,616	62.71	71,462,164	69.72
		TOTAL	113,871	11.77	2,799,899.4	9.98	97,593	56,676,203	100.00	102,502,030	100.00
29	RICHMOND, VA.	NORTH	197,887	20.45	5,099,135.5	18.18	568	44,209,929	44.33	79,299,033	40.61
		SOUTH	197,887	20.45	5,099,135.5	18.18	715,884	55,526,977	55.67	115,956,254	59.39
		TOTAL	197,887	20.45	5,099,135.5	18.18	716,452	99,736,906	100.00	195,255,287	100.00

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ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI. PER TON 13/6
14,754	1.52	579,582.5	2.07		2,740,456	49.10	3,896,663	47.57	131,886,456	44.02	228
14,754	1.52	579,582.5	2.07	1,542	2,840,597	50.90	4,294,241	52.43	167,729,555	55.98	289
14,754	1.52	579,582.5	2.07	1,542	5,581,053	100.00	8,190,904	100.00	299,616,011	100.00	517
13,276	1.37	412,297.6	1.47	70	2,960,121	43.59	4,907,918	40.97	153,054,779	40.44	371
13,276	1.37	412,297.6	1.47	546	3,831,150	56.41	7,071,150	59.03	225,452,364	59.56	547
13,276	1.37	412,297.6	1.47	616	6,791,271	100.00	11,979,068	100.00	378,507,143	100.00	918
6,097	.63	208,841.3	.74		1,365,619	54.63	2,349,317	58.84	74,648,309	56.05	357
6,097	.63	208,841.3	.74		1,133,937	45.37	1,643,205	41.16	58,529,426	43.95	280
6,097	.63	208,841.3	.74		2,499,556	100.00	3,992,522	100.00	133,177,735	100.00	638
20,474	2.12	733,636.7	2.61		4,411,435	49.23	8,776,276	49.42	290,326,411	46.31	396
20,474	2.12	733,636.7	2.61	13,524	4,549,733	50.77	8,984,048	50,58	336,597,889	53.69	459
20,474	2.12	733,636.7	2.61	13,524	8,961,168	100.00	17,760,324	100.00	626,924,300	100.00	855
1,321	.14	60,398.5	.22		267,324	47.46	412,309	46.04	16,533,724	38.85	274
1,321	.14	60,398.5	.22		295,955	52.54	483,152	53.96	26,021,917	61.15	431
1,321	.14	60,398.5	.22		563,279	100.00	895,461	100.00	42,555,641	100.00	705
113,871	11.77	2,799,899.4	9.98	6,061	21,134,587	37.29	31,039,866	30.28	758,551,801	30.70	271
113,871	11.77	2,799,899.4	9.98	91,532	35,541,616	62.71	71,462,164	69.72	1,712,302,957	69.30	612
113,871	11.77	2,799,899.4	9.98	97,593	56,676,203	100.00	102,502,030	100.00	2,470,854,758	100.00	882
197,887	20.45	5,099,135.5	18.18	568	44,209,929	44.33	79,299,033	40.61	2,075,273,647	42.17	407
197,887	20.45	5,099,135.5	18.18	715,884	55,526,977	55.67	115,956,254	59.39	2,846,244,124	57.83	558
197,887	20.45	5,099,135.5	18.18	716,452	99,736,906	100.00	195,255,287	100.00	4,921,517,771	100.00	965

TABULATION 3 — ALL CARLOAD DE 405 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC

SOUTHBOUND AND NORTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS	TONS	PCT. OF TOT TONS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
30	RIVERTON, VA.	NORTH	316	.03	6,772.9	.02		13,497	32.18	398	.38
		SOUTH	316	.03	6,772.9	.02		28,440	67.82	104,038	99.62
		TOTAL	316	.03	6,772.9	.02		41,937	100.00	104,436	100.00
31	ROANOKE, VA.	NORTH	19,180	1.98	734,186.2	2.62		3,810,932	47.67	5,707,067	46.79
		SOUTH	19,180	1.98	734,186.2	2.62	7,162	4,182,861	52.33	6,490,109	53.21
		TOTAL	19,180	1.98	734,186.2	2.62	7,162	7,993,793	100.00	12,197,176	100.00
17	KILBY, VA.	NORTH	985	.10	34,925.0	.12		248,536	71.98	500,907	90.06
		SOUTH	985	.10	34,925.0	.12		96,762	28.02	55,255	9.94
		TOTAL	985	.10	34,925.0	.12		345,298	100.00	556,162	100.00
32	ST. PAUL, VA.	NORTH	12,640	1.31	477,420.4	1.70		3,487,990	55.14	5,351,106	58.32
		SOUTH	12,640	1.31	477,420.4	1.70	2,434	2,837,583	44.86	3,823,861	41.68
		TOTAL	12,640	1.31	477,420.4	1.70	2,434	6,325,573	100.00	9,174,967	100.00
33	STRASBURG JCT., VA.	NORTH									
		SOUTH									
		TOTAL									
34	SUFFOLK, VA.	NORTH	1,412	.15	39,017.0	.14		425,522	77.03	906,944	95.97
		SOUTH	1,412	.15	39,017.0	.14		126,924	22.97	38,079	4.03
		TOTAL	1,412	.15	39,017.0	.14		552,446	100.00	945,023	100.00
36	VIRSO, VA.	NORTH	173	.02	3,919.0	.00		41,697	76.00	110,201	96.52
		SOUTH	173	.02	3,919.0	.00		13,164	24.00	3,979	3.48
		TOTAL	173	.02	3,919.0	.00		54,861	100.00	114,180	100.00
TOTAL VIA VA. GATEWAYS		NORTH	431,505	44.60	12,232,241.5	43.60	8,493	91,989,818	43.88	154,283,650	40.06
		SOUTH	431,505	44.60	12,232,241.5	43.60	846,904	117,642,991	56.12	230,863,153	59.94
		TOTAL	431,505	44.60	12,232,241.5	43.60	855,397	209,632,809	100.00	385,146,803	100.00

ALL CARLOAD DB 495 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS	TONS	PCT. OF TOT TONS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG. SL MI. PER TON 13/6
316	.03	6,772.9	.02		13,497	32.18	398	.38	8,437	.38	1
316	.03	6,772.9	.02		28,440	67.82	104,038	99.62	2,235,409	99.62	330
316	.03	6,772.9	.02		41,937	100.00	104,436	100.00	2,243,846	100.00	331
19,180	1.98	734,186.2	2.62		3,810,932	47.67	5,707,067	46.79	187,560,628	42.83	255
19,180	1.98	734,186.2	2.62	7,162	4,182,861	52.33	6,490,109	53.21	250,344,696	57.17	341
19,180	1.98	734,186.2	2.62	7,162	7,993,793	100.00	12,197,176	100.00	437,905,324	100.00	596
985	.10	34,925.0	.12		248,536	71.98	500,907	90.06	15,250,536	88.83	437
985	.10	34,925.0	.12		96,762	28.02	55,255	9.94	1,918,601	11.17	55
985	.10	34,925.0	.12		345,298	100.00	556,162	100.00	17,169,137	100.00	492
12,640	1.31	477,420.4	1.70		3,487,990	55.14	5,351,106	58.32	188,855,654	54.56	396
12,640	1.31	477,420.4	1.70	2,434	2,837,583	44.86	3,823,861	41.68	157,315,467	45.44	330
12,640	1.31	477,420.4	1.70	2,434	6,325,573	100.00	9,174,967	100.00	346,171,121	100.00	725
1,412	.15	39,017.0	.14		425,522	77.03	906,944	95.97	24,500,684	95.92	528
1,412	.15	39,017.0	.14		126,924	22.97	38,079	4.03	1,041,285	4.08	27
1,412	.15	39,017.0	.14		552,446	100.00	945,023	100.00	25,541,969	100.00	655
173	.02	3,919.0	.00		41,697	76.00	110,201	96.52	2,496,403	96.52	637
173	.02	3,919.0	.00		13,164	24.00	3,979	3.48	90,137	3.48	23
173	.02	3,919.0	.00		54,861	100.00	114,180	100.00	2,586,540	100.00	660
431,505	44.60	12,232,241.5	43.60	8,493	91,989,818	43.88	154,283,650	40.06	4,286,117,968	41.06	350
431,505	44.60	12,232,241.5	43.60	846,904	117,642,991	56.12	230,863,153	59.94	6,151,899,071	58.94	503
431,505	44.60	12,232,241.5	43.60	855,397	209,632,809	100.00	385,146,803	100.00	10,438,017,039	100.00	853

TABULATION C

SOUTHBOUND AND NORTHBOUND

DIVISIONAL GATEWAYS

ALL CARLOAD DB 465 TRAFFIC' DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE A
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAF

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY ITEMS	TONS	PCT. OF TOT TONS BY ITEMS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
6	CAIRO, ILL.	NORTH	58,750	6.07	1,715,849.7	6.12	2,232	18,510,533	55.79	34,310,736	58.6
		SOUTH	58,750	6.07	1,715,849.7	6.12	13,476	14,670,266	44.21	24,223,416	41.3
		TOTAL	58,750	6.07	1,715,849.7	6.12	15,708	33,180,799	100.00	58,534,152	100.0
8	CINCINNATI, OHIO	NORTH	223,806	23.13	6,212,642.7	22.14	43,178	49,551,943	41.31	67,679,386	35.8
		SOUTH	223,806	23.13	6,212,642.7	22.14	194,661	70,400,750	58.69	120,926,474	64.1
		TOTAL	223,806	23.13	6,212,642.7	22.14	237,839	119,952,693	100.00	188,605,860	100.0
9	COVINGTON, KY.	NORTH	1,115	.12	38,975.6	.14		189,803	35.79	203,983	28.3
		SOUTH	1,115	.12	38,975.6	.14		340,504	64.21	516,278	71.6
		TOTAL	1,115	.12	38,975.6	.14		530,307	100.00	720,261	100.0
10	EAST ST. LOUIS, ILL.	NORTH	55,767	5.76	1,509,915.9	5.38	1,282	15,824,558	51.85	35,741,450	54.5
		SOUTH	55,767	5.76	1,509,915.9	5.38		14,697,546	48.15	29,778,344	45.4
		TOTAL	55,767	5.76	1,509,915.9	5.38	1,282	30,522,104	100.00	65,519,794	100.0
11	ELKHORN CITY, KY.	NORTH	56,294	5.82	1,885,182.4	6.72	2,479	14,153,281	46.14	23,283,178	43.1
		SOUTH	56,294	5.82	1,885,182.4	6.72	144,935	16,524,134	53.86	30,727,170	56.8
		TOTAL	56,294	5.82	1,885,182.4	6.72	147,414	30,677,415	100.00	54,010,348	100.0
12	EVANSVILLE, IND.	NORTH	29,342	3.03	923,048.8	3.29	436	6,293,698	42.30	8,351,689	36.6
		SOUTH	29,342	3.03	923,048.8	3.29	47,485	8,584,396	57.70	14,436,465	63.3
		TOTAL	29,342	3.03	923,048.8	3.29	47,921	14,878,094	100.00	22,788,154	100.0
13	GALE, ILL.	NORTH	43	.00	2,153.5	.01		13,565	50.00	15,351	49.6
		SOUTH	43	.00	2,153.5	.01		13,565	50.00	15,566	50.3
		TOTAL	43	.00	2,153.5	.01		27,130	100.00	30,917	100.0
16	KELLOGG-FLINTON, ILL.	NORTH	746	.08	35,543.7	.13		240,030	46.85	345,379	43.9
		SOUTH	746	.08	35,543.7	.13		272,320	53.15	441,278	56.1
		TOTAL	746	.08	35,543.7	.13		512,350	100.00	786,657	100.0

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ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
ARS	PCT. OF TOT CARS BY TONS	TONS	PCT. OF TOT TONS BY GTWY.	REVENUE AS SETTLED ARBITR'S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG.SL MI.PER TON 13/6
58,750	6.07	1,715,849.7	6.12	2,232	18,510,533	55.79	34,310,736	58.62	958,179,844	56.20	558
58,750	6.07	1,715,849.7	6.12	13,476	14,670,266	44.21	24,223,416	41.38	746,618,211	43.80	435
58,750	6.07	1,715,849.7	6.12	15,708	33,180,799	100.00	58,534,152	100.00	1,704,798,055	100.00	994
23,806	23.13	6,212,642.7	22.14	43,178	49,551,943	41.31	67,679,386	35.88	1,819,964,185	35.16	293
23,806	23.13	6,212,642.7	22.14	194,661	70,400,750	58.69	120,926,474	64.12	3,355,660,400	64.84	540
23,806	23.13	6,212,642.7	22.14	237,839	119,952,693	100.00	188,605,860	100.00	5,175,624,585	100.00	833
1,115	.12	38,975.6	.14		189,803	35.79	203,983	28.32	6,251,829	25.63	160
1,115	.12	38,975.6	.14		340,504	64.21	516,278	71.68	18,143,654	74.37	466
1,115	.12	38,975.6	.14		530,307	100.00	720,261	100.00	24,395,483	100.00	626
55,767	5.76	1,509,915.9	5.38	1,282	15,824,558	51.85	35,741,450	54.55	925,437,331	52.15	613
55,767	5.76	1,509,915.9	5.38		14,697,546	48.15	29,778,344	45.45	849,110,439	47.85	562
55,767	5.76	1,509,915.9	5.38	1,282	30,522,104	100.00	65,519,794	100.00	1,774,547,770	100.00	1175
56,294	5.82	1,885,182.4	6.72	2,479	14,153,281	46.14	23,283,178	43.11	769,942,395	42.29	408
56,294	5.82	1,885,182.4	6.72	144,935	16,524,134	53.86	30,727,170	56.89	1,050,583,048	57.71	557
56,294	5.82	1,885,182.4	6.72	147,414	30,677,415	100.00	54,010,348	100.00	1,820,525,443	100.00	966
29,342	3.03	923,048.8	3.29	436	6,293,698	42.30	8,351,689	36.65	259,385,158	36.87	281
29,342	3.03	923,048.8	3.29	47,485	8,584,396	57.70	14,436,465	63.35	444,108,471	63.13	481
29,342	3.03	923,048.8	3.29	47,921	14,878,094	100.00	22,788,154	100.00	703,493,629	100.00	762
43	.00	2,153.5	.01		13,565	50.00	15,351	49.65	768,800	49.65	357
43	.00	2,153.5	.01		13,565	50.00	15,566	50.35	779,567	50.35	362
43	.00	2,153.5	.01		27,130	100.00	30,917	100.00	1,548,367	100.00	719
746	.08	35,543.7	.13		240,030	46.85	345,379	43.90	16,663,971	43.81	469
746	.08	35,543.7	.13		272,320	53.15	441,278	56.10	21,374,842	56.19	601
746	.08	35,543.7	.13		512,350	100.00	786,657	100.00	38,038,813	100.00	1070

TABULATION C

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFI

SOUTHBOUND AND NORTHBOUND

PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

DIVISIONAL GATEWAYS

1	2	3	4	5	6	7	8	9	10	11	12
CODE	NAME		CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT
18	LEXINGTON, KY.	NORTH	3,367	.35	117,288.4	.42		648,900	45.00	864,870	43.11
		SOUTH	3,367	.35	117,288.4	.42		793,183	55.00	1,141,547	56.89
		TOTAL	3,367	.35	117,288.4	.42		1,442,083	100.00	2,006,417	100.00
19	LOUISVILLE, KY.	NORTH	90,538	9.36	2,822,010.8	10.06	1,128	19,045,755	43.39	26,385,505	37.37
		SOUTH	90,538	9.36	2,822,010.8	10.06	49,256	24,852,199	56.61	44,229,397	62.63
		TOTAL	90,538	9.36	2,822,010.8	10.06	50,384	43,897,954	100.00	70,614,902	100.00
21	MAYSVILLE, KY.	NORTH	20	.00	358.8	.00		1,131	35.80	1,960	21.63
		SOUTH	20	.00	358.8	.00		2,028	64.20	7,100	78.37
		TOTAL	20	.00	358.8	.00		3,159	100.00	9,060	100.00
23	METROPOLIS, ILL.	NORTH	2,723	.28	93,260.2	.33	173	975,514	63.88	1,537,533	71.18
		SOUTH	2,723	.28	93,260.2	.33	584	551,507	36.12	622,420	28.82
		TOTAL	2,723	.28	93,260.2	.33	757	1,527,021	100.00	2,159,953	100.00
35	THEBES, ILL.	NORTH	12,998	1.34	445,492.6	1.59		3,807,417	49.59	6,646,487	49.88
		SOUTH	12,998	1.34	445,492.6	1.59	8,454	3,869,643	50.41	6,678,538	50.12
		TOTAL	12,998	1.34	445,492.6	1.59	8,454	7,677,060	100.00	13,325,025	100.00
37	WINCHESTER, KY.	NORTH	540	.06	21,756.1	.07		124,994	48.06	129,234	45.75
		SOUTH	540	.06	21,756.1	.07	549	135,089	51.94	153,240	54.25
		TOTAL	540	.06	21,756.1	.07	549	260,083	100.00	282,474	100.00
TOTAL VIA OHIO R. ILL.-KY.GTWYS		NORTH	536,049	55.40	15,823,479.2	56.40	50,908	129,381,122	45.38	205,496,741	42.87
		SOUTH	536,049	55.40	15,823,479.2	56.40	459,400	155,707,130	54.62	273,897,233	57.13
		TOTAL	536,049	55.40	15,823,479.2	56.40	510,308	285,088,252	100.00	479,393,974	100.00
GRAND TOTAL VIA ALL GATEWAYS		NORTH	967,554	100.00	28,055,720.7	100.00	59,401	221,370,940	44.75	359,780,391	41.62
		SOUTH	967,554	100.00	28,055,720.7	100.00	1,306,304	273,350,121	55.25	504,760,386	58.38
		TOTAL	967,554	100.00	28,055,720.7	100.00	1,365,705	494,721,061	100.00	864,540,777	100.00

ALL CARLOAD DB 465 TRAFFIC DOES NOT INCLUDE COAL, COKE MADE FROM COAL, KY. INTRASTATE, VA. INTRASTATE AND COMPANY MATERIALS
INCLUDES VACATED ORDER TRAFFIC, CODES 003, 004, EX-CANADA AND TO CANADA TRAFFIC CODE 006

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PERIOD. JULY 1958 THROUGH JUNE 1959. INTERLINE ACCOUNTS
BETWEEN. OFFICIAL TERRITORY AND SOUTHERN TERRITORY
BY DIVISIONAL GATEWAYS

4	5	6	7	8	9	10	11	12	13	14	15
CARS	PCT. OF TOT CARS BY GTWYS	TONS	PCT. OF TOT TONS BY GTWYS	REVENUE AS SETTLED ARBITR S.	REMAINDER	PER-CENT	CAR-MILES SHORT LINE	PER-CENT	TON-MILES SHORT LINE	PER-CENT	AVG.SL MI.PER TON 13/6
3,367	.35	117,288.4	.42		648,900	45.00	864,870	43.11	28,906,794	39.49	246
3,367	.35	117,288.4	.42		793,183	55.00	1,141,547	56.89	44,291,453	60.51	378
3,367	.35	117,288.4	.42		1,442,083	100.00	2,006,417	100.00	73,198,247	100.00	624
90,538	9.36	2,822,010.8	10.06	1,128	19,045,755	43.39	26,385,505	37.37	778,709,133	36.01	276
90,538	9.36	2,822,010.8	10.06	49,256	24,852,199	56.61	44,229,397	62.63	1,383,786,645	63.99	490
90,538	9.36	2,822,010.8	10.06	50,384	43,897,954	100.00	70,614,902	100.00	2,162,495,778	100.00	766
20	.00	358.8	.00		1,131	35.80	1,960	21.63	35,162	21.63	98
20	.00	358.8	.00		2,028	64.20	7,100	78.37	127,374	78.37	355
20	.00	358.8	.00		3,159	100.00	9,060	100.00	162,536	100.00	453
2,723	.28	93,260.2	.33	173	975,514	63.88	1,537,533	71.18	51,358,915	73.06	551
2,723	.28	93,260.2	.33	584	551,507	36.12	622,420	28.82	18,936,701	26.94	203
2,723	.28	93,260.2	.33	757	1,527,021	100.00	2,159,953	100.00	70,295,616	100.00	754
12,998	1.34	445,492.6	1.59		3,807,417	49.59	6,646,487	49.88	218,544,066	47.58	491
12,998	1.34	445,492.6	1.59	8,454	3,869,643	50.41	6,678,538	50.12	240,819,782	52.42	541
12,998	1.34	445,492.6	1.59	8,454	7,677,060	100.00	13,325,025	100.00	459,363,848	100.00	1031
540	.06	21,756.1	.07		124,994	48.06	129,234	45.75	4,895,651	44.93	225
540	.06	21,756.1	.07	549	135,089	51.94	153,240	54.25	6,000,988	55.07	276
540	.06	21,756.1	.07	549	260,083	100.00	282,474	100.00	10,896,639	100.00	501
536,049	55.40	15,823,479.2	56.40	50,908	129,381,122	45.38	205,496,741	42.87	5,839,043,234	41.65	369
536,049	55.40	15,823,479.2	56.40	459,400	155,707,130	54.62	273,897,233	57.13	8,180,341,575	58.35	517
536,049	55.40	15,823,479.2	56.40	510,308	285,088,252	100.00	479,393,974	100.00	14,019,384,809	100.00	886
967,554	100.00	28,055,720.7	100.00	59,401	221,370,940	44.75	359,780,391	41.62	10,125,161,202	41.40	361
967,554	100.00	28,055,720.7	100.00	1,306,304	273,350,121	55.25	504,760,386	58.38	14,332,240,646	58.60	511
967,554	100.00	28,055,720.7	100.00	1,365,705	494,721,061	100.00	864,540,777	100.00	24,457,401,848	100.00	872

OFFICIAL-SOUTHERN DIVISIONS CASE

I.C.C. DOCKETS 29885 AND 29799

Tabulations identified below containing information derived from analysis of traffic moving between points in Southern territory and points in Official territory, taken from abstracts of interline settlements for months of July 1958 through June 1959.

Tabulation M	110 Numbered Pages
Tabulation P	2 Numbered Pages

TABULATION M

Ex. No.2 to V.S. No.11A of W

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT	%
50	50	1,079	57,948.0		181,237	113,273	62.5	67,964	37.5	81.5	92,317	18.5	20,956	81
	100	540	24,566.7		100,621	46,270	46.0	54,351	54.0	81.5	37,710	18.5	8,560	68
	150	701	19,541.9		132,327	55,588	42.0	76,739	58.0	81.5	45,304	18.5	10,284	59
	200	440	12,125.2		119,876	47,253	39.4	72,623	60.6	81.5	38,511	18.5	8,742	52
	250	560	28,064.3		323,003	119,497	37.0	203,506	63.0	81.5	97,390	18.5	22,107	46
	300	543	16,539.3		121,678	41,974	34.5	79,704	65.5	81.5	34,209	18.5	7,765	42
	350	637	23,637.0		209,065	67,366	32.2	141,699	67.8	81.5	54,903	18.5	12,463	38
	400	199	4,120.6		60,417	18,420	30.5	41,997	69.5	81.5	15,012	18.5	3,408	35
	450	201	5,207.3		75,018	21,422	28.6	53,596	71.4	81.5	17,459	18.5	3,963	32
	500	157	5,446.9		71,220	19,226	27.0	51,994	73.0	81.5	15,669	18.5	3,557	30
	550	325	7,351.0		154,479	43,721	28.3	110,758	71.7	81.5	35,633	18.5	8,088	28
	600	102	2,107.6		34,776	8,720	25.1	26,056	74.9	81.5	7,107	18.5	1,613	26
	650	170	6,183.7		151,560	36,375	24.0	115,185	76.0	81.5	29,646	18.5	6,729	25
	700	88	2,356.7		43,745	10,040	23.0	33,705	77.0	81.5	8,183	18.5	1,857	23
	750	100	2,644.3		73,752	16,000	21.7	57,752	78.3	81.5	13,040	18.5	2,960	22
	800	62	1,895.6		36,861	7,743	21.0	29,118	79.0	81.5	6,311	18.5	1,432	21
	850	62	1,589.4		29,184	6,407	22.0	22,777	78.0	81.5	5,222	18.5	1,185	20
	900	39	1,003.3		19,073	3,643	19.1	15,430	80.9	81.5	2,969	18.5	674	15
	950	54	1,687.5		45,900	11,475	25.0	34,425	75.0	81.5	9,352	18.5	2,123	18
	1000	99	1,617.6		54,941	9,893	18.0	45,048	82.0	81.5	8,063	18.5	1,830	13
	1050									81.5		18.5		17
	1100	21	264.1		12,290	2,087	17.0	10,203	83.0	81.5	1,701	18.5	386	14
	1150									81.5		18.5		1
	1200									81.5		18.5		1
	1250									81.5		18.5		1
	1300	19	446.0		13,268	1,985	15.0	11,283	85.0	81.5	1,618	18.5	367	1
	1350									81.5		18.5		1
	1400									81.5		18.5		1
	1450									81.5		18.5		1
	1500									81.5		18.5		1
	1550									81.5		18.5		1
	1600									81.5		18.5		1
	1650									81.5		18.5		
	1700									81.5		18.5		
	1750									81.5		18.5		
	1800									81.5		18.5		
TOTAL		6,198	226,344.0		2,064,291	708,378		1,355,913			577,329		131,049	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED TOTAL		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
0	181,237	113,273	62.5	67,964	37.5	81.5	92,317	18.5	20,956	81.5	55,391	18.5	12,573
7	100,621	46,270	46.0	54,351	54.0	81.5	37,710	18.5	8,560	68.8	37,393	31.2	16,958
9	132,327	55,588	42.0	76,739	58.0	81.5	45,304	18.5	10,284	59.5	45,660	40.5	31,079
2	119,876	47,253	39.4	72,623	60.6	81.5	38,511	18.5	8,742	52.5	38,127	47.5	34,496
3	323,003	119,497	37.0	203,506	63.0	81.5	97,390	18.5	22,107	46.9	95,444	53.1	108,062
3	121,678	41,974	34.5	79,704	65.5	81.5	34,209	18.5	7,765	42.4	33,794	57.6	45,910
0	209,065	67,366	32.2	141,699	67.8	81.5	54,903	18.5	12,463	38.7	54,838	61.3	86,861
6	60,417	18,420	30.5	41,997	69.5	81.5	15,012	18.5	3,408	35.6	14,951	64.4	27,046
3	75,018	21,422	28.6	53,596	71.4	81.5	17,459	18.5	3,963	32.9	17,633	67.1	35,963
9	71,220	19,226	27.0	51,994	73.0	81.5	15,669	18.5	3,557	30.5	15,858	69.5	36,136
0	154,479	43,721	28.3	110,758	71.7	81.5	35,633	18.5	8,088	28.5	31,566	71.5	79,192
6	34,776	8,720	25.1	26,056	74.9	81.5	7,107	18.5	1,613	26.8	6,983	73.2	19,073
7	151,560	36,375	24.0	115,185	76.0	81.5	29,646	18.5	6,729	25.2	29,027	74.8	86,158
7	43,745	10,040	23.0	33,705	77.0	81.5	8,183	18.5	1,857	23.9	8,055	76.1	25,650
3	73,752	16,000	21.7	57,752	78.3	81.5	13,040	18.5	2,960	22.7	13,110	77.3	44,642
6	36,861	7,743	21.0	29,118	79.0	81.5	6,311	18.5	1,432	21.5	6,260	78.5	22,858
4	29,184	6,407	22.0	22,777	78.0	81.5	5,222	18.5	1,185	20.5	4,669	79.5	18,108
3	19,073	3,643	19.1	15,430	80.9	81.5	2,969	18.5	674	19.6	3,024	80.4	12,406
5	45,900	11,475	25.0	34,425	75.0	81.5	9,352	18.5	2,123	18.8	6,472	81.2	27,953
6	54,941	9,893	18.0	45,048	82.0	81.5	8,063	18.5	1,830	18.0	8,109	82.0	36,939
						81.5		18.5		17.3		82.7	
1	12,290	2,087	17.0	10,203	83.0	81.5	1,701	18.5	386	16.7	1,704	83.3	8,499
						81.5		18.5		16.1		83.9	
						81.5		18.5		15.5		84.5	
						81.5		18.5		15.0		85.0	
0	13,268	1,985	15.0	11,283	85.0	81.5	1,618	18.5	367	14.4	1,625	85.6	9,658
						81.5		18.5		14.0		86.0	
						81.5		18.5		13.6		86.4	
						81.5		18.5		13.2		86.8	
						81.5		18.5		12.8		87.2	
						81.5		18.5		12.4		87.6	
						81.5		18.5		12.1		87.9	
						81.5		18.5		11.8		88.2	
						81.5		18.5		11.4		88.6	
						81.5		18.5		11.2		88.8	
						81.5		18.5		10.9		89.1	
0	2,064,291	708,378		1,355,913			577,329		131,049		529,693		826,220

TABULATION M

Ex. No.2 to V.S. No.11A of W.

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				RE
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT	%
100	50	727	29,843.2	657	107,644	58,126	54.0	49,518	46.0	68.8	89,991	31.2	18,135	81.5
	100	829	35,442.8		160,638	80,329	50.0	80,309	50.0	68.8	55,266	31.2	25,063	68.8
	150	1,524	44,732.6		305,963	140,724	46.0	165,239	54.0	68.8	96,818	31.2	43,906	59.5
	200	1,319	48,683.9		440,595	189,539	43.0	251,056	57.0	68.8	130,403	31.2	59,136	52.5
	250	564	17,286.9		156,592	64,397	41.1	92,195	58.9	68.8	44,305	31.2	20,092	46.
	300	2,064	63,774.1		706,809	269,641	38.1	437,168	61.9	68.8	185,513	31.2	84,128	42.
	350	940	28,646.1	78	316,694	113,022	35.7	203,672	64.3	68.8	77,759	31.2	35,263	38.
	400	401	15,464.3		172,082	56,434	32.8	115,648	67.2	68.8	38,827	31.2	17,607	35.
	450	796	17,615.4	274	232,567	74,935	32.2	157,632	67.8	68.8	51,555	31.2	23,380	32.
	500	430	18,531.8		180,200	55,886	31.0	124,314	69.0	68.8	38,450	31.2	17,436	30.
	550	629	17,797.8		286,591	82,361	28.7	204,230	71.3	68.8	56,664	31.2	25,697	28.
	600	612	17,254.7		303,262	84,891	28.0	218,371	72.0	68.8	58,405	31.2	26,486	26.
	650	575	14,192.7		255,904	69,109	27.0	186,795	73.0	68.8	47,547	31.2	21,562	25.
	700	187	5,286.9		93,149	24,215	26.0	68,934	74.0	68.8	16,660	31.2	7,555	23.
	750	158	3,228.6		80,014	20,014	25.0	60,000	75.0	68.8	13,770	31.2	6,244	22.
	800	121	3,823.0		68,309	16,421	24.0	51,888	76.0	68.8	11,298	31.2	5,123	21.
	850	301	6,602.6		148,413	35,339	23.8	113,074	76.2	68.8	24,313	31.2	11,026	20.
	900	56	1,290.3		30,272	6,667	22.0	23,605	78.0	68.8	4,587	31.2	2,080	19.
	950	99	1,705.3		44,207	9,280	21.0	34,927	79.0	68.8	6,385	31.2	2,895	18.
	1000	259	4,496.6		113,483	23,841	21.0	89,642	79.0	68.8	16,403	31.2	7,438	18.
	1050	56	1,044.0		48,343	9,660	20.0	38,683	80.0	68.8	6,646	31.2	3,014	17.
	1100	22	280.8		18,252	3,478	19.1	14,774	80.9	68.8	2,393	31.2	1,085	16.
	1150	21	390.1		8,501	1,611	19.0	6,890	81.0	68.8	1,108	31.2	503	16.
	1200	43	1,274.4		32,141	5,789	18.0	26,352	82.0	68.8	3,983	31.2	1,806	15.
	1250	39	345.5		15,537	2,799	18.0	12,738	82.0	68.8	1,926	31.2	873	15.
	1300									68.8		31.2		14.
	1350									68.8		31.2		14.
	1400									68.8		31.2		13.
	1450									68.8		31.2		13.
	1500									68.8		31.2		12.
	1550									68.8		31.2		12.
	1600									68.8		31.2		12.
	1650									68.8		31.2		11.
	1700									68.8		31.2		11.
	1750									68.8		31.2		11.
	1800									68.8		31.2		10.
TOTAL		12,772	399,034.4	1,009	4,326,162	1,498,508		2,827,654			1,030,975		467,533	

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
		TOTAL	SOUTH		NORTH		TERMINAL		LINE-HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
43.2	657	107,644	58,126	54.0	49,518	46.0	68.8	39,991	31.2	18,135	81.5	40,357	18.5	9,161
42.8		160,638	80,329	50.0	80,309	50.0	68.8	55,266	31.2	25,063	68.8	55,253	31.2	25,056
32.6		305,963	140,724	46.0	165,239	54.0	68.8	96,818	31.2	43,906	59.5	98,317	40.5	66,922
83.9		440,595	189,539	43.0	251,056	57.0	68.8	130,403	31.2	59,136	52.5	131,804	47.5	119,252
86.9		156,592	64,397	41.1	92,195	58.9	68.8	44,305	31.2	20,092	46.9	43,239	53.1	48,956
74.1		706,809	269,641	38.1	437,168	61.9	68.8	185,513	31.2	84,128	42.4	185,359	57.6	251,809
46.1	78	316,694	113,022	35.7	203,672	64.3	68.8	77,759	31.2	35,263	38.7	78,821	61.3	124,851
64.3		172,082	56,434	32.8	115,648	67.2	68.8	38,827	31.2	17,607	35.6	41,171	64.4	74,477
15.4	274	232,567	74,935	32.2	157,632	67.8	68.8	51,555	31.2	23,380	32.9	51,861	67.1	105,771
31.8		180,200	55,886	31.0	124,314	69.0	68.8	38,450	31.2	17,436	30.5	37,916	69.5	86,398
97.8		286,591	82,361	28.7	204,230	71.3	68.8	56,664	31.2	25,697	28.5	58,206	71.5	146,024
54.7		303,262	84,891	28.0	218,371	72.0	68.8	58,405	31.2	26,486	26.8	58,523	73.2	159,848
92.7		255,904	69,109	27.0	186,795	73.0	68.8	47,547	31.2	21,562	25.2	47,072	74.8	139,723
86.9		93,149	24,215	26.0	68,934	74.0	68.8	16,660	31.2	7,555	23.9	16,475	76.1	52,459
28.6		80,014	20,014	25.0	60,000	75.0	68.8	13,770	31.2	6,244	22.7	13,620	77.3	46,330
23.0		68,309	16,421	24.0	51,888	76.0	68.8	11,298	31.2	5,123	21.5	11,156	78.5	40,732
02.6		148,413	35,339	23.8	113,074	76.2	68.8	24,313	31.2	11,026	20.5	23,180	79.5	89,894
90.3		30,272	6,667	22.0	23,605	78.0	68.8	4,587	31.2	2,080	19.6	4,627	80.4	18,978
05.3		44,207	9,280	21.0	34,927	79.0	68.8	6,385	31.2	2,895	18.8	6,566	81.2	28,361
96.6		113,483	23,841	21.0	89,642	79.0	68.8	16,403	31.2	7,438	18.0	16,136	82.0	73,506
44.0		48,343	9,660	20.0	38,683	80.0	68.8	6,646	31.2	3,014	17.3	6,692	82.7	31,991
80.8		18,252	3,478	19.1	14,774	80.9	68.8	2,393	31.2	1,085	16.7	2,467	83.3	12,307
90.1		8,501	1,611	19.0	6,890	81.0	68.8	1,108	31.2	503	16.1	1,109	83.9	5,781
74.4		32,141	5,789	18.0	26,352	82.0	68.8	3,983	31.2	1,806	15.5	4,085	84.5	22,267
45.5		15,537	2,799	18.0	12,738	82.0	68.8	1,926	31.2	873	15.0	1,911	85.0	10,827
							68.8		31.2		14.4		85.6	
							68.8		31.2		14.0		86.0	
							68.8		31.2		13.6		86.4	
							68.8		31.2		13.2		86.8	
							68.8		31.2		12.8		87.2	
							68.8		31.2		12.4		87.6	
							68.8		31.2		12.1		87.9	
							68.8		31.2		11.8		88.2	
							68.8		31.2		11.4		88.6	
							68.8		31.2		11.2		88.8	
							68.8		31.2		10.9		89.1	
034.4	1,009	4,326,162	1,498,508		2,827,654			1,030,975		467,533		1,035,923		1,791,731

TABULATION M

SOUTHBOUND

Ex. No.2 to V.S. No.11A of

1	2	3	4	5	6	7	8	9	10	11	12	13	14	1
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT	
150	50	1,796	85,104.0		301,048	174,722	58.0	126,326	42.0	59.5	103,960	40.5	70,762	81
	100	1,952	86,251.4		362,893	197,480	54.4	165,413	45.6	59.5	117,501	40.5	79,979	68
	150	947	29,287.0		221,268	110,655	50.0	110,613	50.0	59.5	65,840	40.5	44,815	59
	200	1,970	81,883.8		557,063	264,358	47.5	292,705	52.5	59.5	157,293	40.5	107,065	52
	250	1,091	29,296.3		311,303	136,831	44.0	174,472	56.0	59.5	81,414	40.5	55,417	46
	300	1,456	49,914.5		645,926	271,329	42.0	374,597	58.0	59.5	161,441	40.5	109,888	42
	350	1,080	27,317.7		412,652	159,723	38.7	252,929	61.3	59.5	95,035	40.5	64,688	38
	400	512	14,456.1		194,260	72,155	37.1	122,105	62.9	59.5	42,932	40.5	29,223	35
	450	1,875	76,602.4		880,684	317,543	36.1	563,141	63.9	59.5	188,938	40.5	128,605	32
	500	859	23,701.7		355,043	120,136	33.8	234,907	66.2	59.5	71,481	40.5	48,655	30
	550	676	15,834.1		219,401	70,218	32.0	149,183	68.0	59.5	41,780	40.5	28,438	28
	600	342	8,933.4		169,742	52,610	31.0	117,132	69.0	59.5	31,303	40.5	21,307	26
	650	502	11,685.1		177,056	52,882	29.9	124,174	70.1	59.5	31,465	40.5	21,417	25
	700	761	17,709.8	220	353,747	102,586	29.0	251,161	71.0	59.5	61,039	40.5	41,547	23
	750	472	15,366.4		278,512	78,575	28.2	199,937	71.8	59.5	46,752	40.5	31,823	22
	800	253	5,464.3		122,376	33,057	27.0	89,319	73.0	59.5	19,669	40.5	13,388	21
	850	494	11,972.2		258,090	67,295	26.1	190,795	73.9	59.5	40,041	40.5	27,254	20
	900	188	5,429.4		112,664	28,208	25.0	84,456	75.0	59.5	16,784	40.5	11,424	19
	950	349	8,744.9	254	173,803	41,724	24.0	132,079	76.0	59.5	24,826	40.5	16,898	18
	1000	201	5,131.0		84,995	19,862	23.4	65,133	76.6	59.5	11,818	40.5	8,044	18
	1050									59.5		40.5		1
	1100									59.5		40.5		1
	1150									59.5		40.5		1
	1200									59.5		40.5		1
	1250	22	464.2		15,202	3,036	20.0	12,166	80.0	59.5	1,806	40.5	1,230	1
	1300	57	1,330.6		41,902	8,392	20.0	33,510	80.0	59.5	4,993	40.5	3,399	1
	1350									59.5		40.5		1
	1400									59.5		40.5		1
	1450									59.5		40.5		1
	1500									59.5		40.5		1
	1550									59.5		40.5		1
	1600									59.5		40.5		1
	1650									59.5		40.5		1
	1700									59.5		40.5		1
	1750									59.5		40.5		1
	1800									59.5		40.5		1
TOTAL		17,755	611,842.3	474	6,249,630	2,383,377		3,866,253			1,418,111		965,266	

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
		TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
104.0		301,048	174,722	58.0	126,326	42.0	59.5	103,960	40.5	70,762	81.5	102,956	18.5	23,370
251.4		362,893	197,480	54.4	165,413	45.6	59.5	117,501	40.5	79,979	68.8	113,804	31.2	51,609
287.0		221,268	110,655	50.0	110,613	50.0	59.5	65,840	40.5	44,815	59.5	65,815	40.5	44,798
883.8		557,063	264,358	47.5	292,705	52.5	59.5	157,293	40.5	107,065	52.5	153,670	47.5	139,035
296.3		311,303	136,831	44.0	174,472	56.0	59.5	81,414	40.5	55,417	46.9	81,827	53.1	92,645
914.5		645,926	271,329	42.0	374,597	58.0	59.5	161,441	40.5	109,888	42.4	158,829	57.6	215,768
317.7		412,652	159,723	38.7	252,929	61.3	59.5	95,035	40.5	64,688	38.7	97,884	61.3	155,045
456.1		194,260	72,155	37.1	122,105	62.9	59.5	42,932	40.5	29,223	35.6	43,469	64.4	78,636
602.4		880,684	317,543	36.1	563,141	63.9	59.5	188,938	40.5	128,605	32.9	185,273	67.1	377,868
701.7		355,043	120,136	33.8	234,907	66.2	59.5	71,481	40.5	48,655	30.5	71,647	69.5	163,260
834.1		219,401	70,218	32.0	149,183	68.0	59.5	41,780	40.5	28,438	28.5	42,517	71.5	106,666
933.4		169,742	52,610	31.0	117,132	69.0	59.5	31,303	40.5	21,307	26.8	31,391	73.2	85,741
695.1		177,056	52,882	29.9	124,174	70.1	59.5	31,465	40.5	21,417	25.2	31,292	74.8	92,882
709.8	220	353,747	102,586	29.0	251,161	71.0	59.5	61,039	40.5	41,547	23.9	60,027	76.1	191,134
366.4		278,512	78,575	28.2	199,937	71.8	59.5	46,752	40.5	31,823	22.7	45,386	77.3	154,551
464.3		122,376	33,057	27.0	89,319	73.0	59.5	19,669	40.5	13,388	21.5	19,204	78.5	70,115
972.2		258,090	67,295	26.1	190,795	73.9	59.5	40,041	40.5	27,254	20.5	39,113	79.5	151,682
429.4		112,664	28,208	25.0	84,456	75.0	59.5	16,784	40.5	11,424	19.6	16,553	80.4	67,903
744.9	254	173,803	41,724	24.0	132,079	76.0	59.5	24,826	40.5	16,898	18.8	24,831	81.2	107,248
131.0		84,995	19,862	23.4	65,133	76.6	59.5	11,818	40.5	8,044	18.0	11,724	82.0	53,409
							59.5		40.5		17.3		82.7	
							59.5		40.5		16.7		83.3	
							59.5		40.5		16.1		83.9	
							59.5		40.5		15.5		84.5	
464.2		15,202	3,036	20.0	12,166	80.0	59.5	1,806	40.5	1,230	15.0	1,825	85.0	10,341
330.6		41,902	8,392	20.0	33,510	80.0	59.5	4,993	40.5	3,399	14.4	4,825	85.6	28,685
							59.5		40.5		14.0		86.0	
							59.5		40.5		13.6		86.4	
							59.5		40.5		13.2		86.8	
							59.5		40.5		12.8		87.2	
							59.5		40.5		12.4		87.6	
							59.5		40.5		12.1		87.9	
							59.5		40.5		11.8		88.2	
							59.5		40.5		11.4		88.6	
							59.5		40.5		11.2		88.8	
							59.5		40.5		10.9		89.1	
1,842.3	474	6,249,630	2,383,377		3,866,253			1,418,111		965,266		1,403,862		2,462,391

TABULATION 'M

Ex. No.2 to V.S. No.11A o

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
MILES SOUTH	MILES NORTH	CARS	TONS	REVENUE AS SETTLED TOTAL ARBITRS.	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT
200	50	2,359	91,600.7		608,785	369,811	60.7	238,974	39.3	52.5	194,151	47.5	175,660
	100	2,751	130,886.8		685,393	390,470	57.0	294,923	43.0	52.5	204,997	47.5	185,473
	150	1,514	66,978.5		454,117	240,687	53.0	213,430	47.0	52.5	126,361	47.5	114,326
	200	1,862	68,020.2		479,838	239,939	50.0	239,899	50.0	52.5	125,968	47.5	113,971
	250	1,013	31,451.7		313,371	148,801	47.5	164,570	52.5	52.5	78,121	47.5	70,680
	300	2,368	86,481.2	449	1,314,933	591,346	45.0	723,587	55.0	52.5	310,457	47.5	280,889
	350	1,859	52,499.3	179	639,529	268,325	42.0	371,204	58.0	52.5	140,871	47.5	127,454
	400	1,392	50,479.9		532,531	214,343	40.2	318,188	59.8	52.5	112,530	47.5	101,813
	450	930	25,051.5	77	382,125	148,920	39.0	233,205	61.0	52.5	78,183	47.5	70,737
	500	1,103	25,427.8		458,696	168,578	36.8	290,118	63.2	52.5	88,503	47.5	80,075
	550	1,249	24,787.3	134	580,755	202,792	34.9	377,963	65.1	52.5	106,466	47.5	96,326
	600	780	18,091.5		334,718	113,677	34.0	221,041	66.0	52.5	59,680	47.5	53,997
	650	572	13,959.4		270,196	87,340	32.3	182,856	67.7	52.5	45,854	47.5	41,486
	700	367	10,169.4	208	201,215	62,167	30.9	139,048	69.1	52.5	32,638	47.5	29,529
	750	277	6,315.1		184,729	57,085	30.9	127,644	69.1	52.5	29,970	47.5	27,115
	800	400	11,292.7		240,298	69,395	28.9	170,903	71.1	52.5	36,432	47.5	32,963
	850	425	7,726.5	374	208,911	59,650	28.6	149,261	71.4	52.5	31,316	47.5	28,334
	900	331	8,863.5		213,746	57,647	27.0	156,099	73.0	52.5	30,265	47.5	27,382
	950	328	7,030.8	1,045	183,262	47,723	26.0	135,539	74.0	52.5	25,055	47.5	22,668
	1000	144	2,723.7		74,183	19,294	26.0	54,889	74.0	52.5	10,129	47.5	9,165
	1050	96	3,148.7		57,499	14,375	25.0	43,124	75.0	52.5	7,547	47.5	6,828
	1100	219	5,906.7		102,162	24,533	24.0	77,629	76.0	52.5	12,880	47.5	11,653
	1150	116	2,357.1		76,390	17,587	23.0	58,803	77.0	52.5	9,233	47.5	8,354
	1200	36	882.2		21,746	4,994	23.0	16,752	77.0	52.5	2,622	47.5	2,372
	1250	135	3,187.4		89,550	20,946	23.4	68,604	76.6	52.5	10,997	47.5	9,949
	1300	64	1,372.4		41,825	9,180	21.9	32,645	78.1	52.5	4,820	47.5	4,360
	1350	38	791.0		23,164	4,868	21.0	18,296	79.0	52.5	2,556	47.5	2,312
	1400	24	361.9		16,874	3,549	21.0	13,325	79.0	52.5	1,863	47.5	1,686
	1450									52.5		47.5	
	1500									52.5		47.5	
	1550									52.5		47.5	
	1600									52.5		47.5	
	1650									52.5		47.5	
	1700									52.5		47.5	
	1750									52.5		47.5	
	1800									52.5		47.5	
TOTAL		22,752	757,824.9	2,466	8,790,541	3,658,022		5,132,519			1,920,465		1,737,557

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
7	608,785	369,811	60.7	238,974	39.3	52.5	194,151	47.5	175,660	81.5	194,764	18.5	44,210
8	685,393	390,470	57.0	294,923	43.0	52.5	204,997	47.5	185,473	68.8	202,907	31.2	92,016
5	454,117	240,687	53.0	213,430	47.0	52.5	126,361	47.5	114,326	59.5	126,991	40.5	86,439
2	479,838	239,939	50.0	239,899	50.0	52.5	125,968	47.5	113,971	52.5	125,947	47.5	113,952
7	313,371	148,801	47.5	164,570	52.5	52.5	78,121	47.5	70,680	46.9	77,183	53.1	87,387
2 449	1,314,933	591,346	45.0	723,587	55.0	52.5	310,457	47.5	280,889	42.4	306,801	57.6	416,786
3 179	639,529	268,325	42.0	371,204	58.0	52.5	140,871	47.5	127,454	38.7	143,656	61.3	227,548
9	532,531	214,343	40.2	318,188	59.8	52.5	112,530	47.5	101,813	35.6	113,275	64.4	204,913
5 77	382,125	148,920	39.0	233,205	61.0	52.5	78,183	47.5	70,737	32.9	76,724	67.1	156,481
8	458,696	168,578	36.8	290,118	63.2	52.5	88,503	47.5	80,075	30.5	88,486	69.5	201,632
3 134	580,755	202,792	34.9	377,963	65.1	52.5	106,466	47.5	96,326	28.5	107,719	71.5	270,244
5	334,718	113,677	34.0	221,041	66.0	52.5	59,680	47.5	53,997	26.8	59,239	73.2	161,802
4	270,196	87,340	32.3	182,856	67.7	52.5	45,854	47.5	41,486	25.2	46,080	74.8	136,776
4 208	201,215	62,167	30.9	139,048	69.1	52.5	32,638	47.5	29,529	23.9	33,232	76.1	105,816
t	184,729	57,085	30.9	127,644	69.1	52.5	29,970	47.5	27,115	22.7	28,975	77.3	98,669
7	240,298	69,395	28.9	170,903	71.1	52.5	36,432	47.5	32,963	21.5	36,744	78.5	134,159
5 374	208,911	59,650	28.6	149,261	71.4	52.5	31,316	47.5	28,334	20.5	30,599	79.5	118,662
5	213,746	57,647	27.0	156,099	73.0	52.5	30,265	47.5	27,382	19.6	30,595	80.4	125,504
8 1,045	183,262	47,723	26.0	135,539	74.0	52.5	25,055	47.5	22,668	18.8	25,481	81.2	110,058
7	74,183	19,294	26.0	54,889	74.0	52.5	10,129	47.5	9,165	18.0	9,880	82.0	45,009
7	57,499	14,375	25.0	43,124	75.0	52.5	7,547	47.5	6,828	17.3	7,460	82.7	35,664
7	102,162	24,533	24.0	77,629	76.0	52.5	12,880	47.5	11,653	16.7	12,964	83.3	64,665
1	76,390	17,587	23.0	58,803	77.0	52.5	9,233	47.5	8,354	16.1	9,467	83.9	49,336
2	21,746	4,994	23.0	16,752	77.0	52.5	2,622	47.5	2,372	15.5	2,597	84.5	14,155
4	89,550	20,946	23.4	68,604	76.6	52.5	10,997	47.5	9,949	15.0	10,291	85.0	58,313
4	41,825	9,180	21.9	32,645	78.1	52.5	4,820	47.5	4,360	14.4	4,701	85.6	27,944
0	23,164	4,868	21.0	18,296	79.0	52.5	2,556	47.5	2,312	14.0	2,561	86.0	15,735
9	16,874	3,549	21.0	13,325	79.0	52.5	1,863	47.5	1,686	13.6	1,812	86.4	11,513
						52.5		47.5		13.2		86.8	
						52.5		47.5		12.8		87.2	
						52.5		47.5		12.4		87.6	
						52.5		47.5		12.1		87.9	
						52.5		47.5		11.8		88.2	
						52.5		47.5		11.4		88.6	
						52.5		47.5		11.2		88.8	
						52.5		47.5		10.9		89.1	
9 2,466	8,790,541	3,658,022		5,132,519			1,920,465		1,737,557		1,917,131		3,215,388

TABULATION M

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
250	50	3,486	167,119.8		1,190,408	746,071	62.7	444,337	37.3	46.9	349,907	53.1	396,164
	100	1,736	73,533.7		450,266	265,646	59.0	184,620	41.0	46.9	124,588	53.1	141,058
	150	1,146	38,224.3		303,086	171,946	56.7	131,140	43.3	46.9	80,643	53.1	91,303
	200	1,748	66,049.5		594,628	315,150	53.0	279,478	47.0	46.9	147,805	53.1	167,345
	250	1,288	50,314.5		587,282	292,834	49.9	294,448	50.1	46.9	137,339	53.1	155,495
	300	1,792	58,958.5		604,196	284,182	47.0	320,014	53.0	46.9	133,281	53.1	150,901
	350	1,242	46,217.4	582	646,490	291,224	45.0	355,266	55.0	46.9	136,584	53.1	154,640
	400	774	21,415.8		274,962	118,688	43.2	156,294	56.8	46.9	55,665	53.1	63,023
	450	829	24,694.3	191	435,830	180,073	41.3	255,757	58.7	46.9	84,454	53.1	95,619
	500	689	24,373.5	1,663	404,593	157,444	38.9	247,149	61.1	46.9	73,841	53.1	83,603
	550	562	13,917.7	260	265,904	101,207	38.1	164,697	61.9	46.9	47,466	53.1	53,741
	600	782	20,853.2	173	410,015	147,591	36.0	262,424	64.0	46.9	69,220	53.1	78,371
	650	532	14,884.5	240	294,529	102,995	35.0	191,534	65.0	46.9	48,305	53.1	54,690
	700	577	11,829.4		297,700	101,400	34.1	196,300	65.9	46.9	47,557	53.1	53,843
	750	598	22,856.2		277,505	91,547	33.0	185,958	67.0	46.9	42,936	53.1	48,611
	800	388	9,392.8		183,554	56,880	31.0	126,674	69.0	46.9	26,677	53.1	30,203
	850	465	11,246.5		303,070	91,210	30.1	211,860	69.9	46.9	42,777	53.1	48,433
	900	80	1,971.7		47,686	15,366	32.2	32,320	67.8	46.9	7,207	53.1	8,159
	950	441	11,843.7		224,181	65,199	29.1	158,982	70.9	46.9	30,578	53.1	34,621
	1000	41	1,625.6		56,665	15,804	27.9	40,861	72.1	46.9	7,412	53.1	8,392
	1050									46.9		53.1	
	1100									46.9		53.1	
	1150	36	846.8		34,231	8,890	26.0	25,341	74.0	46.9	4,169	53.1	4,721
	1200									46.9		53.1	
	1250									46.9		53.1	
	1300	19	433.9		13,824	3,322	24.0	10,502	76.0	46.9	1,558	53.1	1,764
	1350	19	379.9		12,814	2,948	23.0	9,866	77.0	46.9	1,383	53.1	1,565
	1400	42	1,069.8		30,902	6,801	22.0	24,101	78.0	46.9	3,190	53.1	3,611
	1450									46.9		53.1	
	1500									46.9		53.1	
	1550									46.9		53.1	
	1600									46.9		53.1	
	1650									46.9		53.1	
	1700									46.9		53.1	
	1750									46.9		53.1	
	1800									46.9		53.1	
TOTAL		19,312	694,053.0	3,109	7,944,341	3,634,418		4,309,923			1,704,542		1,929,876

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
ONS ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
9.8	1,190,408	746,071	62.7	444,337	37.3	46.9	349,907	53.1	396,164	81.5	362,135	18.5	82,202
3.7	450,266	265,646	59.0	184,620	41.0	46.9	124,588	53.1	141,058	68.8	127,019	31.2	57,601
4.3	303,086	171,946	56.7	131,140	43.3	46.9	80,643	53.1	91,303	59.5	78,028	40.5	53,112
9.5	594,628	315,150	53.0	279,478	47.0	46.9	147,805	53.1	167,345	52.5	146,726	47.5	132,752
4.5	587,282	292,834	49.9	294,448	50.1	46.9	137,339	53.1	155,495	46.9	138,096	53.1	156,352
8.5	604,196	284,182	47.0	320,014	53.0	46.9	133,281	53.1	150,901	42.4	135,686	57.6	184,328
7.4 582	646,490	291,224	45.0	355,266	55.0	46.9	136,584	53.1	154,640	38.7	137,488	61.3	217,778
5.8	274,982	118,688	43.2	156,294	56.8	46.9	55,665	53.1	63,023	35.6	55,641	64.4	100,653
4.3 191	435,830	180,073	41.3	255,757	58.7	46.9	84,454	53.1	95,619	32.9	84,144	67.1	171,613
3.5 1,663	404,593	157,444	38.9	247,149	61.1	46.9	73,841	53.1	83,603	30.5	75,380	69.5	171,769
7.7 260	265,904	101,207	38.1	164,697	61.9	46.9	47,466	53.1	53,748	28.5	46,939	71.5	117,758
3.2 173	410,015	147,591	36.0	262,424	64.0	46.9	69,220	53.1	78,371	26.8	70,330	73.2	192,094
4.5 240	294,529	102,995	35.0	191,534	65.0	46.9	48,305	53.1	54,690	25.2	48,267	74.8	143,267
9.4	297,700	101,400	34.1	196,300	65.9	46.9	47,557	53.1	53,843	23.9	46,916	76.1	149,384
6.2	277,505	91,547	33.0	185,958	67.0	46.9	42,936	53.1	48,611	22.7	42,212	77.3	143,746
2.8	183,554	56,880	31.0	126,674	69.0	46.9	26,677	53.1	30,203	21.5	27,235	78.5	99,439
6.5	303,070	91,210	30.1	211,860	69.9	46.9	42,777	53.1	48,433	20.5	43,431	79.5	168,429
1.7	47,686	15,366	32.2	32,320	67.8	46.9	7,207	53.1	8,159	19.6	6,335	80.4	25,985
3.7	224,181	65,199	29.1	158,982	70.9	46.9	30,578	53.1	34,621	18.8	29,889	81.2	129,093
5.6	56,665	15,804	27.9	40,861	72.1	46.9	7,412	53.1	8,392	18.0	7,355	82.0	33,506
						46.9		53.1		17.3		82.7	
						46.9		53.1		16.7		83.3	
6.8	34,231	8,890	26.0	25,341	74.0	46.9	4,169	53.1	4,721	16.1	4,080	83.9	21,261
						46.9		53.1		15.5		84.5	
						46.9		53.1		15.0		85,0	
3.9	13,824	3,322	24.0	10,502	76.0	46.9	1,558	53.1	1,764	14.4	1,512	85.6	8,990
9.9	12,814	2,948	23.0	9,866	77.0	46.9	1,383	53.1	1,565	14.0	1,381	86.0	8,485
9.8	30,902	6,801	22.0	24,101	78.0	46.9	3,190	53.1	3,611	13.6	3,278	86.4	20,823
						46.9		53.1		13.2		86.8	
						46.9		53.1		12.8		87.2	
						46.9		53.1		12.4		87.6	
						46.9		53.1		12.1		87.9	
						46.9		53.1		11.8		88.2	
						46.9		53.1		11.4		88.6	
						46.9		53.1		11.2		88.8	
						46.9		53.1		10.9		89.1	
3.0 3,109	7,944,341	3,634,418		4,309,923			1,704,542		1,929,876		1,719,503		2,590,420

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRARY	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT
300	50	1,471	57,820.4		384,625	253,510	65.9	131,115	34.1	42.4	107,488	57.6	146,022
	100	1,652	51,513.3		486,736	302,011	62.0	184,725	38.0	42.4	128,053	57.6	173,958
	150	3,003	91,094.2		988,098	573,773	58.1	414,325	41.9	42.4	243,280	57.6	330,493
	200	2,887	97,547.2		1,085,588	595,807	54.9	489,781	45.1	42.4	252,622	57.6	343,185
	250	4,393	95,802.7	376	1,513,644	802,935	53.0	710,709	47.0	42.4	340,444	57.6	462,491
	300	5,060	151,896.0	462	1,994,468	1,001,046	50.2	993,422	49.8	42.4	424,444	57.6	576,602
	350	3,579	89,983.2	358	1,556,950	748,523	48.1	808,427	51.9	42.4	317,374	57.6	431,149
	400	1,422	38,847.1	215	610,074	280,655	46.0	329,419	54.0	42.4	118,998	57.6	161,657
	450	1,586	39,579.3	105	774,509	340,370	43.9	434,139	56.1	42.4	144,317	57.6	196,053
	500	1,585	63,919.0		1,181,065	495,901	42.0	685,164	58.0	42.4	210,262	57.6	285,639
	550	1,130	27,523.2	683	582,407	232,243	39.9	350,164	60.1	42.4	98,471	57.6	133,772
	600	2,155	38,554.8		917,605	358,193	39.0	559,412	61.0	42.4	151,874	57.6	206,319
	650	790	22,090.8	780	441,895	163,603	37.0	278,292	63.0	42.4	69,368	57.6	94,235
	700	481	9,455.3		209,783	75,477	36.0	134,306	64.0	42.4	32,002	57.6	43,475
	750	422	5,391.1		188,302	65,922	35.0	122,380	65.0	42.4	27,951	57.6	37,971
	800	310	6,023.7		137,546	46,466	33.8	91,080	66.2	42.4	19,702	57.6	26,764
	850	282	5,712.5		140,952	48,080	34.1	92,872	65.9	42.4	20,386	57.6	27,694
	900	239	5,106.2		132,909	42,521	32.0	90,388	68.0	42.4	18,029	57.6	24,492
	950	82	1,125.7		31,633	9,820	31.0	21,813	69.0	42.4	4,164	57.6	5,656
	1000	60	1,436.5		44,734	13,431	30.0	31,303	70.0	42.4	5,695	57.6	7,736
	1050	218	5,132.5		169,559	50,535	29.8	119,024	70.2	42.4	21,427	57.6	29,108
	1100	21	374.4		7,633	2,142	28.1	5,491	71.9	42.4	908	57.6	1,234
	1150	21	524.2		24,856	6,718	27.0	18,138	73.0	42.4	2,848	57.6	3,870
	1200									42.4		57.6	
	1250	57	687.6		38,907	10,123	26.0	28,784	74.0	42.4	4,292	57.6	5,831
	1300	19	514.1		21,244	5,292	24.9	15,952	75.1	42.4	2,244	57.6	3,048
	1350									42.4		57.6	
	1400									42.4		57.6	
	1450									42.4		57.6	
	1500									42.4		57.6	
	1550									42.4		57.6	
	1600									42.4		57.6	
	1650									42.4		57.6	
	1700									42.4		57.6	
	1750									42.4		57.6	
	1800									42.4		57.6	
TOTAL		32,925	907,655.0	2,979	13,665,722	6,525,097		7,140,625			2,766,643		3,758,454

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	384,625	253,510	65.9	131,115	34.1	42.4	107,488	57.6	146,022	81.5	106,859	18.5	24,256
	486,736	302,011	62.0	184,725	38.0	42.4	128,053	57.6	173,958	68.8	127,091	31.2	57,634
	988,098	573,773	58.1	414,325	41.9	42.4	243,280	57.6	330,493	59.5	246,523	40.5	167,802
	1,085,588	595,807	54.9	489,781	45.1	42.4	252,622	57.6	343,185	52.5	257,135	47.5	232,646
376	1,513,644	802,935	53.0	710,709	47.0	42.4	340,444	57.6	462,491	46.9	333,323	53.1	377,386
462	1,994,468	1,001,046	50.2	993,422	49.8	42.4	424,444	57.6	576,602	42.4	421,211	57.6	572,211
358	1,556,950	748,523	48.1	808,427	51.9	42.4	317,374	57.6	431,149	38.7	312,861	61.3	495,566
215	610,074	280,655	46.0	329,419	54.0	42.4	118,998	57.6	161,657	35.6	117,273	64.4	212,146
105	774,509	340,370	43.9	434,139	56.1	42.4	144,317	57.6	196,053	32.9	142,832	67.1	291,307
	1,181,065	495,901	42.0	685,164	58.0	42.4	210,262	57.6	285,639	30.5	208,975	69.5	476,189
683	582,407	232,243	39.9	350,164	60.1	42.4	098,471	57.6	133,772	28.5	99,797	71.5	250,367
	917,605	358,193	39.0	559,412	61.0	42.4	151,874	57.6	206,319	26.8	149,922	73.2	409,490
780	441,895	163,603	37.0	278,292	63.0	42.4	69,368	57.6	94,235	25.2	70,130	74.8	208,162
	209,783	75,477	36.0	134,306	64.0	42.4	32,002	57.6	43,475	23.9	32,099	76.1	102,207
	188,302	65,922	35.0	122,380	65.0	42.4	27,951	57.6	37,971	22.7	27,780	77.3	94,600
	137,546	46,466	33.8	91,080	66.2	42.4	19,702	57.6	26,764	21.5	19,582	78.5	71,498
	140,952	48,080	34.1	92,872	65.9	42.4	20,386	57.6	27,694	20.5	19,039	79.5	73,833
	132,909	42,521	32.0	90,388	68.0	42.4	18,029	57.6	24,492	19.6	17,716	80.4	72,672
	31,633	9,820	31.0	21,813	69.0	42.4	4,164	57.6	5,656	18.8	4,101	81.2	17,712
	44,734	13,431	30.0	31,303	70.0	42.4	5,695	57.6	7,736	18.0	5,635	82.0	25,668
	169,559	50,535	29.8	119,024	70.2	42.4	21,427	57.6	29,108	17.3	20,591	82.7	98,433
	7,633	2,142	28.1	5,491	71.9	42.4	908	57.6	1,234	16.7	917	83.3	4,574
	24,856	6,718	27.0	18,138	73.0	42.4	2,848	57.6	3,870	16.1	2,920	83.9	15,218
						42.4		57.6		15.5		84.5	
	38,907	10,123	26.0	28,784	74.0	42.4	4,292	57.6	5,831	15.0	4,318	85.0	24,466
	21,244	5,292	24.9	15,952	75.1	42.4	2,244	57.6	3,048	14.4	2,297	85.6	13,655
						42.4		57.6		14.0		86.0	
						42.4		57.6		13.6		86.4	
						42.4		57.6		13.2		86.8	
						42.4		57.6		12.8		87.2	
						42.4		57.6		12.4		87.6	
						42.4		57.6		12.1		87.9	
						42.4		57.6		11.8		88.2	
						42.4		57.6		11.4		88.6	
						42.4		57.6		11.2		88.8	
						42.4		57.6		10.9		89.1	
0	2,979	13,665,722	6,525,097		7,140,625		2,766,643		3,758,454		2,750,927		4,389,698

TABULATION M

SOUTHBOUND

Ex. No.2 to V.S. No.11A of

1	2	3	4	5	6	7	8	9	10	11	12	13	14
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRARIES	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT
350	50	2,642	91,160.9	460	769,870	523,044	67.9	246,826	32.1	38.7	202,418	61.3	320,626
	100	1,366	34,611.9		412,189	263,810	64.0	148,379	36.0	38.7	102,094	61.3	161,716
	150	3,712	119,945.7		1,422,934	869,878	61.1	553,056	38.9	38.7	336,643	61.3	533,235
	200	1,913	60,496.1	1,131	725,239	420,486	58.0	304,753	42.0	38.7	162,728	61.3	257,758
	250	2,109	56,967.3	1,379	801,937	441,898	55.1	360,039	44.9	38.7	171,015	61.3	270,883
	300	4,850	136,941.3		2,331,621	1,213,640	52.1	1,117,981	47.9	38.7	469,679	61.3	743,961
	350	3,656	96,162.8	125	1,664,596	829,111	49.8	835,485	50.2	38.7	320,866	61.3	508,245
	400	3,935	109,554.2		1,871,203	901,732	48.2	969,471	51.8	38.7	348,970	61.3	552,762
	450	1,889	49,042.9		962,488	443,456	46.1	519,032	53.9	38.7	171,617	61.3	271,839
	500	1,265	27,503.7		685,588	303,300	44.2	382,288	55.8	38.7	117,377	61.3	185,923
	550	2,302	54,198.7	952	1,172,017	493,689	42.1	678,328	57.9	38.7	191,058	61.3	302,631
	600	1,143	27,625.2		624,354	256,056	41.0	368,298	59.0	38.7	99,094	61.3	156,962
	650	1,377	39,047.8		871,435	340,161	39.0	531,274	61.0	38.7	131,642	61.3	208,519
	700	525	12,160.4		286,725	108,932	38.0	177,793	62.0	38.7	42,157	61.3	66,775
	750	318	6,959.0		172,200	63,699	37.0	108,501	63.0	38.7	24,652	61.3	39,047
	800	490	11,093.1		274,335	99,269	36.2	175,066	63.8	38.7	38,417	61.3	60,852
	850	207	3,359.7		108,697	38,018	35.0	70,679	65.0	38.7	14,713	61.3	23,305
	900	260	5,157.1	70	111,654	37,972	34.0	73,682	66.0	38.7	14,695	61.3	23,277
	950	176	5,012.8		131,848	43,486	33.0	88,362	67.0	38.7	16,829	61.3	26,657
	1000	551	11,716.3		298,397	95,492	32.0	202,905	68.0	38.7	36,956	61.3	58,537
	1050	3,875	38,006.4		1,528,075	473,929	31.0	1,054,146	69.0	38.7	183,411	61.3	290,518
	1100	159	4,198.5	584	129,328	38,785	30.0	90,543	70.0	38.7	15,010	61.3	23,775
	1150	428	2,797.0		220,834	64,043	29.0	156,791	71.0	38.7	24,785	61.3	39,256
	1200	128	2,697.8		112,524	32,613	29.0	79,911	71.0	38.7	12,621	61.3	19,992
	1250									38.7		61.3	
	1300									38.7		61.3	
	1350	42	1,262.1		30,282	8,169	27.0	22,113	73.0	38.7	3,161	61.3	5,008
	1400									38.7		61.3	
	1450	118	3,024.6		77,169	19,287	25.0	57,882	75.0	38.7	7,464	61.3	11,823
	1500	62	1,287.9		36,805	9,475	25.7	27,330	74.3	38.7	3,667	61.3	5,808
	1550									38.7		61.3	
	1600									38.7		61.3	
	1650									38.7		61.3	
	1700									38.7		61.3	
	1750									38.7		61.3	
	1800									38.7		61.3	
TOTAL		39,498	1,011,991.2	4,701	17,834,344	8,433,430		9,400,914			3,263,738		5,169,692

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
60.9	460	769,870	523,044	67.9	246,826	32.1	38.7	202,418	61.3	320,626	81.5	201,163	18.5	45,663
11.9		412,189	263,810	64.0	148,379	36.0	38.7	102,094	61.3	161,716	68.8	102,085	31.2	46,294
45.7		1,422,934	869,878	61.1	553,056	38.9	38.7	336,643	61.3	533,235	59.5	329,068	40.5	223,988
96.1	1,131	725,239	420,486	58.0	304,753	42.0	38.7	162,728	61.3	257,758	52.5	159,995	47.5	144,758
67.3	1,379	801,937	441,898	55.1	360,039	44.9	38.7	171,015	61.3	270,883	46.9	168,858	53.1	191,181
41.3		2,331,621	1,213,640	52.1	1,117,981	47.9	38.7	469,679	61.3	743,961	42.4	474,024	57.6	643,957
62.8	125	1,664,596	829,111	49.8	835,485	50.2	38.7	320,866	61.3	508,245	38.7	323,333	61.3	512,152
54.2		1,871,203	901,732	48.2	969,471	51.8	38.7	348,970	61.3	552,762	35.6	345,132	64.4	624,339
42.9		962,488	443,456	46.1	519,032	53.9	38.7	171,617	61.3	271,839	32.9	170,762	67.1	348,270
03.7		685,588	303,300	44.2	382,288	55.8	38.7	117,377	61.3	185,923	30.5	116,598	69.5	265,690
98.7	952	1,172,017	493,689	42.1	678,328	57.9	38.7	191,058	61.3	302,631	28.5	193,323	71.5	485,005
25.2		624,354	256,056	41.0	368,298	59.0	38.7	99,094	61.3	156,962	26.8	98,704	73.2	269,594
47.8		871,435	340,161	39.0	531,274	61.0	38.7	131,642	61.3	208,519	25.2	133,881	74.8	397,393
60.4		286,725	108,932	38.0	177,793	62.0	38.7	42,157	61.3	66,775	23.9	42,493	76.1	135,300
59.0		172,200	63,699	37.0	108,501	63.0	38.7	24,652	61.3	39,047	22.7	24,630	77.3	83,871
93.1		274,335	99,269	36.2	175,066	63.8	38.7	38,417	61.3	60,852	21.5	37,639	78.5	137,427
59.7		108,697	38,018	35.0	70,679	65.0	38.7	14,713	61.3	23,305	20.5	14,489	79.5	56,190
57.1	70	111,654	37,972	34.0	73,682	66.0	38.7	14,695	61.3	23,277	19.6	14,442	80.4	59,240
12.8		131,848	43,486	33.0	88,362	67.0	38.7	16,829	61.3	26,657	18.8	16,612	81.2	71,750
16.3		298,397	95,492	32.0	202,905	68.0	38.7	36,955	61.3	58,537	18.0	36,523	82.0	166,382
06.4		1,528,075	473,929	31.0	1,054,146	69.0	38.7	183,411	61.3	290,518	17.3	182,367	82.7	871,779
98.5	584	129,328	38,785	30.0	90,543	70.0	38.7	15,010	61.3	23,775	16.7	15,121	83.3	75,422
97.0		220,834	64,043	29.0	156,791	71.0	38.7	24,785	61.3	39,258	16.1	25,243	83.9	131,548
97.8		112,524	32,613	29.0	79,911	71.0	38.7	12,621	61.3	19,992	15.5	12,386	84.5	67,525
							38.7		61.3		15.0		85.0	
							38.7		61.3		14.4		85.6	
62.1		30,282	8,169	27.0	22,113	73.0	38.7	3,161	61.3	5,008	14.0	3,096	86.0	19,017
							38.7		61.3		13.6		86.4	
24.6		77,169	19,287	25.0	57,882	75.0	38.7	7,464	61.3	11,823	13.2	7,640	86.8	50,242
97.9		36,805	9,475	25.7	27,330	74.3	38.7	3,667	61.3	5,808	12.8	3,498	87.2	23,832
							38.7		61.3		12.4		87.6	
							38.7		61.3		12.1		87.9	
							38.7		61.3		11.8		88.2	
							38.7		61.3		11.4		88.6	
							38.7		61.3		11.2		88.8	
							38.7		61.3		10.9		89.1	
91.2	4,70.1	17,834,344	8,433,430		9,400,914			3,263,738		5,169,692		3,253,105		6,147,809

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	1
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRARIES	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT	
400	50	1,129	45,480.4		390,144	272,800	69.9	117,344	30.1	35.6	97,117	64.4	175,683	81
	100	508	16,013.4		178,844	117,890	65.9	60,954	34.1	35.6	41,969	64.4	75,921	68
	150	2,254	70,201.5		922,528	581,710	63.1	340,818	36.9	35.6	207,089	64.4	374,621	59
	200	2,933	107,654.9	1,435	1,274,074	763,696	59.9	510,378	40.1	35.6	271,876	64.4	491,820	52
	250	2,458	77,121.7		1,144,030	651,837	57.0	492,193	43.0	35.6	232,054	64.4	419,783	46
	300	4,718	140,146.6		2,516,088	1,351,369	53.7	1,164,728	46.3	35.6	481,084	64.4	870,276	42
	350	3,537	88,612.9	78	1,710,719	895,295	52.3	815,424	47.7	35.6	318,725	64.4	576,570	38
	400	2,610	80,633.1		1,311,566	663,510	50.6	648,056	49.4	35.6	236,210	64.4	427,300	35
	450	2,449	60,010.3	247	1,301,710	625,075	48.0	676,635	52.0	35.6	222,527	64.4	402,548	32
	500	1,276	28,845.5	303	657,170	301,508	45.9	355,662	54.1	35.6	107,337	64.4	194,171	30
	550	1,694	37,520.3	378	851,144	379,787	44.6	471,357	55.4	35.6	135,204	64.4	244,583	28
	600	1,210	29,496.7		637,411	273,872	43.0	363,539	57.0	35.6	97,498	64.4	176,374	26
	650	717	15,993.3		498,286	209,352	42.0	288,934	58.0	35.6	74,529	64.4	134,823	25
	700	671	16,325.7		432,468	172,372	39.9	260,096	60.1	35.6	61,364	64.4	111,008	23
	750	466	12,143.6		323,178	126,529	39.2	196,649	60.8	35.6	45,044	64.4	81,485	22
	800	182	3,439.0		103,995	39,504	38.0	64,491	62.0	35.6	14,063	64.4	25,441	21
	850	401	8,327.5		253,201	93,431	36.9	159,770	63.1	35.6	33,261	64.4	60,170	20
	900	247	9,983.4		243,597	87,709	36.0	155,888	64.0	35.6	31,224	64.4	56,485	19
	950	426	11,424.3		321,621	112,568	35.0	209,053	65.0	35.6	40,074	64.4	72,494	1
	1000	106	2,374.4		78,405	26,638	34.0	51,767	66.0	35.6	9,483	64.4	17,155	1
	1050	21	249.6		7,871	2,496	33.0	5,075	67.0	35.6	889	64.4	1,607	1
	1100	66	466.7		31,955	10,237	32.0	21,718	68.0	35.6	3,644	64.4	6,593	1
	1150	63	345.6		32,123	9,970	31.0	22,153	69.0	35.6	3,549	64.4	6,421	1
	1200	23	112.5		7,200	2,160	30.0	5,040	70.0	35.6	769	64.4	1,391	1
	1250	25	806.9		34,662	10,406	30.0	24,256	70.0	35.6	3,705	64.4	6,701	1
	1300	21	384.8		8,923	2,662	29.8	6,261	70.2	35.6	948	64.4	1,714	1
	1350									35.6		64.4		1
	1400	22	397.8		11,779	3,293	28.0	8,486	72.0	35.6	1,172	64.4	2,121	1
	1450									35.6		64.4		1
	1500	21	384.8		10,629	3,411	32.1	7,218	67.9	35.6	1,214	64.4	2,197	1
	1550									35.6		64.4		1
	1600									35.6		64.4		1
	1650									35.6		64.4		1
	1700									35.6		64.4		1
	1750									35.6		64.4		1
	1800									35.6		64.4		1
TOTAL		30,254	864,897.2	2,441	15,295,021	7,791,078		7,503,943			2,773,622		5,017,456	

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
,480.4		390,144	272,800	69.9	117,344	30.1	35.6	97,117	64.4	175,683	81.5	95,635	18.5	21,709
,013.4		178,844	117,890	65.9	60,954	34.1	35.6	41,969	64.4	75,921	68.8	41,936	31.2	19,018
,201.5		922,528	581,710	63.1	340,818	36.9	35.6	207,089	64.4	374,621	59.5	202,787	40.5	138,031
,654.9	1,435	1,274,074	763,696	59.9	510,378	40.1	35.6	271,876	64.4	491,820	52.5	267,948	47.5	242,430
,121.7		1,144,030	651,837	57.0	492,193	43.0	35.6	232,054	64.4	419,783	46.9	230,839	53.1	261,354
,146.6		2,516,088	1,351,360	53.7	1,164,728	46.3	35.6	481,084	64.4	870,276	42.4	493,845	57.6	670,883
,612.9	78	1,710,719	895,295	52.3	815,424	47.7	35.6	318,725	64.4	576,570	38.7	315,569	61.3	499,855
,633.1		1,311,566	663,510	50.6	648,056	49.4	35.6	236,210	64.4	427,300	35.6	230,708	64.4	417,348
,010.3	247	1,301,710	625,075	48.0	676,635	52.0	35.6	222,527	64.4	402,548	32.9	222,613	67.1	454,022
,845.5	303	657,170	301,508	45.9	355,662	54.1	35.6	107,337	64.4	194,171	30.5	108,477	69.5	247,185
,520.3	378	851,144	379,787	44.6	471,357	55.4	35.6	135,204	64.4	244,583	28.5	134,337	71.5	337,020
,496.7		637,411	273,872	43.0	363,539	57.0	35.6	97,498	64.4	176,374	26.8	97,428	73.2	266,111
,993.3		498,286	209,352	42.0	288,934	58.0	35.6	74,529	64.4	134,823	25.2	72,811	74.8	216,123
,325.7		432,468	172,372	39.9	260,096	60.1	35.6	61,364	64.4	111,008	23.9	62,163	76.1	197,933
,143.6		323,178	126,529	39.2	196,649	60.8	35.6	45,044	64.4	81,485	22.7	44,639	77.3	152,010
,439.0		103,995	39,504	38.0	64,491	62.0	35.6	14,063	64.4	25,441	21.5	13,866	78.5	50,625
,327.5		253,201	93,431	36.9	159,770	63.1	35.6	33,261	64.4	60,170	20.5	32,753	79.5	127,017
,983.4		243,597	87,709	36.0	155,888	64.0	35.6	31,224	64.4	56,485	19.6	30,554	80.4	125,334
,424.3		321,621	112,568	35.0	209,053	65.0	35.6	40,074	64.4	72,494	18.8	39,302	81.2	169,751
,374.4		78,405	26,638	34.0	51,767	66.0	35.6	9,483	64.4	17,155	18.0	9,318	82.0	42,449
249.6		7,571	2,496	33.0	5,075	67.0	35.6	889	64.4	1,607	17.3	878	82.7	4,197
466.7		31,955	10,237	32.0	21,718	68.0	35.6	3,644	64.4	6,593	16.7	3,627	83.3	18,091
345.6		32,123	9,970	31.0	22,153	69.0	35.6	3,549	64.4	6,421	16.1	3,567	83.9	18,586
112.5		7,200	2,160	30.0	5,040	70.0	35.6	769	64.4	1,391	15.5	781	84.5	4,259
806.9		34,662	10,406	30.0	24,256	70.0	35.6	3,705	64.4	6,701	15.0	3,638	85.0	20,618
384.8		8,923	2,662	29.8	6,261	70.2	35.6	948	64.4	1,714	14.4	902	85.6	5,359
							35.6		64.4		14.0		86.0	
397.8		11,779	3,293	28.0	8,486	72.0	35.6	1,172	64.4	2,121	13.6	1,154	86.4	7,332
							35.6		64.4		13.2		86.8	
384.8		10,629	3,411	32.1	7,218	67.9	35.6	1,214	64.4	2,197	12.8	924	87.2	6,294
							35.6		64.4		12.4		87.6	
							35.6		64.4		12.1		87.9	
							35.6		64.4		11.8		88.2	
							35.6		64.4		11.4		88.6	
							35.6		64.4		11.2		88.8	
							35.6		64.4		10.9		89.1	
,897.2	2,441	15,295,021	7,791,078		7,503,943			2,773,622		5,017,456		2,762,999		4,740,944

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	1
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRARY	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	
450	50	834	27,581.5		308,295	218,872	71.0	89,423	29.0	32.9	72,009	67.1	146,863	81
	100	666	29,665.7		262,875	178,764	68.0	84,111	32.0	32.9	58,813	67.1	119,951	68
	150	1,693	57,824.7		646,253	414,788	64.2	231,465	35.8	32.9	136,465	67.1	278,323	59
	200	2,126	65,531.5	2,972	885,739	540,297	61.0	345,442	39.0	32.9	177,758	67.1	362,539	52
	250	1,094	31,579.4		543,831	323,023	59.4	220,808	40.6	32.9	106,275	67.1	216,748	46
	300	2,723	70,722.3		1,404,082	787,630	56.1	616,452	43.9	32.9	259,130	67.1	528,500	42
	350	1,940	59,193.0	95	1,053,006	570,042	54.1	482,964	45.9	32.9	187,544	67.1	382,498	38
	400	1,738	54,777.0	71	993,089	517,273	52.1	475,816	47.9	32.9	170,183	67.1	347,090	35
	450	712	22,291.7		488,381	244,547	50.1	243,834	49.9	32.9	80,456	67.1	164,091	32
	500	549	14,522.9	196	293,968	140,960	48.0	153,008	52.0	32.9	46,376	67.1	94,584	30
	550	1,074	28,383.3	92	638,958	294,859	46.1	344,099	53.9	32.9	97,009	67.1	197,850	25
	600	267	8,152.1		165,112	74,358	45.0	90,754	55.0	32.9	24,464	67.1	49,894	20
	650	376	11,046.2		211,432	90,861	43.0	120,571	57.0	32.9	29,893	67.1	60,968	25
	700	441	16,123.8		311,674	131,462	42.2	180,212	57.8	32.9	43,251	67.1	88,211	25
	750	402	8,936.3		260,059	106,631	41.0	153,428	59.0	32.9	35,082	67.1	71,549	25
	800	199	4,970.8		128,040	51,187	40.0	76,853	60.0	32.9	16,841	67.1	34,346	25
	850	84	2,865.4		42,803	16,250	38.0	26,553	62.0	32.9	5,346	67.1	10,904	25
	900	78	1,078.7		45,403	16,818	37.0	28,585	63.0	32.9	5,533	67.1	11,285	15
	950	141	2,776.0		84,521	30,421	36.0	54,100	64.0	32.9	10,009	67.1	20,412	15
	1000	41	786.5		23,604	8,252	35.0	15,352	65.0	32.9	2,715	67.1	5,537	15
	1050	39	374.4		14,112	4,802	34.0	9,310	66.0	32.9	1,580	67.1	3,222	15
	1100	25	265.7		14,489	4,920	34.0	9,569	66.0	32.9	1,619	67.1	3,301	15
	1150									32.9		67.1		15
	1200									32.9		67.1		15
	1250	42	829.7		21,736	6,458	29.7	15,278	70.3	32.9	2,125	67.1	4,333	15
	1300	39	1,161.8		31,604	7,493	23.7	24,111	76.3	32.9	2,465	67.1	5,028	15
	1350									32.9		67.1		15
	1400									32.9		67.1		15
	1450									32.9		67.1		15
	1500									32.9		67.1		15
	1550									32.9		67.1		15
	1600									32.9		67.1		15
	1650									32.9		67.1		15
	1700									32.9		67.1		15
	1750									32.9		67.1		15
	1800													
TOTAL		17,293	521,440.4	3,426	8,873,066	4,780,968		4,092,098			1,572,941		3,208,027	

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
		TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
881.5		308,295	218,872	71.0	89,423	29.0	32.9	72,009	67.1	146,863	81.5	72,880	18.5	16,543
365.7		262,875	178,764	68.0	84,111	32.0	32.9	58,813	67.1	119,951	68.8	57,868	31.2	26,243
824.7		646,253	414,788	64.2	231,465	35.8	32.9	136,465	67.1	278,323	59.5	137,722	40.5	93,743
631.5	2,972	885,739	540,297	61.0	345,442	39.0	32.9	177,758	67.1	362,539	52.5	181,357	47.5	164,085
579.4		543,831	323,023	59.4	220,808	40.6	32.9	106,275	67.1	216,748	46.9	103,559	53.1	117,249
722.3		1,404,082	787,630	56.1	616,452	43.9	32.9	259,130	67.1	528,500	42.4	261,376	57.6	355,076
193.0	96	1,053,006	570,042	54.1	482,964	45.9	32.9	187,544	67.1	382,498	38.7	186,907	61.3	296,057
777.0	71	993,089	517,273	52.1	475,816	47.9	32.9	170,183	67.1	347,090	35.6	169,390	64.4	306,426
291.7		488,381	244,547	50.1	243,834	49.9	32.9	80,456	67.1	164,091	32.9	80,221	67.1	163,613
522.9	196	293,968	140,960	48.0	153,008	52.0	32.9	46,376	67.1	94,584	30.5	46,667	69.5	106,341
383.3	92	638,958	294,859	46.1	344,099	53.9	32.9	97,009	67.1	197,850	28.5	98,068	71.5	246,031
152.1		165,112	74,358	45.0	90,754	55.0	32.9	24,464	67.1	49,894	26.8	24,322	73.2	66,432
046.2		211,432	90,861	43.0	120,571	57.0	32.9	29,893	67.1	60,968	25.2	30,384	74.8	90,187
123.8		311,674	131,462	42.2	180,212	57.8	32.9	43,251	67.1	88,211	23.9	43,071	76.1	137,141
936.3		260,059	106,631	41.0	153,428	59.0	32.9	35,082	67.1	71,549	22.7	34,828	77.3	118,600
970.8		128,040	51,187	40.0	76,853	60.0	32.9	16,841	67.1	34,346	21.5	16,523	78.5	60,330
865.4		42,803	16,250	38.0	26,553	62.0	32.9	5,346	67.1	10,904	20.5	5,443	79.5	21,110
078.7		45,403	16,818	37.0	28,585	63.0	32.9	5,533	67.1	11,285	19.6	5,603	80.4	22,982
776.0		84,521	30,421	36.0	54,100	64.0	32.9	10,009	67.1	20,412	18.8	10,171	81.2	43,929
786.5		23,604	8,252	35.0	15,352	65.0	32.9	2,715	67.1	5,537	18.0	2,763	82.0	12,589
374.4		14,112	4,802	34.0	9,310	66.0	32.9	1,580	67.1	3,222	17.3	1,611	82.7	7,699
265.7		14,489	4,920	34.0	9,569	66.0	32.9	1,619	67.1	3,301	16.7	1,598	83.3	7,971
							32.9		67.1		16.1		83.9	
							32.9		67.1		15.5		84.5	
829.7		21,736	6,458	29.7	15,278	70.3	32.9	2,125	67.1	4,333	15.0	2,292	85.0	12,986
161.8		31,604	7,493	23.7	24,111	76.3	32.9	2,465	67.1	5,028	14.4	3,472	85.6	20,639
							32.9		67.1		14.0		86.0	
							32.9		67.1		13.6		86.4	
							32.9		67.1		13.2		86.8	
							32.9		67.1		12.8		87.2	
							32.9		67.1		12.4		87.6	
							32.9		67.1		12.1		87.9	
							32.9		67.1		11.8		88.2	
							32.9		67.1		11.4		88.6	
							32.9		67.1		11.2		88.8	
							32.9		67.1		10.9		89.1	
440.4	3,426	8,873,066	4,780,968		4,092,098			1,572,941		3,208,027		1,578,096		2,514,002

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
500	50	3,430	70,332.0		1,291,129	942,578	73.0	348,551	27.0	30.5	287,486	69.5	655,092
	100	1,428	29,851.9		560,316	386,657	69.0	173,659	31.0	30.5	117,930	69.5	268,727
	150	4,679	112,556.1		2,137,063	1,409,837	66.0	727,226	34.0	30.5	430,000	69.5	979,837
	200	5,143	149,048.1		2,647,199	1,667,771	63.0	979,428	37.0	30.5	508,670	69.5	1,159,101
	250	7,958	168,727.3		4,731,592	2,885,016	61.0	1,846,576	39.0	30.5	879,930	69.5	2,005,086
	300	21,134	427,353.4	21,084	12,430,213	7,208,070	58.0	5,222,143	42.0	30.5	2,198,461	69.5	5,009,609
	350	9,669	207,411.8	19,788	6,062,423	3,414,976	56.3	2,647,447	43.7	30.5	1,041,568	69.5	2,373,408
	400	3,812	104,451.0	250	2,055,402	1,108,115	53.9	947,287	46.1	30.5	337,975	69.5	770,140
	450	3,237	85,677.9	211	2,176,579	1,134,537	52.1	1,042,042	47.9	30.5	346,034	69.5	788,503
	500	682	14,014.1		351,393	175,936	50.1	175,457	49.9	30.5	53,660	69.5	122,276
	550	1,346	25,202.1		751,773	360,853	48.0	390,920	52.0	30.5	110,060	69.5	250,793
	600	888	19,591.7	866	584,386	274,618	47.0	309,768	53.0	30.5	83,758	69.5	190,860
	650	1,247	30,167.0		653,463	296,080	45.3	357,383	54.7	30.5	90,304	69.5	205,776
	700	377	12,993.2	156	401,006	176,934	44.1	224,072	55.9	30.5	53,965	69.5	122,969
	750	645	10,310.5		334,884	144,018	43.0	190,866	57.0	30.5	43,925	69.5	100,093
	800	252	7,187.1		144,193	59,129	41.0	85,064	59.0	30.5	18,034	69.5	41,095
	850	180	3,696.9		125,808	50,338	40.0	75,470	60.0	30.5	15,353	69.5	34,985
	900	142	3,130.0		100,689	39,579	39.3	61,110	60.7	30.5	12,072	69.5	27,507
	950	80	911.8		51,891	19,714	38.0	32,177	62.0	30.5	6,013	69.5	13,701
	1000	103	935.8		44,609	16,513	37.0	28,096	63.0	30.5	5,036	69.5	11,477
	1050	105	1,188.7		45,941	16,559	36.0	29,382	64.0	30.5	5,050	69.5	11,509
	1100	21	499.2		25,896	9,069	35.0	16,827	65.0	30.5	2,766	69.5	6,303
	1150									30.5		69.5	
	1200									30.5		69.5	
	1250	20	519.4		12,367	4,096	33.1	8,271	66.9	30.5	1,249	69.5	2,847
	1300									30.5		69.5	
	1350									30.5		69.5	
	1400									30.5		69.5	
	1450									30.5		69.5	
	1500									30.5		69.5	
	1550									30.5		69.5	
	1600									30.5		69.5	
	1650									30.5		69.5	
	1700									30.5		69.5	
	1750									30.5		69.5	
	1800									30.5		69.5	
TOTAL		66,578	1,485,757.0	42,355	37,720,215	21,800,993		15,919,222			6,649,299		15,151,694

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRARY. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
52.0	1,291,129	942,578	73.0	348,551	27.0	30.5	287,486	69.5	655,092	81.5	284,069	18.5	64,482
51.9	560,316	386,657	69.0	173,659	31.0	30.5	117,930	69.5	268,727	68.8	119,477	31.2	54,182
56.1	2,137,063	1,409,837	66.0	727,226	34.0	30.5	430,000	69.5	979,837	59.5	432,699	40.5	294,527
48.1	2,647,199	1,667,771	63.0	979,428	37.0	30.5	508,670	69.5	1,159,101	52.5	514,200	47.5	465,228
27.3	4,731,592	2,885,016	61.0	1,846,576	39.0	30.5	879,930	69.5	2,005,086	46.9	866,044	53.1	980,532
53.4	21,084 12,430,213	7,208,070	58.0	5,222,143	42.0	30.5	2,198,461	69.5	5,009,609	42.4	2,214,189	57.6	3,007,954
11.8	19,788 6,062,423	3,414,976	56.3	2,647,447	43.7	30.5	1,041,568	69.5	2,373,408	38.7	1,024,562	61.3	1,622,885
51.0	250 2,055,402	1,108,115	53.9	947,287	46.1	30.5	337,975	69.5	770,140	35.6	337,234	64.4	610,053
77.9	211 2,176,579	1,134,537	52.1	1,042,042	47.9	30.5	346,034	69.5	788,503	32.9	342,832	67.1	699,210
14.1	351,393	175,936	50.1	175,457	49.9	30.5	53,660	69.5	122,276	30.5	53,514	69.5	121,943
02.1	751,773	360,853	48.0	390,920	52.0	30.5	110,060	69.5	250,793	28.5	111,412	71.5	279,508
91.7	866 584,386	274,618	47.0	309,768	53.0	30.5	83,758	69.5	190,860	26.8	83,018	73.2	226,750
67.0	653,463	296,080	45.3	357,383	54.7	30.5	90,304	69.5	205,776	25.2	90,061	74.8	267,322
93.2	156 401,006	176,934	44.1	224,072	55.9	30.5	53,965	69.5	122,969	23.9	53,553	76.1	170,519
10.5	334,884	144,018	43.0	190,866	57.0	30.5	43,925	69.5	100,093	22.7	43,327	77.3	147,539
87.1	144,193	59,129	41.0	85,064	59.0	30.5	18,034	69.5	41,095	21.5	18,289	78.5	66,775
96.9	125,808	50,338	40.0	75,470	60.0	30.5	15,353	69.5	34,985	20.5	15,471	79.5	59,999
30.0	100,689	39,579	39.3	61,110	60.7	30.5	12,072	69.5	27,507	19.6	11,978	80.4	49,132
11.8	51,891	19,714	38.0	32,177	62.0	30.5	6,013	69.5	13,701	18.8	6,049	81.2	26,128
35.8	44,609	16,513	37.0	28,096	63.0	30.5	5,036	69.5	11,477	18.0	5,057	82.0	23,039
88.7	45,941	16,559	36.0	29,382	64.0	30.5	5,050	69.5	11,509	17.3	5,083	82.7	24,299
99.2	25,896	9,069	35.0	16,827	65.0	30.5	2,766	69.5	6,303	16.7	2,810	83.3	14,017
						30.5		69.5		16.1		83.9	
						30.5		69.5		15.5		84.5	
19.4	12,367	4,096	33.1	8,271	66.9	30.5	1,249	69.5	2,847	15.0	1,241	85.0	7,030
						30.5		69.5		14.4		85.6	
						30.5		69.5		14.0		86.0	
						30.5		69.5		13.6		86.4	
						30.5		69.5		13.2		86.8	
						30.5		69.5		12.8		87.2	
						30.5		69.5		12.4		87.6	
						30.5		69.5		12.1		87.9	
						30.5		69.5		11.8		88.2	
						30.5		69.5		11.4		88.6	
						30.5		69.5		11.2		88.8	
						30.5		69.5		10.9		89.1	
57.0	42,355	37,720,215	21,800,993		15,919,222		6,649,299		15,151,694		6,636,169		9,283,053

TABULATION M

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
550	50	624	14,875.6		158,824	117,484	74.0	41,340	26.0	28.5	33,483	71.5	84,001
	100	849	29,206.0		360,873	255,508	70.8	105,365	29.2	28.5	72,820	71.5	182,688
	150	1,379	59,394.9		739,073	502,073	67.9	237,000	32.1	28.5	143,091	71.5	358,982
	200	1,121	36,630.8		558,109	362,330	64.9	195,779	35.1	28.5	103,264	71.5	259,066
	250	1,765	58,600.7		912,011	565,135	62.0	346,876	38.0	28.5	161,063	71.5	404,072
	300	2,145	56,443.1		1,104,651	663,846	60.1	440,805	39.9	28.5	189,196	71.5	474,650
	350	3,564	69,993.9	412	1,592,748	923,488	58.0	669,260	42.0	28.5	263,194	71.5	660,294
	400	2,144	61,359.6		1,271,671	712,154	56.0	559,517	44.0	28.5	202,964	71.5	509,190
	450	1,563	36,158.0	76	909,764	494,957	54.4	414,807	45.6	28.5	141,063	71.5	353,894
	500	1,199	26,120.3		606,007	314,863	52.0	291,144	48.0	28.5	89,736	71.5	225,127
	550	1,878	46,765.6		1,088,020	543,655	50.0	544,365	50.0	28.5	154,942	71.5	388,713
	600	767	18,628.5		479,075	229,980	48.0	249,095	52.0	28.5	65,544	71.5	164,436
	650	905	24,119.7		549,154	250,743	45.7	298,411	54.3	28.5	71,462	71.5	179,281
	700	177	4,971.6		113,700	52,291	46.0	61,409	54.0	28.5	14,903	71.5	37,388
	750	218	4,539.7		131,142	57,917	44.2	73,225	55.8	28.5	16,506	71.5	41,411
	800	180	3,429.8		94,535	40,640	43.0	53,895	57.0	28.5	11,582	71.5	29,058
	850	178	4,164.2		115,727	48,599	42.0	67,128	58.0	28.5	13,851	71.5	34,748
	900	209	4,382.4		150,279	61,602	41.0	88,677	59.0	28.5	17,557	71.5	44,045
	950	83	3,687.8		66,685	26,666	40.0	40,019	60.0	28.5	7,600	71.5	19,066
	1000	226	5,301.4		163,272	63,649	39.0	99,623	61.0	28.5	18,140	71.5	45,509
	1050	180	4,075.8		140,098	50,036	35.7	90,062	64.3	28.5	14,260	71.5	35,776
	1100	68	1,686.4		57,296	21,210	37.0	36,086	63.0	28.5	6,045	71.5	15,165
	1150	45	721.7		25,357	9,127	36.0	16,230	64.0	28.5	2,601	71.5	6,526
	1200	187	4,933.0		151,453	53,023	35.0	98,430	65.0	28.5	15,112	71.5	37,911
	1250	82	2,082.0		70,882	25,075	35.4	45,807	64.6	28.5	7,146	71.5	17,929
	1300	20	360.0		9,660	3,280	34.0	6,380	66.0	28.5	935	71.5	2,345
	1350									28.5		71.5	
	1400	61	1,055.4		34,310	11,408	33.2	22,902	66.8	28.5	3,251	71.5	8,157
	1450									28.5		71.5	
	1500									28.5		71.5	
	1550									28.5		71.5	
	1600									28.5		71.5	
	1650									28.5		71.5	
	1700									28.5		71.5	
	1750									28.5		71.5	
	1800												
TOTAL		21,817	583,687.9	488	11,654,376	6,460,739		5,193,637			1,841,311		4,619,428

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
875.6		158,824	117,484	74.0	41,340	26.0	28.5	33,483	71.5	84,001	81.5	33,692	18.5	7,648
206.0		360,873	255,508	70.8	105,365	29.2	28.5	72,820	71.5	182,688	68.8	72,491	31.2	32,874
394.9		739,073	502,073	67.9	237,000	32.1	28.5	143,091	71.5	358,982	59.5	141,015	40.5	95,985
630.8		558,109	362,330	64.9	195,779	35.1	28.5	103,264	71.5	259,066	52.5	102,784	47.5	92,995
600.7		912,011	565,135	62.0	346,876	38.0	28.5	161,063	71.5	404,072	46.9	162,685	53.1	184,191
443.1		1,104,651	663,846	60.1	440,805	39.9	28.5	189,196	71.5	474,650	42.4	186,901	57.6	253,904
993.9	412	1,592,748	923,488	58.0	669,260	42.0	28.5	263,194	71.5	660,294	38.7	259,004	61.3	410,256
359.6		1,271,671	712,154	56.0	559,517	44.0	28.5	202,964	71.5	509,190	35.6	199,188	64.4	360,329
158.0	76	909,764	494,957	54.4	414,807	45.6	28.5	141,063	71.5	353,894	32.9	136,472	67.1	278,335
120.3		606,007	314,863	52.0	291,144	48.0	28.5	89,736	71.5	225,127	30.5	88,799	69.5	202,345
765.6		1,088,020	543,655	50.0	544,365	50.0	28.5	154,942	71.5	388,713	28.5	155,144	71.5	389,221
628.5		479,075	229,980	48.0	249,095	52.0	28.5	65,544	71.5	164,436	26.8	66,757	73.2	182,338
119.7		549,154	250,743	45.7	298,411	54.3	28.5	71,462	71.5	179,281	25.2	75,200	74.8	223,211
971.6		113,700	52,291	46.0	61,409	54.0	28.5	14,903	71.5	37,388	23.9	14,677	76.1	46,732
539.7		131,142	57,917	44.2	73,225	55.8	28.5	16,506	71.5	41,411	22.7	16,622	77.3	56,603
429.8		94,535	40,640	43.0	53,895	57.0	28.5	11,582	71.5	29,058	21.5	11,587	78.5	42,308
							28.5	13,851	71.5	34,748	20.5	13,761	79.5	53,367
164.2		115,727	48,599	42.0	67,128	58.0	28.5	17,557	71.5	44,045	19.6	17,381	80.4	71,296
382.4		150,279	61,602	41.0	88,677	59.0	28.5	7,600	71.5	19,066	18.8	7,524	81.2	32,495
687.8		66,685	26,666	40.0	40,019	60.0	28.5	18,140	71.5	45,509	18.0	17,932	82.0	81,691
301.4		163,272	63,649	39.0	99,623	61.0	28.5							
075.8		140,098	50,036	35.7	90,062	64.3	28.5	14,260	71.5	35,776	17.3	15,581	82.7	74,481
686.4		57,296	21,210	37.0	36,086	63.0	28.5	6,045	71.5	15,165	16.7	6,026	83.3	30,060
721.7		25,357	9,127	36.0	16,230	64.0	28.5	2,601	71.5	6,526	16.1	2,613	83.9	13,617
933.0		151,453	53,023	35.0	98,430	65.0	28.5	15,112	71.5	37,911	15.5	15,257	84.5	83,173
082.0		70,882	25,075	35.4	45,807	64.6	28.5	7,146	71.5	17,929	15.0	6,871	85.0	38,936
360.0		9,660	3,280	34.0	6,380	66.0	28.5	935	71.5	2,345	14.4	919	85.6	5,461
							28.5		71.5		14.0		86.0	
055.4		34,310	11,408	33.2	22,902	66.8	28.5	3,251	71.5	8,157	13.6	3,115	86.4	19,787
							28.5		71.5		13.2		86.8	
							28.5		71.5		12.8		87.2	
							28.5		71.5		12.4		87.6	
							28.5		71.5		12.1		87.9	
							28.5		71.5		11.8		88.2	
							28.5		71.5		11.4		88.6	
							28.5		71.5		11.2		88.8	
							28.5		71.5		10.9		89.1	
								1,841,311		4,619,428		1,829,998		3,363,639
687.9	488	11,654,376	6,460,739		5,193,637									

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	
				REVENUE AS SETTLED TOTAL		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				
										TERMINAL		LINE HAUL		
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRARYS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	%	AMOUNT	%	AMOUNT	
600	50	1,572	44,916.7		642,513	481,318	74.9	161,195	25.1	26.8	128,993	73.2	352,325	8
	100	422	9,490.1		217,871	156,885	72.0	60,986	28.0	26.8	42,045	73.2	114,840	6
	150	1,276	34,708.5		543,058	374,507	69.0	168,551	31.0	26.8	100,368	73.2	274,139	5
	200	1,545	43,141.4		687,785	450,619	65.5	237,166	34.5	26.8	120,766	73.2	329,853	5
	250	2,476	72,042.2		1,286,607	824,112	64.1	462,495	35.9	26.8	220,862	73.2	603,250	4
	300	4,383	90,697.8	152	2,172,686	1,327,299	61.1	845,387	38.9	26.8	355,716	73.2	971,583	4
	350	1,827	55,764.6	410	1,105,602	651,153	58.9	454,449	41.1	26.8	174,509	73.2	476,644	3
	400	1,301	31,463.9		766,191	437,937	57.2	328,254	42.8	26.8	117,367	73.2	320,570	3
	450	1,157	30,094.1		707,463	393,327	55.6	314,136	44.4	26.8	105,412	73.2	287,915	3
	500	579	14,927.0		332,479	177,416	53.4	155,063	46.6	26.8	47,547	73.2	129,869	3
	550	709	16,240.7		418,040	221,159	52.9	196,881	47.1	26.8	59,271	73.2	161,888	2
	600	857	19,099.1		480,338	240,158	50.0	240,180	50.0	26.8	64,362	73.2	175,796	2
	650	218	6,076.0		164,085	80,901	49.3	83,184	50.7	26.8	21,681	73.2	59,220	2
	700	561	16,202.4		399,864	197,422	49.4	202,442	50.6	26.8	52,909	73.2	144,513	2
	750	123	2,963.0	4,080	97,255	42,525	43.7	54,730	56.3	26.8	11,397	73.2	31,128	2
	800	134	2,344.1		70,845	32,205	45.5	38,640	54.5	26.8	8,631	73.2	23,574	2
	850	203	3,659.1		131,822	56,697	43.0	75,125	57.0	26.8	15,195	73.2	41,502	2
	900	172	3,105.8		102,466	43,031	42.0	59,435	58.0	26.8	11,532	73.2	31,499	2
	950	59	1,477.0		50,433	20,466	40.6	29,967	59.4	26.8	5,485	73.2	14,981	2
	1000	102	1,792.9		63,199	25,267	40.0	37,932	60.0	26.8	6,772	73.2	18,495	2
	1050	63	1,192.8		38,926	17,176	44.1	21,750	55.9	26.8	4,603	73.2	12,573	2
	1100	97	2,821.7		102,456	38,916	38.0	63,540	62.0	26.8	10,429	73.2	28,487	2
	1150									26.8		73.2		2
	1200	19	781.7		20,535	6,813	33.2	13,722	66.8	26.8	1,826	73.2	4,987	2
	1250	38	848.7		23,180	8,355	36.0	14,825	64.0	26.8	2,239	73.2	6,116	2
	1300									26.8		73.2		
	1350									26.8		73.2		
	1400									26.8		73.2		
	1450									26.8		73.2		
	1500									26.8		73.2		
	1550									26.8		73.2		
	1600									26.8		73.2		
	1650									26.8		73.2		
	1700									26.8		73.2		
	1750									26.8		73.2		
	1800													
TOTAL		19,893	505,851.3	4,642	10,625,699	6,305,664		4,320,035			1,689,917		4,615,747	

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRARIES	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
916.7		642,513	481,318	74.9	161,195	25.1	26.8	128,993	73.2	352,325	81.5	131,374	18.5	29,821
490.1		217,871	156,885	72.0	60,986	28.0	26.8	42,045	73.2	114,840	68.8	41,958	31.2	19,028
708.5		543,058	374,507	69.0	168,551	31.0	26.8	100,368	73.2	274,139	59.5	100,288	40.5	68,263
141.4		687,785	450,619	65.5	237,166	34.5	26.8	120,766	73.2	329,853	52.5	124,512	47.5	112,654
042.2		1,286,607	824,112	64.1	462,495	35.9	26.8	220,862	73.2	603,250	46.9	216,910	53.1	245,585
697.8	152	2,172,686	1,327,299	61.1	845,387	38.9	26.8	355,716	73.2	971,583	42.4	358,444	57.6	486,943
764.6	410	1,105,602	651,153	58.9	454,449	41.1	26.8	174,509	73.2	476,644	38.7	175,872	61.3	278,577
463.9		766,191	437,937	57.2	328,254	42.8	26.8	117,367	73.2	320,570	35.6	116,858	64.4	211,396
094.1		707,463	393,327	55.6	314,136	44.4	26.8	105,412	73.2	287,915	32.9	103,351	67.1	210,785
927.0		332,479	177,416	53.4	155,063	46.6	26.8	47,547	73.2	129,869	30.5	47,294	69.5	107,769
240.7		418,040	221,159	52.9	196,881	47.1	26.8	59,271	73.2	161,888	28.5	56,111	71.5	140,770
099.1		480,338	240,158	50.0	240,180	50.0	26.8	64,362	73.2	175,796	26.8	64,368	73.2	175,812
076.0		164,085	80,901	49.3	83,184	50.7	26.8	21,681	73.2	59,220	25.2	20,962	74.8	62,222
202.4		399,864	197,422	49.4	202,442	50.6	26.8	52,909	73.2	144,513	23.9	48,384	76.1	154,058
963.0	4,080	97,255	42,525	43.7	54,730	56.3	26.8	11,397	73.2	31,128	22.7	12,424	77.3	42,306
344.1		70,845	32,205	45.5	38,640	54.5	26.8	8,631	73.2	23,574	21.5	8,308	78.5	30,332
659.1		131,822	56,697	43.0	75,125	57.0	26.8	15,195	73.2	41,502	20.5	15,401	79.5	59,724
105.8		102,466	43,031	42.0	59,435	58.0	26.8	11,532	73.2	31,499	19.6	11,649	80.4	47,786
477.0		50,433	20,466	40.6	29,967	59.4	26.8	5,485	73.2	14,981	18.8	5,634	81.2	24,333
792.9		63,199	25,267	40.0	37,932	60.0	26.8	6,772	73.2	18,495	18.0	6,828	82.0	31,104
192.8		38,926	17,176	44.1	21,750	55.9	26.8	4,603	73.2	12,573	17.3	3,763	82.7	17,987
821.7		102,456	38,916	38.0	63,540	62.0	26.8	10,429	73.2	28,487	16.7	10,611	83.3	52,929
							26.8		73.2		16.1		83.9	
781.7		20,535	6,813	33.2	13,722	66.8	26.8	1,826	73.2	4,987	15.5	2,127	84.5	11,595
848.7		23,180	8,355	36.0	14,825	64.0	26.8	2,239	73.2	6,116	15.0	2,224	85.0	12,601
							26.8		73.2		14.4		85.6	
							26.8		73.2		14.0		86.0	
							26.8		73.2		13.6		86.4	
							26.8		73.2		13.2		86.8	
							26.8		73.2		12.8		87.2	
							26.8		73.2		12.4		87.6	
							26.8		73.2		12.1		87.9	
							26.8		73.2		11.8		88.2	
							26.8		73.2		11.4		88.6	
							26.8		73.2		11.2		88.8	
							26.8		73.2		10.9		89.1	
851.3	4,642	10,625,699	6,305,664		4,320,035			1,689,917		4,615,747		1,685,655		2,634,380

TABULATION M

SOUTHBOUND

Ex. No.2 to V.S. No.11A of

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT
650	50	689	22,817.8		423,969	322,013	76.0	101,956	24.0	25.2	81,147	74.8	240,366
	100	1,055	31,514.2		467,421	339,336	72.6	128,085	27.4	25.2	85,513	74.8	253,823
	150	2,638	70,443.4		1,466,364	1,024,393	69.9	441,971	30.1	25.2	258,147	74.8	766,246
	200	2,689	90,576.9		1,374,181	933,876	68.0	440,305	32.0	25.2	235,337	74.8	698,539
	250	6,841	80,350.3		2,339,875	1,521,722	65.0	818,153	35.0	25.2	383,474	74.8	1,138,248
	300	2,116	52,769.7		1,225,348	768,792	62.7	456,556	37.3	25.2	193,736	74.8	575,056
	350	5,918	90,893.8	92	2,572,689	1,569,649	61.0	1,003,040	39.0	25.2	395,552	74.8	1,174,097
	400	1,923	49,752.5		1,097,634	636,438	58.0	461,196	42.0	25.2	160,382	74.8	476,056
	450	2,406	43,183.2		1,392,005	793,966	57.0	598,039	43.0	25.2	200,079	74.8	593,887
	500	1,245	37,434.2		874,430	480,611	55.0	393,819	45.0	25.2	121,114	74.8	359,497
	550	1,274	26,154.8	314	698,065	371,182	53.2	326,883	46.8	25.2	93,538	74.8	277,644
	600	812	20,739.6		527,848	269,175	51.0	258,673	49.0	25.2	67,832	74.8	201,343
	650	649	16,480.4		409,908	204,974	50.0	204,934	50.0	25.2	51,653	74.8	153,321
	700	361	7,938.2		249,990	122,514	49.0	127,476	51.0	25.2	30,874	74.8	91,640
	750	199	3,789.2		128,718	61,442	47.7	67,276	52.3	25.2	15,483	74.8	45,959
	800	162	2,806.3		79,750	37,063	46.5	42,687	53.5	25.2	9,340	74.8	27,723
	850	329	7,951.2		206,816	93,018	45.0	113,798	55.0	25.2	23,441	74.8	69,577
	900	43	1,065.3		35,028	15,413	44.0	19,615	56.0	25.2	3,884	74.8	11,529
	950	68	1,555.9		39,946	17,169	43.0	22,777	57.0	25.2	4,327	74.8	12,842
	1000	127	2,232.5		77,003	32,377	42.0	44,626	58.0	25.2	8,159	74.8	24,218
	1050	137	2,467.8		101,678	41,706	41.0	59,972	59.0	25.2	10,510	74.8	31,196
	1100	21	106.0		9,412	3,752	39.9	5,660	60.1	25.2	946	74.8	2,806
	1150	21	840.3		22,110	8,632	39.0	13,478	61.0	25.2	2,175	74.8	6,457
	1200	105	1,554.0		64,851	24,634	38.0	40,217	62.0	25.2	6,208	74.8	18,426
	1250	42	694.3		21,801	8,052	36.9	13,749	63.1	25.2	2,029	74.8	6,023
	1300									25.2		74.8	
	1350									25.2		74.8	
	1400									25.2		74.8	
	1450									25.2		74.8	
	1500									25.2		74.8	
	1550									25.2		74.8	
	1600									25.2		74.8	
	1650									25.2		74.8	
	1700									25.2		74.8	
	1750									25.2		74.8	
	1800									25.2		74.8	
TOTAL		31,720	666,111.8	406	15,906,840	9,701,899		6,204,941			2,444,880		7,257,019

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
17.8		423,969	322,013	76.0	101,956	24.0	25.2	81,147	74.8	240,366	81.5	83,094	18.5	18,862
14.2		467,421	339,336	72.6	128,085	27.4	25.2	85,513	74.8	253,823	68.8	88,122	31.2	39,963
43.4		1,466,364	1,024,393	69.9	441,971	30.1	25.2	258,147	74.8	766,246	59.5	262,973	40.5	178,998
76.9		1,374,181	933,876	68.0	440,305	32.0	25.2	235,337	74.8	698,539	52.5	231,160	47.5	209,145
50.3		2,339,875	1,521,722	65.0	818,153	35.0	25.2	383,474	74.8	1,138,248	46.9	383,714	53.1	434,439
69.7		1,225,348	768,792	62.7	456,556	37.3	25.2	193,736	74.8	575,056	42.4	193,580	57.6	262,976
93.8	92	2,572,689	1,569,649	61.9	1,003,040	39.0	25.2	395,552	74.8	1,174,097	38.7	388,176	61.3	614,864
52.5		1,097,634	636,438	58.0	461,196	42.0	25.2	160,382	74.8	476,056	35.6	164,186	64.4	297,010
83.2		1,392,005	793,966	57.0	598,039	43.0	25.2	200,079	74.8	593,887	32.9	196,755	67.1	401,284
34.2		874,430	480,611	55.0	393,819	45.0	25.2	121,114	74.8	359,497	30.5	120,115	69.5	273,704
54.8	314	698,065	371,182	53.2	326,883	46.8	25.2	93,538	74.8	277,644	28.5	93,162	71.5	233,721
39.6		527,848	269,175	51.0	258,673	49.0	25.2	67,832	74.8	201,343	26.8	69,324	73.2	189,349
80.4		409,908	204,974	50.0	204,934	50.0	25.2	51,653	74.8	153,321	25.2	51,643	74.8	153,291
38.2		249,990	122,514	49.0	127,476	51.0	25.2	30,874	74.8	91,640	23.9	30,467	76.1	97,009
89.2		128,718	61,442	47.7	67,276	52.3	25.2	15,483	74.8	45,959	22.7	15,272	77.3	52,004
06.3		79,750	37,063	46.5	42,687	53.5	25.2	9,340	74.8	27,723	21.5	9,178	78.5	33,509
51.2		206,816	93,018	45.0	113,798	55.0	25.2	23,441	74.8	69,577	20.5	23,329	79.5	90,469
65.3		35,028	15,413	44.0	19,615	56.0	25.2	3,884	74.8	11,529	19.6	3,845	80.4	15,770
55.9		39,946	17,169	43.0	22,777	57.0	25.2	4,327	74.8	12,842	18.8	4,282	81.2	18,495
32.5		77,003	32,377	42.0	44,626	58.0	25.2	8,159	74.8	24,218	18.0	8,033	82.0	36,593
67.8		101,678	41,706	41.0	59,972	59.0	25.2	10,510	74.8	31,196	17.3	10,375	82.7	49,597
06.0		9,412	3,752	39.9	5,660	60.1	25.2	946	74.8	2,806	16.7	945	83.3	4,715
40.3		22,110	8,632	39.0	13,478	61.0	25.2	2,175	74.8	6,457	16.1	2,170	83.9	11,308
54.0		64,851	24,634	38.0	40,217	62.0	25.2	6,208	74.8	18,426	15.5	6,234	84.5	33,983
94.3		21,801	8,052	36.9	13,749	63.1	25.2	2,029	74.8	6,023	15.0	2,062	85.0	11,687
							25.2		74.8		14.4		85.6	
							25.2		74.8		14.0		86.0	
							25.2		74.8		13.6		86.4	
							25.2		74.8		13.2		86.8	
							25.2		74.8		12.8		87.2	
							25.2		74.8		12.4		87.6	
							25.2		74.8		12.1		87.9	
							25.2		74.8		11.8		88.2	
							25.2		74.8		11.4		88.6	
							25.2		74.8		11.2		88.8	
							25.2		74.8		10.9		89.1	
11.8	406	15,906,840	9,701,899		6,204,941			2,444,880		7,257,019		2,442,196		3,762,745

TABULATION M

SOUTHBOUND

Ex. No.2 to V.S. No.11A

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE = COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
700	50	659	13,495.6		222,289	169,392	76.2	52,897	23.8	23.9	40,485	76.1	128,907
	100	299	9,030.5		157,215	116,483	74.1	40,732	25.9	23.9	27,839	76.1	88,644
	150	893	40,883.5		436,550	315,226	72.2	121,324	27.8	23.9	75,339	76.1	239,887
	200	661	20,272.8		325,800	224,829	69.0	100,971	31.0	23.9	53,734	76.1	171,095
	250	840	24,289.6		479,083	312,883	65.3	166,200	34.7	23.9	74,779	76.1	238,104
	300	2,020	44,455.2		1,049,699	669,325	63.8	380,374	36.2	23.9	159,969	76.1	509,356
	350	1,433	28,528.3		727,326	450,127	61.9	277,199	38.1	23.9	107,580	76.1	342,547
	400	1,612	39,178.3		978,968	585,212	59.8	393,756	40.2	23.9	139,866	76.1	445,346
	450	842	17,824.3	1,163	479,353	276,734	57.7	202,619	42.3	23.9	66,139	76.1	210,595
	500	594	17,413.1		439,076	245,991	56.0	193,085	44.0	23.9	58,792	76.1	187,199
	550	900	17,827.6	837	532,147	287,382	54.0	244,765	46.0	23.9	68,684	76.1	218,698
	600	582	14,348.0		449,919	238,435	53.0	211,484	47.0	23.9	56,986	76.1	181,449
	650	663	17,632.4	5,425	466,012	231,753	49.7	234,259	50.3	23.9	55,389	76.1	176,364
	700	483	8,612.9	1,253	240,900	121,393	50.4	119,507	49.6	23.9	29,013	76.1	92,380
	750	19	484.7		11,082	5,421	48.9	5,661	51.1	23.9	1,296	76.1	4,125
	800	190	4,542.5	318	150,750	70,635	46.9	80,115	53.1	23.9	16,882	76.1	53,753
	850	87	1,826.2		61,247	28,174	46.0	33,073	54.0	23.9	6,734	76.1	21,440
	900	130	1,798.7		71,552	32,200	45.0	39,352	55.0	23.9	7,696	76.1	24,504
	950	43	998.8		31,840	14,008	44.0	17,836	56.0	23.9	3,347	76.1	10,657
	1000	130	2,156.8		74,206	32,005	43.1	42,201	56.9	23.9	7,649	76.1	24,356
	1050	503	6,428.0		272,966	115,185	42.2	157,781	57.8	23.9	27,529	76.1	87,656
	1100	133	1,662.3		73,845	30,290	41.0	43,555	59.0	23.9	7,239	76.1	23,051
	1150	231	2,688.6		151,833	60,697	40.0	91,136	60.0	23.9	14,507	76.1	46,190
	1200									23.9		76.1	
	1250	21	376.5		11,440	4,451	38.9	6,989	61.1	23.9	1,064	76.1	3,387
	1300									23.9		76.1	
	1350									23.9		76.1	
	1400									23.9		76.1	
	1450									23.9		76.1	
	1500									23.9		76.1	
	1550									23.9		76.1	
	1600									23.9		76.1	
	1650									23.9		76.1	
	1700									23.9		76.1	
	1750									23.9		76.1	
	1800									23.9		76.1	
TOTAL		13,968	336,755.2	8,996	7,895,098	4,638,227		3,256,871			1,108,537		3,529,69

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
ONS ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
5.6	222,289	169,392	76.2	52,897	23.8	23.9	40,485	76.1	128,907	81.5	43,111	18.5	9,786
0.5	157,215	116,483	74.1	40,732	25.9	23.9	27,839	76.1	88,644	68.8	28,024	31.2	12,708
3.5	436,550	315,226	72.2	121,324	27.8	23.9	75,339	76.1	239,887	59.5	72,188	40.5	49,136
2.8	325,800	224,829	69.0	100,971	31.0	23.9	53,734	76.1	171,095	52.5	53,010	47.5	47,961
9.6	479,083	312,883	65.3	166,200	34.7	23.9	74,779	76.1	238,104	46.9	77,948	53.1	88,252
5.2	1,049,699	669,325	63.8	380,374	36.2	23.9	159,969	76.1	509,356	42.4	161,279	57.6	219,095
8.3	727,326	450,127	61.9	277,199	38.1	23.9	107,580	76.1	342,547	38.7	107,276	61.3	169,923
8.3	978,968	585,212	59.8	393,756	40.2	23.9	139,866	76.1	445,346	35.6	140,177	64.4	253,579
4.3 1,163	479,353	276,734	57.7	202,619	42.3	23.9	66,139	76.1	210,595	32.9	66,662	67.1	135,957
3.1	439,076	245,991	56.0	193,085	44.0	23.9	58,792	76.1	187,199	30.5	58,891	69.5	134,194
7.6 837	532,147	287,382	54.0	244,765	46.0	23.9	68,684	76.1	218,698	28.5	69,758	71.5	175,007
8.0	449,919	238,435	53.0	211,484	47.0	23.9	56,986	76.1	181,449	26.8	56,678	73.2	154,806
2.4 5,425	466,012	231,753	49.7	234,259	50.3	23.9	55,389	76.1	176,364	25.2	59,033	74.8	175,226
2.9 1,253	240,900	121,393	50.4	119,507	49.6	23.9	29,013	76.1	92,380	23.9	28,562	76.1	90,945
4.7	11,082	5,421	48.9	5,661	51.1	23.9	1,296	76.1	4,125	22.7	1,285	77.3	4,376
2.5 318	150,750	70,635	46.9	80,115	53.1	23.9	16,882	76.1	53,753	21.5	17,225	78.5	62,890
6.2	61,247	28,174	46.0	33,073	54.0	23.9	6,734	76.1	21,440	20.5	6,780	79.5	26,293
8.7	71,552	32,200	45.0	39,352	55.0	23.9	7,696	76.1	24,504	19.6	7,713	80.4	31,639
8.8	31,840	14,004	44.0	17,836	56.0	23.9	3,347	76.1	10,657	18.8	3,353	81.2	14,483
6.8	74,206	32,005	43.1	42,201	56.9	23.9	7,649	76.1	24,356	18.0	7,596	82.0	34,605
8.0	272,966	115,185	42.2	157,781	57.8	23.9	27,529	76.1	87,656	17.3	27,296	82.7	130,485
2.3	73,845	30,290	41.0	43,555	59.0	23.9	7,239	76.1	23,051	16.7	7,274	83.3	36,281
8.6	151,833	60,697	40.0	91,136	60.0	23.9	14,507	76.1	46,190	16.1	14,673	83.9	76,463
						23.9		76.1		15.5		84.5	
6.5	11,440	4,451	38.9	6,989	61.1	23.9	1,064	76.1	3,387	15.0	1,048	85.0	5,941
						23.9		76.1		14.4		85.6	
						23.9		76.1		14.0		86.0	
						23.9		76.1		13.6		86.4	
						23.9		76.1		13.2		86.8	
						23.9		76.1		12.8		87.2	
						23.9		76.1		12.4		87.6	
						23.9		76.1		12.1		87.9	
						23.9		76.1		11.8		88.2	
						23.9		76.1		11.4		88.6	
						23.9		76.1		11.2		88.8	
						23.9		76.1		10.9		89.1	
55.2	8,996 7,895,098	4,638,227		3,256,871			1,108,537		3,529,690		1,116,840		2,140,031

TABULATION M

SOUTHBOUND

Ex. No.2 to V.S. No.11A

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT
750	50	690	15,543.0		297,252	231,850	78.0	65,402	22.0	22.7	52,630	77.3	179,220
	100	343	6,502.3	315	134,345	100,771	75.0	33,574	25.0	22.7	22,878	77.3	77,896
	150	1,769	51,841.8		833,802	600,256	72.0	233,546	28.0	22.7	136,258	77.3	463,998
	200	942	24,607.8		429,604	300,530	70.0	129,074	30.0	22.7	68,220	77.3	232,310
	250	1,507	31,124.9	291	757,210	507,351	67.0	249,859	33.0	22.7	115,169	77.3	392,182
	300	2,602	55,186.4	418	1,365,759	884,966	64.8	480,793	35.2	22.7	200,887	77.3	684,079
	350	1,991	37,625.7	1,094	910,872	574,954	63.1	335,918	36.9	22.7	130,515	77.3	444,439
	400	797	19,023.4		528,728	322,781	61.0	205,947	39.0	22.7	73,271	77.3	249,510
	450	922	23,202.3	2,165	581,712	343,621	59.1	238,091	40.9	22.7	78,002	77.3	265,619
	500	461	12,600.2	1,107	341,629	194,705	57.0	146,924	43.0	22.7	44,198	77.3	150,507
	550	186	4,316.0		153,782	86,562	56.3	67,220	43.7	22.7	19,650	77.3	66,912
	600	646	19,773.4		391,381	210,035	53.7	181,346	46.3	22.7	47,678	77.3	162,357
	650	409	10,076.7		279,841	148,328	53.0	131,513	47.0	22.7	33,670	77.3	114,658
	700	241	5,603.7		180,755	92,188	51.0	88,567	49.0	22.7	20,927	77.3	71,261
	750	369	11,549.6		377,290	188,646	50.0	188,644	50.0	22.7	42,823	77.3	145,823
	800	223	2,965.3		115,676	56,677	49.0	58,999	51.0	22.7	12,866	77.3	43,811
	850	802	12,348.4	962	438,769	210,542	48.0	228,227	52.0	22.7	47,793	77.3	162,749
	900	88	1,586.8		72,022	33,134	46.0	38,888	54.0	22.7	7,521	77.3	25,613
	950	108	1,416.1		103,211	46,463	45.0	56,748	55.0	22.7	10,547	77.3	35,916
	1000									22.7		77.3	
	1050	19	249.6		9,773	4,205	43.0	5,568	57.0	22.7	955	77.3	3,250
	1100									22.7		77.3	
	1150									22.7		77.3	
	1200									22.7		77.3	
	1250									22.7		77.3	
	1300									22.7		77.3	
	1350									22.7		77.3	
	1400									22.7		77.3	
	1450									22.7		77.3	
	1500									22.7		77.3	
	1550									22.7		77.3	
	1600									22.7		77.3	
	1650									22.7		77.3	
	1700									22.7		77.3	
	1750									22.7		77.3	
	1800									22.7		77.3	
TOTAL		15,115	347,153.4	6,352	8,303,413	5,138,565		3,164,848			1,166,455		3,972,1

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
543.0		297,252	231,850	78.0	65,402	22.0	22.7	52,630	77.3	179,220	81.5	53,303	18.5	12,099
502.3	315	134,345	100,771	75.0	33,574	25.0	22.7	22,875	77.3	77,896	68.8	23,099	31.2	10,475
841.8		833,802	600,256	72.0	233,546	28.0	22.7	136,258	77.3	463,998	59.5	138,960	40.5	94,586
507.8		429,604	300,530	70.0	129,074	30.0	22.7	68,220	77.3	232,310	52.5	67,764	47.5	61,310
124.9	291	757,210	507,351	67.0	249,859	33.0	22.7	115,169	77.3	392,182	46.9	117,184	53.1	132,675
186.4	418	1,365,759	884,966	64.8	480,793	35.2	22.7	200,887	77.3	684,079	42.4	203,856	57.6	276,937
325.7	1,094	910,872	574,954	63.1	335,918	36.9	22.7	130,515	77.3	444,439	38.7	130,000	61.3	205,918
023.4		528,728	322,781	61.0	205,947	39.0	22.7	73,271	77.3	249,510	35.6	73,317	64.4	132,630
202.3	2,165	581,712	343,621	59.1	238,091	40.9	22.7	78,002	77.3	265,619	32.9	78,332	67.1	159,759
300.2	1,107	341,629	194,705	57.0	146,924	43.0	22.7	44,198	77.3	150,507	30.5	44,812	69.5	102,112
316.0		153,782	86,562	56.3	67,220	43.7	22.7	19,650	77.3	66,912	28.5	19,158	71.5	48,062
773.4		391,381	210,035	53.7	181,346	46.3	22.7	47,678	77.3	162,357	26.8	48,601	73.2	132,745
076.7		279,841	148,328	53.0	131,513	47.0	22.7	33,670	77.3	114,658	25.2	33,141	74.8	98,372
303.7		180,755	92,188	51.0	88,567	49.0	22.7	20,927	77.3	71,261	23.9	21,168	76.1	67,399
349.6		377,290	188,646	50.0	188,644	50.0	22.7	42,823	77.3	145,823	22.7	42,822	77.3	145,822
165.3		115,676	56,677	49.0	58,999	51.0	22.7	12,866	77.3	43,811	21.5	12,685	78.5	46,314
348.4	962	438,769	210,542	48.0	228,227	52.0	22.7	47,793	77.3	162,749	20.5	46,787	79.5	181,440
386.8		72,022	33,134	46.0	38,888	54.0	22.7	7,521	77.3	25,613	19.6	7,622	80.4	31,266
116.1		103,211	46,463	45.0	56,748	55.0	22.7	10,547	77.3	35,916	18.8	10,669	81.2	46,079
							22.7		77.3		18.0		82.0	
249.6		9,773	4,205	43.0	5,568	57.0	22.7	955	77.3	3,250	17.3	963	82.7	4,605
							22.7		77.3		16.7		83.3	
							22.7		77.3		16.1		83.9	
							22.7		77.3		15.5		84.5	
							22.7		77.3		15.0		85.0	
							22.7		77.3		14.4		85.6	
							22.7		77.3		14.0		86.0	
							22.7		77.3		13.6		86.4	
							22.7		77.3		13.2		86.8	
							22.7		77.3		12.8		87.2	
							22.7		77.3		12.4		87.6	
							22.7		77.3		12.1		87.9	
							22.7		77.3		11.8		88.2	
							22.7		77.3		11.4		88.6	
							22.7		77.3		11.2		88.8	
							22.7		77.3		10.9		89.1	
53.4	6,352	8,303,413	5,138,565		3,164,848			1,166,455		3,972,110		1,174,243		1,990,605

TABULATION M

Ex. No.2 to V.S. No.11A

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
800	50	201	5,835.3		116,628	92,006	78.9	24,622	21.1	21.5	19,781	78.5	72,225
	100	164	3,799.7		82,836	62,956	76.0	19,880	24.0	21.5	13,536	78.5	49,420
	150	403	10,270.5	751	180,855	131,245	72.6	49,610	27.4	21.5	28,218	78.5	103,027
	200	1,925	86,696.1	10,603	1,117,220	793,094	71.0	324,126	29.0	21.5	170,515	78.5	622,579
	250	1,575	24,177.2	2,321	657,850	451,863	68.7	205,987	31.3	21.5	97,151	78.5	354,712
	300	1,458	34,382.2	5,079	847,163	554,492	65.5	292,671	34.5	21.5	119,216	78.5	435,276
	350	1,855	34,583.6	19,972	880,218	564,037	64.1	316,181	35.9	21.5	121,268	78.5	442,769
	400	833	19,404.4	1,918	459,312	285,406	62.1	173,906	37.9	21.5	61,362	78.5	224,044
	450	908	23,638.3	8,895	572,898	344,840	60.2	228,058	39.8	21.5	74,141	78.5	270,699
	500	644	13,937.9	11,261	380,094	223,177	58.7	156,917	41.3	21.5	47,983	78.5	175,194
	550	559	10,245.9	1,550	352,077	203,517	57.8	148,560	42.2	21.5	43,756	78.5	159,761
	600	284	6,673.9	1,197	204,388	112,457	55.0	91,931	45.0	21.5	24,178	78.5	88,279
	650	356	11,065.3	6,100	281,669	152,137	54.0	129,532	46.0	21.5	32,709	78.5	119,428
	700	442	10,440.7	3,864	224,538	118,990	53.0	105,548	47.0	21.5	25,583	78.5	93,407
	750	54	2,169.6		62,518	31,892	51.0	30,626	49.0	21.5	6,857	78.5	25,035
	800	106	1,628.5		62,903	31,412	49.9	31,491	50.1	21.5	6,754	78.5	24,658
	850	59	992.3	780	31,153	15,267	49.0	15,886	51.0	21.5	3,282	78.5	11,985
	900	20	412.1		6,365	3,060	48.1	3,305	51.9	21.5	658	78.5	2,402
	950	84	1,386.2	389	48,412	22,748	47.0	25,664	53.0	21.5	4,891	78.5	17,857
	1000									21.5		78.5	
	1050									21.5		78.5	
	1100									21.5		78.5	
	1150									21.5		78.5	
	1200									21.5		78.5	
	1250									21.5		78.5	
	1300									21.5		78.5	
	1350									21.5		78.5	
	1400									21.5		78.5	
	1450									21.5		78.5	
	1500									21.5		78.5	
	1550									21.5		78.5	
	1600									21.5		78.5	
	1650									21.5		78.5	
	1700									21.5		78.5	
	1750									21.5		78.5	
	1800									21.5		78.5	
TOTAL		11,930	301,739.7	74,680	6,569,097	4,194,596		2,374,501			901,839		3,292,757

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
835.3		116,628	92,006	78.9	24,622	21.1	21.5	19,781	78.5	72,225	81.5	20,067	18.5	4,555
799.7		82,836	62,956	76.0	19,880	24.0	21.5	13,536	78.5	49,420	68.8	13,677	31.2	6,203
270.5	751	180,855	131,245	72.6	49,610	27.4	21.5	28,218	78.5	103,027	59.5	29,518	40.5	20,092
696.1	10,603	1,117,220	793,094	71.0	324,126	29.0	21.5	170,515	78.5	622,579	52.5	170,166	47.5	153,960
177.2	2,321	657,850	451,863	68.7	205,987	31.3	21.5	97,151	78.5	354,712	46.9	96,608	53.1	109,379
382.2	5,079	847,163	554,492	65.5	292,671	34.5	21.5	119,216	78.5	435,276	42.4	124,093	57.6	168,578
583.6	19,972	880,218	564,037	64.1	316,181	35.9	21.5	121,268	78.5	442,769	38.7	122,362	61.3	193,819
404.4	1,918	459,312	285,406	62.1	173,906	37.9	21.5	61,362	78.5	224,044	35.6	61,911	64.4	111,995
638.3	8,895	572,898	344,840	60.2	228,058	39.8	21.5	74,141	78.5	270,699	32.9	75,031	67.1	153,027
937.9	11,261	380,094	223,177	58.7	156,917	41.3	21.5	47,983	78.5	175,194	30.5	47,860	69.5	109,057
245.9	1,550	352,077	203,517	57.8	148,560	42.2	21.5	43,756	78.5	159,761	28.5	42,340	71.5	106,220
673.9	1,197	204,388	112,457	55.0	91,931	45.0	21.5	24,178	78.5	88,279	26.8	24,638	73.2	67,293
065.3	6,100	281,669	152,137	54.0	129,532	46.0	21.5	32,709	78.5	119,428	25.2	32,642	74.8	96,890
440.7	3,864	224,538	118,990	53.0	105,548	47.0	21.5	25,583	78.5	93,407	23.9	25,226	76.1	80,322
169.6		62,518	31,892	51.0	30,626	49.0	21.5	6,857	78.5	25,035	22.7	6,952	77.3	23,674
628.5		62,903	31,412	49.9	31,491	50.1	21.5	6,754	78.5	24,658	21.5	6,771	78.5	24,720
992.3	780	31,153	15,267	49.0	15,886	51.0	21.5	3,282	78.5	11,985	20.5	3,257	79.5	12,629
412.1		6,365	3,060	48.1	3,305	51.9	21.5	658	78.5	2,402	19.6	648	80.4	2,657
386.2	389	48,412	22,748	47.0	25,664	53.0	21.5	4,891	78.5	17,857	18.8	4,825	81.2	20,839
							21.5		78.5		18.0		82.0	
							21.5		78.5		17.3		82.7	
							21.5		78.5		16.7		83.3	
							21.5		78.5		16.1		83.9	
							21.5		78.5		15.5		84.5	
							21.5		78.5		15.0		85.0	
							21.5		78.5		14.4		85.6	
							21.5		78.5		14.0		86.0	
							21.5		78.5		13.6		86.4	
							21.5		78.5		13.2		86.8	
							21.5		78.5		12.8		87.2	
							21.5		78.5		12.4		87.6	
							21.5		78.5		12.1		87.9	
							21.5		78.5		11.8		88.2	
							21.5		78.5		11.4		88.6	
							21.5		78.5		11.2		88.8	
							21.5		78.5		10.9		89.1	
739.7	74.680	6,569,097	4,194,596		2,374,501			901,839		3,292,757		908,592		1,465,909

TABULATION M

Ex. No.2 to V.S. No.11A of W

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				
			TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRARY S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%
850	50	913	15,268.5		417,514	334,009	80.0	83,505	20.0	20.5	68,472	79.5	265,537	81.
	100	267	5,960.8		107,521	82,784	77.0	24,737	23.0	20.5	16,971	79.5	65,813	68.
	150	1,045	17,171.7	1,982	475,229	351,622	74.0	123,607	26.0	20.5	72,083	79.5	279,539	59.
	200	1,212	46,046.2	6,214	861,158	619,944	72.0	241,214	28.0	20.5	127,089	79.5	492,855	52.
	250	1,504	29,598.4	1,525	739,002	517,388	70.0	221,614	30.0	20.5	106,065	79.5	411,323	46.
	300	3,555	63,007.1	8,273	1,847,450	1,237,935	67.0	609,515	33.0	20.5	253,777	79.5	984,158	42.
	350	4,204	55,760.6	59,999	1,874,114	1,218,243	65.0	655,871	35.0	20.5	249,740	79.5	968,503	38.
	400	470	13,108.6	6,498	264,771	173,046	65.4	91,725	34.6	20.5	35,474	79.5	137,572	35.
	450	1,352	34,557.0	23,006	994,545	616,683	62.0	377,862	38.0	20.5	126,420	79.5	490,263	32.
	500	674	21,663.3	6,310	552,198	331,090	60.0	221,108	40.0	20.5	67,873	79.5	263,217	30.
	550	865	17,936.1	3,315	636,526	368,761	57.9	267,765	42.1	20.5	75,596	79.5	293,165	28.
	600	744	10,408.3	13,049	377,444	214,524	56.8	162,920	43.2	20.5	43,977	79.5	170,547	26.
	650	186	4,126.5	694	105,176	57,406	54.6	47,770	45.4	20.5	11,768	79.5	45,638	25.
	700	289	5,960.1	637	225,234	121,394	53.9	103,840	46.1	20.5	24,886	79.5	96,508	23.
	750	559	5,742.7		247,555	128,732	52.0	118,823	48.0	20.5	26,390	79.5	102,342	22.
	800	84	1,343.5		56,349	28,560	50.7	27,789	49.3	20.5	5,855	79.5	22,705	21.
	850	152	1,553.5		79,066	39,533	50.0	39,533	50.0	20.5	8,104	79.5	31,429	20.
	900	99	1,958.5		65,959	32,291	49.0	33,668	51.0	20.5	6,620	79.5	25,671	19.
	950	23	714.5		14,885	7,145	48.0	7,740	52.0	20.5	1,465	79.5	5,680	18.
	1000	20	405.7		18,208	8,565	47.0	9,643	53.0	20.5	1,756	79.5	6,809	18.
	1050									20.5		79.5		17.
	1100									20.5		79.5		16.
	1150									20.5		79.5		16.
	1200									20.5		79.5		15.
	1250									20.5		79.5		15.
	1300									20.5		79.5		14.
	1350									20.5		79.5		14.
	1400									20.5		79.5		13.
	1450									20.5		79.5		13.
	1500									20.5		79.5		12.
	1550									20.5		79.5		12.
	1600									20.5		79.5		12.
	1650									20.5		79.5		11.
	1700									20.5		79.5		11.
	1750									20.5		79.5		11.
	1800									20.5		79.5		10.
TOTAL		18,217	352,291.6	131,502	9,959,904	6,489,655		3,470,249			1,330,381		5,159,274	

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
38.5		417,514	334,009	80.0	83,505	20.0	20.5	68,472	79.5	265,537	81.5	68,057	18.5	15,448
30.8		107,521	82,784	77.0	24,737	23.0	20.5	16,971	79.5	65,813	68.8	17,019	31.2	7,718
71.7	1,982	475,229	351,622	74.0	123,607	26.0	20.5	72,083	79.5	279,539	59.5	73,546	40.5	50,061
46.2	6,214	861,158	619,944	72.0	241,214	28.0	20.5	127,089	79.5	492,855	52.5	126,637	47.5	114,577
98.4	1,525	739,002	517,388	70.0	221,614	30.0	20.5	106,065	79.5	411,323	46.9	103,937	53.1	117,677
07.1	8,273	1,847,450	1,237,935	67.0	609,515	33.0	20.5	253,777	79.5	984,158	42.4	258,434	57.6	351,081
80.6	59,999	1,874,114	1,218,243	65.0	655,871	35.0	20.5	249,740	79.5	968,503	38.7	253,822	61.3	402,049
08.6	6,498	264,771	173,046	65.4	91,725	34.6	20.5	35,474	79.5	137,572	35.6	32,654	64.4	59,071
57.0	23,006	994,545	616,683	62.0	377,862	38.0	20.5	126,420	79.5	490,263	32.9	124,317	67.1	253,545
53.3	6,310	552,198	331,090	60.0	221,108	40.0	20.5	67,873	79.5	263,217	30.5	67,438	69.5	153,670
36.1	3,315	636,526	368,761	57.9	267,765	42.1	20.5	75,596	79.5	293,165	28.5	76,313	71.5	191,452
08.3	13,049	377,444	214,524	56.8	162,920	43.2	20.5	43,977	79.5	170,547	26.8	43,663	73.2	119,257
26.5	694	105,176	57,406	54.6	47,770	45.4	20.5	11,768	79.5	45,638	25.2	12,038	74.8	35,732
50.1	637	225,234	121,394	53.9	103,840	46.1	20.5	24,886	79.5	96,508	23.9	24,818	76.1	79,022
42.7		247,555	128,732	52.0	118,823	48.0	20.5	26,390	79.5	102,342	22.7	26,973	77.3	91,850
43.5		56,349	28,560	50.7	27,789	49.3	20.5	5,855	79.5	22,705	21.5	5,975	78.5	21,814
53.5		79,066	39,533	50.0	39,533	50.0	20.5	8,104	79.5	31,429	20.5	8,104	79.5	31,429
58.5		65,959	32,291	49.0	33,668	51.0	20.5	6,620	79.5	25,671	19.6	6,599	80.4	27,069
14.5		14,885	7,145	48.0	7,740	52.0	20.5	1,465	79.5	5,680	18.8	1,455	81.2	6,285
05.7		18,208	8,565	47.0	9,643	53.0	20.5	1,756	79.5	6,809	18.0	1,736	82.0	7,907
							20.5		79.5		17.3		82.7	
							20.5		79.5		16.7		83.3	
							20.5		79.5		16.1		83.9	
							20.5		79.5		15.5		84.5	
							20.5		79.5		15.0		85.0	
							20.5		79.5		14.4		85.6	
							20.5		79.5		14.0		86.0	
							20.5		79.5		13.6		86.4	
							20.5		79.5		13.2		86.8	
							20.5		79.5		12.8		87.2	
							20.5		79.5		12.4		87.6	
							20.5		79.5		12.1		87.9	
							20.5		79.5		11.8		88.2	
							20.5		79.5		11.4		88.6	
							20.5		79.5		11.2		88.8	
							20.5		79.5		10.9		89.1	
91.6	131,502	9,959,904	6,489,655		3,470,249			1,330,381		5,159,274		1,333,535		2,136,714

TABULATION M

SOUTHBOUND

Ex. No.2 to V.S. No.11A o

1	2	3	4	5	6	7	8	9	10	11	12	13	14
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRARYS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
900	50	18	178.4		8,335	6,752	81.0	1,583	19.0	19.6	1,323	80.4	5,429
	100	61	1,178.4		25,916	19,859	76.6	6,057	23.4	19.6	3,892	80.4	15,967
	150	278	4,258.5	1,837	126,452	94,696	74.9	31,756	25.1	19.6	18,560	80.4	76,136
	200	204	6,214.7		119,195	86,992	73.0	32,203	27.0	19.6	17,050	80.4	69,942
	250	227	4,386.6	796	118,460	82,936	70.0	35,524	30.0	19.6	16,255	80.4	66,681
	300	248	3,589.7	710	112,709	75,116	66.6	37,593	33.4	19.6	14,723	80.4	60,393
	350	917	8,601.8		321,653	212,357	66.0	109,296	34.0	19.6	41,622	80.4	170,735
	400	542	14,421.4	5,938	285,884	183,768	64.3	102,116	35.7	19.6	36,019	80.4	147,749
	450	505	16,599.8	3,558	386,256	246,086	63.7	140,170	36.3	19.6	48,233	80.4	197,353
	500	62	1,077.9		42,802	26,104	61.0	16,698	39.0	19.6	5,116	80.4	20,988
	550	179	4,009.2	739	130,764	77,167	59.0	53,597	41.0	19.6	15,125	80.4	62,042
	600	253	5,033.8	1,929	162,141	94,066	58.0	68,075	42.0	19.6	18,437	80.4	75,629
	650	144	3,285.9	1,237	97,444	54,696	56.1	42,748	43.9	19.6	10,720	80.4	43,976
	700	22	429.0		17,028	9,372	55.0	7,656	45.0	19.6	1,837	80.4	7,535
	750	21	374.4		10,712	5,782	54.0	4,930	46.0	19.6	1,133	80.4	4,649
	800	58	1,133.6		32,331	16,800	52.0	15,531	48.0	19.6	3,293	80.4	13,507
	850									19.6		80.4	
	900									19.6		80.4	
	950	19	787.6		22,213	10,883	49.0	11,330	51.0	19.6	2,133	80.4	8,750
	1000									19.6		80.4	
	1050									19.6		80.4	
	1100									19.6		80.4	
	1150									19.6		80.4	
	1200									19.6		80.4	
	1250									19.6		80.4	
	1300									19.6		80.4	
	1350									19.6		80.4	
	1400									19.6		80.4	
	1450									19.6		80.4	
	1500									19.6		80.4	
	1550									19.6		80.4	
	1600									19.6		80.4	
	1650									19.6		80.4	
	1700									19.6		80.4	
	1750									19.6		80.4	
	1800									19.6		80.4	
TOTAL		3,757	75,560.7	16,744	2,020,295	1,303,432		716,863			255,471		1,047,961

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED TOTAL		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
178.4		8,335	6,752	81.0	1,583	19.0	19.6	1,323	80.4	5,429	81.5	1,290	18.5	293
178.4		25,916	19,859	76.6	6,057	23.4	19.6	3,892	80.4	15,967	68.8	4,167	31.2	1,890
258.5	1,837	126,452	94,696	74.9	31,756	25.1	19.6	18,560	80.4	76,136	59.5	18,895	40.5	12,861
214.7		119,195	86,992	73.0	32,203	27.0	19.6	17,050	80.4	69,942	52.5	16,907	47.5	15,296
386.6	796	118,460	82,936	70.0	35,524	30.0	19.6	16,255	80.4	66,681	46.9	16,661	53.1	18,863
589.7	710	112,709	75,116	66.6	37,593	33.4	19.6	14,723	80.4	60,393	42.4	15,939	57.6	21,654
601.8		321,653	212,357	66.0	109,296	34.0	19.6	41,622	80.4	170,735	38.7	42,298	61.3	66,998
421.4	5,938	285,884	183,768	64.3	102,116	35.7	19.6	36,019	80.4	147,749	35.6	36,353	64.4	65,763
599.8	3,558	386,256	246,086	63.7	140,170	36.3	19.6	48,233	80.4	197,353	32.9	46,116	67.1	94,054
077.9		42,802	26,104	61.0	16,698	39.0	19.6	5,116	80.4	20,988	30.5	5,093	69.5	41,605
009.2	739	130,764	77,167	59.0	53,597	41.0	19.6	15,125	80.4	62,042	28.5	15,275	71.5	38,322
033.8	1,929	162,141	94,066	58.0	68,075	42.0	19.6	18,437	80.4	75,629	26.8	18,244	73.2	49,831
285.9	1,237	97,444	54,696	56.1	42,748	43.9	19.6	10,720	80.4	43,976	25.2	10,772	74.8	31,976
429.0		17,028	9,372	55.0	7,656	45.0	19.6	1,837	80.4	7,535	23.9	1,830	76.1	5,826
374.4		10,712	5,782	54.0	4,930	46.0	19.6	1,133	80.4	4,649	22.7	1,119	77.3	3,811
133.6		32,331	16,800	52.0	15,531	48.0	19.6	3,293	80.4	13,507	21.5	3,339	78.5	12,192
							19.6		80.4		20.5		79.5	
							19.6		80.4		19.6		80.4	
787.6		22,213	10,883	49.0	11,330	51.0	19.6	2,133	80.4	8,750	18.8	2,130	81.2	9,200
							19.6		80.4		18.0		82.0	
							19.6		80.4		17.3		82.7	
							19.6		80.4		16.7		83.3	
							19.6		80.4		16.1		83.9	
							19.6		80.4		15.5		84.5	
							19.6		80.4		15.0		85.0	
							19.6		80.4		14.4		85.6	
							19.6		80.4		14.0		86.0	
							19.6		80.4		13.6		86.4	
							19.6		80.4		13.2		86.8	
							19.6		80.4		12.8		87.2	
							19.6		80.4		12.4		87.6	
							19.6		80.4		12.1		87.9	
							19.6		80.4		11.8		88.2	
							19.6		80.4		11.4		88.6	
							19.6		80.4		11.2		88.8	
							19.6		80.4		10.9		89.1	
560.7	16,744	2,020,295	1,303,432		716,863			255,471		1,047,961		256,428		460,435

TABULATION M

Ex. No.2 to V.S. No.11A o

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
950	50	118	1,738.2		57,673	46,569	80.7	11,104	19.3	18.8	8,755	81.2	37,814
	100	21	213.0		8,179	6,454	78.9	1,725	21.1	18.8	1,213	81.2	5,241
	150	401	7,544.5	3,233	239,487	182,004	76.0	57,483	24.0	18.8	34,217	81.2	147,787
	200	270	6,465.3	420	169,666	125,642	74.1	44,024	25.9	18.8	23,621	81.2	102,021
	250	1,558	17,817.6	328	687,398	488,177	71.0	199,221	29.0	18.8	91,777	81.2	396,400
	300	1,732	27,091.2	24,819	938,697	648,275	69.1	290,422	30.9	18.8	121,876	81.2	526,399
	350	348	7,671.8	2,265	210,784	141,172	67.0	69,612	33.0	18.8	26,540	81.2	114,632
	400	534	15,340.2	16,681	324,910	210,231	64.7	114,679	35.3	18.8	39,523	81.2	170,708
	450	797	14,509.0	10,163	538,089	345,313	64.2	192,776	35.8	18.8	64,919	81.2	280,394
	500	310	4,371.4	901	210,394	129,940	61.8	80,454	38.2	18.8	24,429	81.2	105,511
	550	452	11,028.6	2,228	322,026	192,174	59.7	129,852	40.3	18.8	36,129	81.2	156,045
	600	200	6,145.1	856	146,410	86,941	59.4	59,469	40.6	18.8	16,345	81.2	70,596
	650	135	2,347.5	2,084	82,592	47,177	57.1	35,415	42.9	18.8	8,869	81.2	38,308
	700	78	1,697.6	2,567	27,268	15,274	56.0	11,994	44.0	18.8	2,872	81.2	12,402
	750	23	300.3		13,814	7,600	55.8	6,214	45.0	18.8	1,429	81.2	6,171
	800	56	795.0		31,797	16,845	53.0	14,952	47.0	18.8	3,167	81.2	13,678
	850									18.8		81.2	
	900									18.8		81.2	
	950	40	1,112.6		38,646	19,314	50.0	19,332	50.0	18.8	3,631	81.2	15,683
	1000									18.8		81.2	
	1050									18.8		81.2	
	1100									18.8		81.2	
	1150									18.8		81.2	
	1200									18.8		81.2	
	1250									18.8		81.2	
	1300									18.8		81.2	
	1350									18.8		81.2	
	1400									18.8		81.2	
	1450									18.8		81.2	
	1500									18.8		81.2	
	1550									18.8		81.2	
	1600									18.8		81.2	
	1650									18.8		81.2	
	1700									18.8		81.2	
	1750									18.8		81.2	
	1800									18.8		81.2	
TOTAL		7,073	126,188.9	66,545	4,047,830	2,709,102		1,338,728			509,312		2,199,790

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
738.2		57,673	46,569	80.7	11,104	19.3	18.8	8,755	81.2	37,814	81.5	9,050	18.5	2,054
213.0		8,179	6,454	78.9	1,725	21.1	18.8	1,213	81.2	5,241	68.8	1,187	31.2	538
544.5	3,233	239,487	182,004	76.0	57,483	24.0	18.8	34,217	81.2	147,787	59.5	34,202	40.5	23,281
465.3	420	169,666	125,642	74.1	44,024	25.9	18.8	23,621	81.2	102,021	52.5	23,113	47.5	20,911
817.6	328	687,398	488,177	71.0	199,221	29.0	18.8	91,777	81.2	396,400	46.9	93,435	53.1	105,786
091.2	24,819	938,697	648,275	69.1	290,422	30.9	18.8	121,876	81.2	526,399	42.4	123,139	57.6	167,283
671.8	2,265	210,784	141,172	67.0	69,612	33.0	18.8	26,540	81.2	114,632	38.7	26,940	61.3	42,672
340.2	16,681	324,910	210,231	64.7	114,679	35.3	18.8	39,523	81.2	170,708	35.6	40,826	64.4	73,853
509.0	10,163	538,089	345,313	64.2	192,776	35.8	18.8	64,919	81.2	280,394	32.9	63,423	67.1	129,353
371.4	901	210,394	129,940	61.8	80,454	38.2	18.8	24,429	81.2	105,511	30.5	24,538	69.5	55,916
028.6	2,228	322,026	192,174	59.7	129,852	40.3	18.8	36,129	81.2	156,045	28.5	37,008	71.5	92,844
145.1	856	146,410	86,941	59.4	59,469	40.6	18.8	16,345	81.2	70,596	26.8	15,938	73.2	43,531
347.5	2,084	82,592	47,177	57.1	35,415	42.9	18.8	8,869	81.2	38,308	25.2	8,925	74.8	26,490
697.6	2,567	27,268	15,274	56.0	11,994	44.0	18.8	2,872	81.2	12,402	23.9	2,867	76.1	9,127
300.3		13,814	7,600	55.0	6,214	45.0	18.8	1,429	81.2	6,171	22.7	1,411	77.3	4,803
795.0		31,797	16,845	53.0	14,952	47.0	18.8	3,167	81.2	13,678	21.5	3,215	78.5	11,737
							18.8		81.2		20.5		79.5	
							18.8		81.2		19.6		80.4	
112.6		38,046	19,314	50.0	19,332	50.0	18.8	3,631	81.2	15,683	18.8	3,634	81.2	15,698
							18.8		81.2		18.0		82.0	
							18.8		81.2		17.3		82.7	
							18.8		81.2		16.7		83.3	
							18.8		81.2		16.1		83.9	
							18.8		81.2		15.5		84.5	
							18.8		81.2		15.0		85.0	
							18.8		81.2		14.4		85.6	
							18.8		81.2		14.0		86.0	
							18.8		81.2		13.6		86.4	
							18.8		81.2		13.2		86.8	
							18.8		81.2		12.8		87.2	
							18.8		81.2		12.4		87.6	
							18.8		81.2		12.1		87.9	
							18.8		81.2		11.8		88.2	
							18.8		81.2		11.4		88.6	
							18.8		81.2		11.2		88.8	
							18.8		81.2		10.9		89.1	
188.9	66,545	4,047,830	2,709,102		1,338,728			509,312		2,199,790		512,851		825,877

TABULATION M

Ex. No. 2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	1
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	
1000	50	370	6,537.2		192,551	157,856	82.0	34,695	18.0	18.0	28,414	82.0	129,442	81
	100	59	1,602.3		29,072	22,971	79.0	6,101	21.0	18.0	4,135	82.0	18,836	68
	150	365	7,140.5	6,034	201,708	155,354	77.0	46,354	23.0	18.0	27,964	82.0	127,390	59
	200	1,053	27,505.5	18,555	685,475	507,235	74.0	178,240	26.0	18.0	91,302	82.0	415,933	52
	250	1,760	23,778.7	2,756	735,553	529,795	72.0	205,758	28.0	18.0	95,363	82.0	434,432	46
	300	2,884	46,102.5	55,816	1,600,149	1,123,578	70.2	476,571	29.8	18.0	202,244	82.0	921,334	42
	350	8,213	90,291.9	142,768	3,687,209	2,507,783	68.0	1,179,426	32.0	18.0	451,401	82.0	2,056,382	38
	400	571	12,790.2	10,658	356,863	235,669	66.0	121,194	34.0	18.0	42,420	82.0	193,249	35
	450	705	13,372.0	9,815	467,610	304,789	65.2	162,821	34.8	18.0	54,862	82.0	249,927	3
	500	721	18,931.7	17,078	530,782	335,061	63.1	195,721	36.9	18.0	60,311	82.0	274,750	3
	550	919	16,040.3	4,146	588,310	358,781	61.0	229,529	39.0	18.0	64,581	82.0	294,200	2
	600	859	17,557.9	13,576	531,204	318,465	60.0	212,739	40.0	18.0	57,324	82.0	261,141	2
	650	443	8,357.5	6,320	228,542	132,886	58.1	95,656	41.9	18.0	23,919	82.0	108,967	2
	700	311	7,321.4	4,676	185,292	104,596	56.4	80,696	43.6	18.0	18,827	82.0	85,769	2
	750	121	2,085.7	458	82,436	46,169	56.0	36,267	44.0	18.0	8,310	82.0	37,859	2
	800	137	2,149.5		81,647	44,099	54.0	37,548	46.0	18.0	7,938	82.0	36,161	2
	850	161	2,640.6	816	115,996	61,586	53.1	54,410	46.9	18.0	11,085	82.0	50,501	2
	900	83	1,093.7		37,570	19,544	52.0	18,026	48.0	18.0	3,518	82.0	16,026	1
	950	20	384.2		10,290	5,253	51.0	5,037	49.0	18.0	946	82.0	4,307	1
	1000									18.0		82.0		1
	1050	18	791.7		24,224	11,866	49.0	12,358	51.0	18.0	2,136	82.0	9,730	1
	1100									18.0		82.0		1
	1150									18.0		82.0		1
	1200									18.0		82.0		1
	1250									18.0		82.0		1
	1300									18.0		82.0		1
	1350									18.0		82.0		1
	1400									18.0		82.0		1
	1450									18.0		82.0		1
	1500									18.0		82.0		1
	1550									18.0		82.0		1
	1600									18.0		82.0		1
	1650									18.0		82.0		
	1700									18.0		82.0		
	1750									18.0		82.0		
	1800									18.0		82.0		
TOTAL		19,773	306,475.0	293,472	10,372,483	6,983,336		3,389,147			1,257,000		5,726,336	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED						REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
7.2		192,551	157,856	82.0	34,695	18.0	18.0	28,414	82.0	129,442	81.5	28,276	18.5	6,419
2.3		29,072	22,971	79.0	6,101	21.0	18.0	4,135	82.0	18,836	68.8	4,197	31.2	1,904
0.5	6,034	201,708	155,354	77.0	46,354	23.0	18.0	27,964	82.0	127,390	59.5	27,581	40.5	18,773
5.5	18,555	685,475	507,235	74.0	178,240	26.0	18.0	91,302	82.0	415,933	52.5	93,576	47.5	84,664
8.7	2,756	735,553	529,795	72.0	205,758	28.0	18.0	95,363	82.0	434,432	46.9	96,501	53.1	109,257
2.5	55,816	1,600,149	1,123,578	70.2	476,571	29.8	18.0	202,244	82.0	921,334	42.4	202,066	57.6	274,505
1.9	142,768	3,687,209	2,507,783	68.0	1,179,426	32.0	18.0	451,401	82.0	2,056,382	38.7	456,438	61.3	722,988
0.2	10,658	356,863	235,669	66.0	121,194	34.0	18.0	42,420	82.0	193,249	35.6	43,145	64.4	78,049
2.0	9,815	467,610	304,789	65.2	162,821	34.8	18.0	54,862	82.0	249,927	32.9	53,568	67.1	109,253
1.7	17,078	530,782	335,061	63.1	195,721	36.9	18.0	60,311	82.0	274,750	30.5	59,695	69.5	136,026
0.3	4,146	588,310	358,781	61.0	229,529	39.0	18.0	64,581	82.0	294,200	28.5	65,416	71.5	164,113
7.9	13,576	531,204	318,465	60.0	212,739	40.0	18.0	57,324	82.0	261,141	26.8	57,014	73.2	155,725
7.5	6,320	228,542	132,886	58.1	95,656	41.9	18.0	23,919	82.0	108,967	25.2	24,105	74.8	71,551
1.4	4,676	185,292	104,596	56.4	80,696	43.6	18.0	18,827	82.0	85,769	23.9	19,286	76.1	61,410
5.7	458	82,436	46,169	56.0	36,267	44.0	18.0	8,310	82.0	37,859	22.7	8,233	77.3	28,034
9.5		81,647	44,099	54.0	37,548	46.0	18.0	7,938	82.0	36,161	21.5	8,073	78.5	29,475
0.6	816	115,996	61,586	53.1	54,410	46.9	18.0	11,085	82.0	50,501	20.5	11,154	79.5	43,256
3.7		37,570	19,544	52.0	18,026	48.0	18.0	3,518	82.0	16,026	19.6	3,533	80.4	14,493
4.2		10,290	5,253	51.0	5,037	49.0	18.0	946	82.0	4,307	18.8	947	81.2	4,090
							18.0		82.0		18.0		82.0	
1.7		24,224	11,866	49.0	12,358	51.0	18.0	2,136	82.0	9,730	17.3	2,138	82.7	10,220
							18.0		82.0		16.7		83.3	
							18.0		82.0		16.1		83.9	
							18.0		82.0		15.5		84.5	
							18.0		82.0		15.0		85.0	
							18.0		82.0		14.4		85.6	
							18.0		82.0		14.0		86.0	
							18.0		82.0		13.6		86.4	
							18.0		82.0		13.2		86.8	
							18.0		82.0		12.8		87.2	
							18.0		82.0		12.4		87.6	
							18.0		82.0		12.1		87.9	
							18.0		82.0		11.8		88.2	
							18.0		82.0		11.4		88.6	
							18.0		82.0		11.2		88.8	
							18.0		82.0		10.9		89.1	
5.0	293,472	10,372,483	6,983,336		3,389,147			1,257,000		5,726,336		1,264,942		2,124,205

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	1
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	
1050	50									17.3		82.7		81
	100	114	2,219.2		49,685	39,748	80.0	9,937	20.0	17.3	6,876	82.7	32,872	68
	150	40	644.1	677	21,741	16,742	77.0	4,999	23.0	17.3	2,896	82.7	13,846	59
	200	124	2,430.1	1,325	79,114	59,130	74.7	19,984	25.3	17.3	10,229	82.7	48,901	52
	250	534	9,481.0	1,340	302,051	220,476	73.0	81,575	27.0	17.3	38,142	82.7	182,334	46
	300	211	3,578.9	1,393	123,403	86,920	70.4	36,483	29.6	17.3	15,037	82.7	71,883	42
	350	744	8,330.6	3,337	352,990	242,696	68.8	110,294	31.2	17.3	41,986	82.7	200,710	38
	400	651	14,793.4	9,265	354,724	235,610	66.4	119,114	33.6	17.3	40,761	82.7	194,849	35
	450	295	7,413.8	10,803	244,417	161,190	65.9	83,227	34.1	17.3	27,886	82.7	133,304	32
	500	145	2,184.1	673	107,944	69,069	64.0	38,875	36.0	17.3	11,949	82.7	57,120	30
	550	317	4,328.2	762	189,205	117,369	62.0	71,836	38.0	17.3	20,305	82.7	97,064	28
	600	164	1,865.4		81,117	49,462	61.0	31,655	39.0	17.3	8,557	82.7	40,905	26
	650	176	2,554.5		153,381	90,372	58.9	63,009	41.1	17.3	15,634	82.7	74,738	25
	700									17.3		82.7		23
	750									17.3		82.7		22
	800									17.3		82.7		21
	850									17.3		82.7		20
	900									17.3		82.7		19
	950									17.3		82.7		18
	1000									17.3		82.7		18
	1050									17.3		82.7		17
	1100									17.3		82.7		16
	1150									17.3		82.7		16
	1200									17.3		82.7		15
	1250									17.3		82.7		15
	1300									17.3		82.7		14
	1350									17.3		82.7		14
	1400									17.3		82.7		13
	1450									17.3		82.7		13
	1500									17.3		82.7		12
	1550									17.3		82.7		12
	1600									17.3		82.7		12
	1650									17.3		82.7		11
	1700									17.3		82.7		11
	1750									17.3		82.7		11
	1800									17.3		82.7		11
TOTAL		3,515	59,823.3	29,575	2,059,772	1,368,784		670,988			240,258		1,148,526	

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
							17.3		82.7		81.5		18.5	
19.2		49,685	39,748	80.0	9,937	20.0	17.3	6,876	82.7	32,872	68.8	6,837	31.2	3,100
44.1	677	21,741	16,742	77.0	4,999	23.0	17.3	2,896	82.7	13,846	59.5	2,974	40.5	2,025
30.1	1,325	79,114	59,130	74.7	19,984	25.3	17.3	10,229	82.7	48,901	52.5	10,492	47.5	9,492
81.0	1,340	302,051	220,476	73.0	81,575	27.0	17.3	38,142	82.7	182,334	46.9	38,259	53.1	43,316
78.9	1,393	123,403	86,920	70.4	36,483	29.6	17.3	15,037	82.7	71,883	42.4	15,469	57.6	21,014
30.6	3,337	352,990	242,696	68.8	110,294	31.2	17.3	41,986	82.7	200,710	38.7	42,684	61.3	67,610
93.4	9,265	354,724	235,610	66.4	119,114	33.6	17.3	40,761	82.7	194,849	35.6	42,405	64.4	76,709
13.8	10,803	244,417	161,190	65.9	83,227	34.1	17.3	27,886	82.7	133,304	32.9	27,382	67.1	55,845
84.1	673	107,944	69,069	64.0	38,875	36.0	17.3	11,949	82.7	57,120	30.5	11,857	69.5	27,018
28.2	762	189,205	117,369	62.0	71,836	38.0	17.3	20,305	82.7	97,064	28.5	20,473	71.5	51,363
65.4		81,117	49,462	61.0	31,655	39.0	17.3	8,557	82.7	40,905	26.8	8,484	73.2	23,171
54.5		153,381	90,372	58.9	63,009	41.1	17.3	15,634	82.7	74,738	25.2	15,878	74.8	47,131
							17.3		82.7		23.9		76.1	
							17.3		82.7		22.7		77.3	
							17.3		82.7		21.5		78.5	
							17.3		82.7		20.5		79.5	
							17.3		82.7		19.6		80.4	
							17.3		82.7		18.8		81.2	
							17.3		82.7		18.0		82.0	
							17.3		82.7		17.3		82.7	
							17.3		82.7		16.7		83.3	
							17.3		82.7		16.1		83.9	
							17.3		82.7		15.5		84.5	
							17.3		82.7		15.0		85.0	
							17.3		82.7		14.4		85.6	
							17.3		82.7		14.0		86.0	
							17.3		82.7		13.6		86.4	
							17.3		82.7		13.2		86.8	
							17.3		82.7		12.8		87.2	
							17.3		82.7		12.4		87.6	
							17.3		82.7		12.1		87.9	
							17.3		82.7		11.8		88.2	
							17.3		82.7		11.4		88.6	
							17.3		82.7		11.2		88.8	
							17.3		82.7		10.9		89.1	
23.3	29,575	2,059,772	1,368,784		670,988			240,258		1,148,526		243,194		427,794

TABULATION M

SOUTHBOUND

Ex. No.2 to V.S. No.71A of

1	2	3	4	5	6	7	8	9	10	11	12	13	14
MILES SOUTH	MILES NORTH	CARS	REVENUE AS SETTLED TOTAL TONS	ARBITS S.	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	AMOUNT	LINE HAUL %	AMOUNT
1100	50	20	398.0		8,757	7,264	83.0	1,493	17.0	16.7	1,213	83.3	6,051
	100	153	3,059.1	1,831	86,988	70,452	81.0	16,536	19.0	16.7	11,765	83.3	58,687
	150	340	6,242.5	6,208	169,986	132,365	77.9	37,621	22.1	16.7	22,105	83.3	110,260
	200	447	11,567.1	5,807	281,320	214,841	76.4	66,479	23.6	16.7	35,878	83.3	178,963
	250	234	4,819.1	2,650	118,461	86,501	73.0	31,960	27.0	16.7	14,446	83.3	72,055
	300	245	6,001.9	2,047	196,176	141,319	72.0	54,857	28.0	16.7	23,600	83.3	117,719
	350	374	9,559.1	14,495	393,339	274,237	69.7	119,102	30.3	16.7	45,798	83.3	228,439
	400	280	8,629.0	10,615	226,508	155,008	68.4	71,500	31.6	16.7	25,886	83.3	129,122
	450	228	5,531.0	400	142,078	94,069	66.2	48,009	33.8	16.7	15,710	83.3	78,359
	500	91	762.6	1,383	40,204	26,135	65.0	14,069	35.0	16.7	4,365	83.3	21,770
	550	40	1,094.5	1,672	13,731	8,656	63.0	5,075	37.0	16.7	1,446	83.3	7,210
	600	111	2,449.2	1,110	74,113	45,921	62.0	28,192	38.0	16.7	7,669	83.3	38,252
	650	84	1,316.5		45,422	27,255	60.0	18,167	40.0	16.7	4,552	83.3	22,703
	700									16.7		83.3	
	750									16.7		83.3	
	800									16.7		83.3	
	850									16.7		83.3	
	900									16.7		83.3	
	950									16.7		83.3	
	1000									16.7		83.3	
	1050									16.7		83.3	
	1100									16.7		83.3	
	1150									16.7		83.3	
	1200									16.7		83.3	
	1250									16.7		83.3	
	1300									16.7		83.3	
	1350									16.7		83.3	
	1400									16.7		83.3	
	1450									16.7		83.3	
	1500									16.7		83.3	
	1550									16.7		83.3	
	1600									16.7		83.3	
	1650									16.7		83.3	
	1700									16.7		83.3	
	1750									16.7		83.3	
	1800									16.7		83.3	
TOTAL		2,647	61,429.6	48,218	1,797,083	1,284,023		513,060			214,433		1,069,590

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
ONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
8.0		8,757	7,264	83.0	1,493	17.0	16.7	1,213	83.3	6,051	81.5	1,217	18.5	276
9.1	1,831	86,988	70,452	81.0	16,536	19.0	16.7	11,765	83.3	58,687	68.8	11,377	31.2	5,159
2.5	6,208	169,986	132,365	77.9	37,621	22.1	16.7	22,105	83.3	110,260	59.5	22,384	40.5	15,237
7.1	5,807	281,320	214,841	76.4	66,479	23.6	16.7	35,878	83.3	178,963	52.5	34,901	47.5	31,578
9.1	2,650	118,461	86,501	73.0	31,960	27.0	16.7	14,446	83.3	72,055	46.9	14,989	53.1	16,971
1.9	2,047	196,176	141,319	72.0	54,857	28.0	16.7	23,600	83.3	117,719	42.4	23,259	57.6	31,598
9.1	14,495	393,339	274,237	69.7	119,102	30.3	16.7	45,798	83.3	228,439	38.7	46,092	61.3	73,010
9.0	10,615	226,508	155,008	68.4	71,500	31.6	16.7	25,886	83.3	129,122	35.6	25,454	64.4	46,046
1.0	400	142,078	94,069	66.2	48,009	33.8	16.7	15,710	83.3	78,359	32.9	15,795	67.1	32,214
2.6	1,383	40,204	26,135	65.0	14,069	35.0	16.7	4,365	83.3	21,770	30.5	4,291	69.5	9,778
4.5	1,672	13,731	8,656	63.0	5,075	37.0	16.7	1,446	83.3	7,210	28.5	1,446	71.5	3,629
9.2	1,110	74,113	45,921	62.0	28,192	38.0	16.7	7,669	83.3	38,252	26.8	7,555	73.2	20,637
6.5		45,422	27,255	60.0	18,167	40.0	16.7	4,552	83.3	22,703	25.2	4,578	74.8	13,589
							16.7		83.3		23.9		76.1	
							16.7		83.3		22.7		77.3	
							16.7		83.3		21.5		78.5	
							16.7		83.3		20.5		79.5	
							16.7		83.3		19.6		80.4	
							16.7		83.3		18.8		81.2	
							16.7		83.3		18.0		82.0	
							16.7		83.3		17.3		82.7	
							16.7		83.3		16.7		83.3	
							16.7		83.3		16.1		83.9	
							16.7		83.3		15.5		84.5	
							16.7		83.3		15.0		85.0	
							16.7		83.3		14.4		85.6	
							16.7		83.3		14.0		86.0	
							16.7		83.3		13.6		86.4	
							16.7		83.3		13.2		86.8	
							16.7		83.3		12.8		87.2	
							16.7		83.3		12.4		87.6	
							16.7		83.3		12.1		87.9	
							16.7		83.3		11.8		88.2	
							16.7		83.3		11.4		88.6	
							16.7		83.3		11.2		88.8	
							16.7		83.3		10.9		89.1	
9.6	48,218	1,797,083	1,284,023		513,060			214,433		1,069,590		213,338		299,722

TABULATION M

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
MILES SOUTH	MILES NORTH	CARS	REVENUE AS SETTLED TOTAL TONS	ARBITRARIES	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	AMOUNT	LINE HAUL %	AMOUNT
1150	50	207	5,134.4	1,174	129,910	109,128	84.0	20,782	16.0	16.1	17,570	83.9	91,558
	100	83	1,301.2		58,364	47,298	81.0	11,066	19.0	16.1	7,615	83.9	39,683
	150	429	8,639.4	1,353	279,637	220,910	79.0	58,727	21.0	16.1	35,567	83.9	185,343
	200	252	6,950.5	3,305	143,422	112,229	78.3	31,193	21.7	16.1	18,069	83.9	94,160
	250	1,413	15,429.2	6,082	581,673	430,453	74.0	151,220	26.0	16.1	69,303	83.9	361,150
	300	991	18,472.1	22,093	602,918	440,575	73.1	162,343	26.9	16.1	70,933	83.9	369,642
	350	499	6,911.5	3,368	375,262	269,004	71.7	106,258	28.3	16.1	43,310	83.9	225,694
	400	704	17,462.7	21,166	489,501	338,531	69.2	150,970	30.8	16.1	54,503	83.9	284,028
	450	342	8,115.5	10,653	244,762	164,965	67.4	79,797	32.6	16.1	26,559	83.9	138,406
	500	984	9,146.4		484,737	315,082	65.0	169,655	35.0	16.1	50,728	83.9	264,354
	550	60	1,034.0		41,569	26,586	64.0	14,983	36.0	16.1	4,280	83.9	22,306
	600									16.1		83.9	
	650	62	955.2		34,296	20,902	60.9	13,394	39.1	16.1	3,365	83.9	17,537
	700									16.1		83.9	
	750	44	795.6		25,172	14,851	59.0	10,321	41.0	16.1	2,391	83.9	12,460
	800									16.1		83.9	
	850									16.1		83.9	
	900									16.1		83.9	
	950	20	413.9	1,274	15,880	8,577	54.0	7,303	46.0	16.1	1,381	83.9	7,196
	1000									16.1		83.9	
	1050									16.1		83.9	
	1100									16.1		83.9	
	1150									16.1		83.9	
	1200									16.1		83.9	
	1250									16.1		83.9	
	1300									16.1		83.9	
	1350									16.1		83.9	
	1400									16.1		83.9	
	1450									16.1		83.9	
	1500									16.1		83.9	
	1550									16.1		83.9	
	1600									16.1		83.9	
	1650									16.1		83.9	
	1700									16.1		83.9	
	1750									16.1		83.9	
	1800									16.1		83.9	
TOTAL		6,090	100,761.6	70,468	3,507,103	2,519,091		988,012			405,574		2,113,517

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
34.4	1,174	129,910	109,128	84.0	20,782	16.0	16.1	17,570	83.9	91,558	81.5	16,937	18.5	3,845
01.2		58,364	47,298	81.0	11,066	19.0	16.1	7,615	83.9	39,683	68.8	7,613	31.2	3,453
39.4	1,353	279,637	220,910	79.0	58,727	21.0	16.1	35,567	83.9	185,343	59.5	34,943	40.5	23,784
50.5	3,305	143,422	112,229	78.3	31,193	21.7	16.1	18,069	83.9	94,160	52.5	16,376	47.5	14,817
29.2	6,082	581,673	430,453	74.0	151,220	26.0	16.1	69,303	83.9	361,150	46.9	70,922	53.1	80,298
72.1	22,093	602,918	440,575	73.1	162,343	26.9	16.1	70,933	83.9	369,642	42.4	68,833	57.6	93,510
11.5	3,368	375,262	269,004	71.7	106,258	28.3	16.1	43,310	83.9	225,694	38.7	41,122	61.3	65,136
62.7	21,166	489,501	338,531	69.2	150,970	30.8	16.1	54,503	83.9	284,028	35.6	53,745	64.4	97,225
15.5	10,653	244,762	164,965	67.4	79,797	32.6	16.1	26,559	83.9	138,406	32.9	26,253	67.1	53,544
46.4		484,737	315,082	65.0	169,655	35.0	16.1	50,728	83.9	264,354	30.5	51,745	69.5	117,910
34.0		41,569	26,586	64.0	14,983	36.0	16.1	4,280	83.9	22,306	28.5	4,270	71.5	10,713
							16.1		83.9		26.8		73.2	
55.2		34,296	20,902	60.9	13,394	39.1	16.1	3,365	83.9	17,537	25.2	3,375	74.8	10,019
							16.1		83.9		23.9		76.1	
95.6		25,172	14,851	59.0	10,321	41.0	16.1	2,391	83.9	12,460	22.7	2,343	77.3	7,978
							16.1		83.9		21.5		78.5	
							16.1		83.9		20.5		79.5	
							16.1		83.9		19.6		80.4	
13.9	1,274	15,880	8,577	54.0	7,303	46.0	16.1	1,381	83.9	7,196	18.8	1,373	81.2	5,930
							16.1		83.9		18.0		82.0	
							16.1		83.9		17.3		82.7	
							16.1		83.9		16.7		83.3	
							16.1		83.9		16.1		83.9	
							16.1		83.9		15.5		84.5	
							16.1		83.9		15.0		85.0	
							16.1		83.9		14.4		85.6	
							16.1		83.9		14.0		86.0	
							16.1		83.9		13.6		86.4	
							16.1		83.9		13.2		86.8	
							16.1		83.9		12.8		87.2	
							16.1		83.9		12.4		87.6	
							16.1		83.9		12.1		87.9	
							16.1		83.9		11.8		88.2	
							16.1		83.9		11.4		88.6	
							16.1		83.9		11.2		88.8	
							16.1		83.9		10.9		89.1	
61.6	70,468	3,507,103	2,519,091		988,012			405,574		2,113,517		399,850		588,162

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
					TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRARYS	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
1200	50	378	4,863.7	1,037	198,954	167,132	84.0	31,822	16.0	15.5	25,905	84.5	141,227
	100	138	1,776.0		82,131	67,351	82.0	14,780	18.0	15.5	10,439	84.5	56,912
	150	233	3,853.5	5,551	158,982	124,863	78.5	34,119	21.5	15.5	19,354	84.5	105,509
	200	509	12,171.4	12,530	230,565	177,360	76.9	53,205	23.1	15.5	27,491	84.5	149,869
	250	1,577	15,832.5	4,735	733,326	549,980	75.0	183,346	25.0	15.5	85,247	84.5	464,733
	300	1,940	24,505.3	35,222	1,140,320	826,089	72.4	314,231	27.6	15.5	128,044	84.5	698,045
	350	74	1,533.9	582	47,450	33,694	71.0	13,756	29.0	15.5	5,223	84.5	28,471
	400	76	2,909.0	1,019	138,949	97,278	70.0	41,671	30.0	15.5	15,078	84.5	82,200
	450	43	1,209.7	647	36,399	24,767	68.0	11,632	32.0	15.5	3,839	84.5	20,928
	500									15.5		84.5	
	550									15.5		84.5	
	600									15.5		84.5	
	650									15.5		84.5	
	700									15.5		84.5	
	750									15.5		84.5	
	800									15.5		84.5	
	850									15.5		84.5	
	900									15.5		84.5	
	950									15.5		84.5	
	1000									15.5		84.5	
	1050									15.5		84.5	
	1100									15.5		84.5	
	1150									15.5		84.5	
	1200									15.5		84.5	
	1250									15.5		84.5	
	1300									15.5		84.5	
	1350									15.5		84.5	
	1400									15.5		84.5	
	1450									15.5		84.5	
	1500									15.5		84.5	
	1550									15.5		84.5	
	1600									15.5		84.5	
	1650									15.5		84.5	
	1700									15.5		84.5	
	1750									15.5		84.5	
	1800									15.5		84.5	
TOTAL		4,968	68,655.0	61,323	2,767,076	2,068,514		698,562			320,620		1,747,894

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
863.7	1,037	198,954	167,132	84.0	31,822	16.0	15.5	25,905	84.5	141,227	81.5	25,935	18.5	5,887
776.0		82,131	67,351	82.0	14,780	18.0	15.5	10,439	84.5	56,912	68.8	10,169	31.2	4,611
853.5	5,551	158,982	124,863	78.5	34,119	21.5	15.5	19,354	84.5	105,509	59.5	20,301	40.5	13,818
171.4	12,530	230,565	177,360	76.9	53,205	23.1	15.5	27,491	84.5	149,869	52.5	27,933	47.5	25,272
832.5	4,735	733,326	549,980	75.0	183,346	25.0	15.5	85,247	84.5	464,733	46.9	85,989	53.1	97,357
505.3	35,222	1,140,320	826,089	72.4	314,231	27.6	15.5	128,044	84.5	698,045	42.4	133,234	57.6	180,997
533.9	582	47,450	33,694	71.0	13,756	29.0	15.5	5,223	84.5	28,471	38.7	5,324	61.3	8,432
909.0	1,019	138,949	97,278	70.0	41,671	30.0	15.5	15,078	84.5	82,200	35.6	14,835	64.4	26,836
209.7	647	36,399	24,767	68.0	11,632	32.0	15.5	3,839	84.5	20,928	32.9	3,827	67.1	7,805
							15.5		84.5		30.5		69.5	
							15.5		84.5		28.5		71.5	
							15.5		84.5		26.8		73.2	
							15.5		84.5		25.2		74.8	
							15.5		84.5		23.9		76.1	
							15.5		84.5		22.7		77.3	
							15.5		84.5		21.5		78.5	
							15.5		84.5		20.5		79.5	
							15.5		84.5		19.6		80.4	
							15.5		84.5		18.8		81.2	
							15.5		84.5		18.0		82.0	
							15.5		84.5		17.3		82.7	
							15.5		84.5		16.7		83.3	
							15.5		84.5		16.1		83.9	
							15.5		84.5		15.5		84.5	
							15.5		84.5		15.0		85.0	
							15.5		84.5		14.4		85.6	
							15.5		84.5		14.0		86.0	
							15.5		84.5		13.6		86.4	
							15.5		84.5		13.2		86.8	
							15.5		84.5		12.8		87.2	
							15.5		84.5		12.4		87.6	
							15.5		84.5		12.1		87.9	
							15.5		84.5		11.8		88.2	
							15.5		84.5		11.4		88.6	
							15.5		84.5		11.2		88.8	
							15.5		84.5		10.9		89.1	
55.0	61,323	2,767,076	2,068,514		698,562			320,620		1,747,894		327,547		371,015

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TOTAL TONS	ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE HAUL %	AMOUNT
1250	50									15.0		85.0	
	100									15.0		85.0	
	150									15.0		85.0	
	200									15.0		85.0	
	250									15.0		85.0	
	300									15.0		85.0	
	350									15.0		85.0	
	400									15.0		85.0	
	450									15.0		85.0	
	500									15.0		85.0	
	550									15.0		85.0	
	600									15.0		85.0	
	650									15.0		85.0	
	700									15.0		85.0	
	750									15.0		85.0	
	800									15.0		85.0	
	850									15.0		85.0	
	900									15.0		85.0	
	950									15.0		85.0	
	1000									15.0		85.0	
	1050									15.0		85.0	
	1100									15.0		85.0	
	1150									15.0		85.0	
	1200									15.0		85.0	
	1250									15.0		85.0	
	1300									15.0		85.0	
	1350									15.0		85.0	
	1400									15.0		85.0	
	1450									15.0		85.0	
	1500									15.0		85.0	
	1550									15.0		85.0	
	1600									15.0		85.0	
	1650									15.0		85.0	
	1700									15.0		85.0	
	1750									15.0		85.0	
	1800									15.0		85.0	
TOTAL													

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS	S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
							15.0		85.0		81.5		18.5	
							15.0		85.0		68.8		31.2	
							15.0		85.0		59.5		40.5	
							15.0		85.0		52.5		47.5	
							15.0		85.0		46.9		53.1	
							15.0		85.0		42.4		57.6	
							15.0		85.0		38.7		61.3	
							15.0		85.0		35.6		64.4	
							15.0		85.0		32.9		67.1	
							15.0		85.0		30.5		69.5	
							15.0		85.0		28.5		71.5	
							15.0		85.0		26.8		73.2	
							15.0		85.0		25.2		74.8	
							15.0		85.0		23.9		76.1	
							15.0		85.0		22.7		77.3	
							15.0		85.0		21.5		78.5	
							15.0		85.0		20.5		79.5	
							15.0		85.0		19.6		80.4	
							15.0		85.0		18.8		81.2	
							15.0		85.0		18.0		82.0	
							15.0		85.0		17.3		82.7	
							15.0		85.0		16.7		83.3	
							15.0		85.0		16.1		83.9	
							15.0		85.0		15.5		84.5	
							15.0		85.0		15.0		85.0	
							15.0		85.0		14.4		85.6	
							15.0		85.0		14.0		86.0	
							15.0		85.0		13.6		86.4	
							15.0		85.0		13.2		86.8	
							15.0		85.0		12.8		87.2	
							15.0		85.0		12.4		87.6	
							15.0		85.0		12.1		87.9	
							15.0		85.0		11.8		88.2	
							15.0		85.0		11.4		88.6	
							15.0		85.0		11.2		88.8	
							15.0		85.0		10.9		89.1	

TABULATION M

SOUTHBOUND

Ex. No.2 to V.S. No.11A of

1	2	3	4	5	6	7	8	9	10	11	12	13	14
MILES SOUTH	MILES NORTH	CARS	REVENUE AS SETTLED TOTAL TONS	ARBITS	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	AMOUNT	LINE HAUL %	AMOUNT
1300	50									14.4		85.6	
	100									14.4		85.6	
	150									14.4		85.6	
	200									14.4		85.6	
	250									14.4		85.6	
	300									14.4		85.6	
	350									14.4		85.6	
	400									14.4		85.6	
	450									14.4		85.6	
	500									14.4		85.6	
	550									14.4		85.6	
	600									14.4		85.6	
	650									14.4		85.6	
	700									14.4		85.6	
	750									14.4		85.6	
	800									14.4		85.6	
	850									14.4		85.6	
	900									14.4		85.6	
	950									14.4		85.6	
	1000									14.4		85.6	
	1050									14.4		85.6	
	1100									14.4		85.6	
	1150									14.4		85.6	
	1200									14.4		85.6	
	1250									14.4		85.6	
	1300									14.4		85.6	
	1350									14.4		85.6	
	1400									14.4		85.6	
	1450									14.4		85.6	
	1500									14.4		85.6	
	1550									14.4		85.6	
	1600									14.4		85.6	
	1650									14.4		85.6	
	1700									14.4		85.6	
	1750									14.4		85.6	
	1800									14.4		85.6	
TOTAL													

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
							14.4		85.6		81.5		18.5	
							14.4		85.6		68.8		31.2	
							14.4		85.6		59.5		40.5	
							14.4		85.6		52.5		47.5	
							14.4		85.6		46.9		53.1	
							14.4		85.6		42.4		57.6	
							14.4		85.6		38.7		61.3	
							14.4		85.6		35.6		64.4	
							14.4		85.6		32.9		67.1	
							14.4		85.6		30.5		69.5	
							14.4		85.6		28.5		71.5	
							14.4		85.6		26.8		73.2	
							14.4		85.6		25.2		74.8	
							14.4		85.6		23.9		76.1	
							14.4		85.6		22.7		77.3	
							14.4		85.6		21.5		78.5	
							14.4		85.6		20.5		79.5	
							14.4		85.6		19.6		80.4	
							14.4		85.6		18.8		81.2	
							14.4		85.6		18.0		82.0	
							14.4		85.6		17.3		82.7	
							14.4		85.6		16.7		83.3	
							14.4		85.6		16.1		83.9	
							14.4		85.6		15.5		84.5	
							14.4		85.6		15.0		85.0	
							14.4		85.6		14.4		85.6	
							14.4		85.6		14.0		86.0	
							14.4		85.6		13.6		86.4	
							14.4		85.6		13.2		86.8	
							14.4		85.6		12.8		87.2	
							14.4		85.6		12.4		87.6	
							14.4		85.6		12.1		87.9	
							14.4		85.6		11.8		88.2	
							14.4		85.6		11.4		88.6	
							14.4		85.6		11.2		88.8	
							14.4		85.6		10.9		89.1	

TABULATION M

Ex. No.2 to V.S. No.11A o

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
			TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
1350	50									14.0		86.0	
	100									14.0		86.0	
	150									14.0		86.0	
	200									14.0		86.0	
	250									14.0		86.0	
	300									14.0		86.0	
	350									14.0		86.0	
	400									14.0		86.0	
	450									14.0		86.0	
	500									14.0		86.0	
	550									14.0		86.0	
	600									14.0		86.0	
	650									14.0		86.0	
	700									14.0		86.0	
	750									14.0		86.0	
	800									14.0		86.0	
	850									14.0		86.0	
	900									14.0		86.0	
	950									14.0		86.0	
	1000									14.0		86.0	
	1050									14.0		86.0	
	1100									14.0		86.0	
	1150									14.0		86.0	
	1200									14.0		86.0	
	1250									14.0		86.0	
	1300									14.0		86.0	
	1350									14.0		86.0	
	1400									14.0		86.0	
	1450									14.0		86.0	
	1500									14.0		86.0	
	1550									14.0		86.0	
	1600									14.0		86.0	
	1650									14.0		86.0	
	1700									14.0		86.0	
	1750									14.0		86.0	
	1800									14.0		86.0	
TOTAL													

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						14.0		86.0		81.5		18.5	
						14.0		86.0		68.8		31.2	
						14.0		86.0		59.5		40.5	
						14.0		86.0		52.5		47.5	
						14.0		86.0		46.9		53.1	
						14.0		86.0		42.4		57.6	
						14.0		86.0		38.7		61.3	
						14.0		86.0		35.6		64.4	
						14.0		86.0		32.9		67.1	
						14.0		86.0		30.5		69.5	
						14.0		86.0		28.5		71.5	
						14.0		86.0		26.8		73.2	
						14.0		86.0		25.2		74.8	
						14.0		86.0		23.9		76.1	
						14.0		86.0		22.7		77.3	
						14.0		86.0		21.5		78.5	
						14.0		86.0		20.5		79.5	
						14.0		86.0		19.6		80.4	
						14.0		86.0		18.8		81.2	
						14.0		86.0		18.0		82.0	
						14.0		86.0		17.3		82.7	
						14.0		86.0		16.7		83.3	
						14.0		86.0		16.1		83.9	
						14.0		86.0		15.5		84.5	
						14.0		86.0		15.0		85.0	
						14.0		86.0		14.4		85.6	
						14.0		86.0		14.0		86.0	
						14.0		86.0		13.6		86.4	
						14.0		86.0		13.2		86.8	
						14.0		86.0		12.8		87.2	
						14.0		86.0		12.4		87.6	
						14.0		86.0		12.1		87.9	
						14.0		86.0		11.8		88.2	
						14.0		86.0		11.4		88.6	
						14.0		86.0		11.2		88.8	
						14.0		86.0		10.9		89.1	

TABULATION M

Ex. No.2 to V.S. No.11A o

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
			TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
1400	30									13.6		86.4	
	100									13.6		86.4	
	150									13.6		86.4	
	200									13.6		86.4	
	250									13.6		86.4	
	300									13.6		86.4	
	350									13.6		86.4	
	400									13.6		86.4	
	450									13.6		86.4	
	500									13.6		86.4	
	550									13.6		86.4	
	600									13.6		86.4	
	650									13.6		86.4	
	700									13.6		86.4	
	750									13.6		86.4	
	800									13.6		86.4	
	850									13.6		86.4	
	900									13.6		86.4	
	950									13.6		86.4	
	1000									13.6		86.4	
	1050									13.6		86.4	
	1100									13.6		86.4	
	1150									13.6		86.4	
	1200									13.6		86.4	
	1250									13.6		86.4	
	1300									13.6		86.4	
	1350									13.6		86.4	
	1400									13.6		86.4	
	1450									13.6		86.4	
	1500									13.6		86.4	
	1550									13.6		86.4	
	1600									13.6		86.4	
	1650									13.6		86.4	
	1700									13.6		86.4	
	1750									13.6		86.4	
	1800									13.6		86.4	
TOTAL													

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
							13.6		86.4		81.5		18.5	
							13.6		86.4		68.8		31.2	
							13.6		86.4		59.5		40.5	
							13.6		86.4		52.5		47.5	
							13.6		86.4		46.9		53.1	
							13.6		86.4		42.4		57.6	
							13.6		86.4		38.7		61.3	
							13.6		86.4		35.6		64.4	
							13.6		86.4		32.9		67.1	
							13.6		86.4		30.5		69.5	
							13.6		86.4		28.5		71.5	
							13.6		86.4		26.8		73.2	
							13.6		86.4		25.2		74.8	
							13.6		86.4		23.9		76.1	
							13.6		86.4		22.7		77.3	
							13.6		86.4		21.5		78.5	
							13.6		86.4		20.5		79.5	
							13.6		86.4		19.6		80.4	
							13.6		86.4		18.8		81.2	
							13.6		86.4		18.0		82.0	
							13.6		86.4		17.3		82.7	
							13.6		86.4		16.7		83.3	
							13.6		86.4		16.1		83.9	
							13.6		86.4		15.5		84.5	
							13.6		86.4		15.0		85.0	
							13.6		86.4		14.4		85.6	
							13.6		86.4		14.0		86.0	
							13.6		86.4		13.6		86.4	
							13.6		86.4		13.2		86.8	
							13.6		86.4		12.8		87.2	
							13.6		86.4		12.4		87.6	
							13.6		86.4		12.1		87.9	
							13.6		86.4		11.8		88.2	
							13.6		86.4		11.4		88.6	
							13.6		86.4		11.2		88.8	
							13.6		86.4		10.9		89.1	

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	1
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	
1450°	50									13.2		86.8		81
	100									13.2		86.8		68
	150									13.2		86.8		59
	200									13.2		86.8		52
	250									13.2		86.8		46
	300									13.2		86.8		42
	350									13.2		86.8		38
	400									13.2		86.8		35
	450									13.2		86.8		32
	500									13.2		86.8		30
	550									13.2		86.8		28
	600									13.2		86.8		26
	650									13.2		86.8		25
	700									13.2		86.8		23
	750									13.2		86.8		22
	800									13.2		86.8		21
	850									13.2		86.8		20
	900									13.2		86.8		19
	950									13.2		86.8		18
	1000									13.2		86.8		18
	1050									13.2		86.8		17
	1100									13.2		86.8		16
	1150									13.2		86.8		16
	1200									13.2		86.8		15
	1250									13.2		86.8		15
	1300									13.2		86.8		14
	1350									13.2		86.8		14
	1400									13.2		86.8		13
	1450									13.2		86.8		13
	1500									13.2		86.8		13
	1550									13.2		86.8		12
	1600									13.2		86.8		12
	1650									13.2		86.8		11
	1700									13.2		86.8		11
	1750									13.2		86.8		11
	1800									13.2		86.8		11
TOTAL														

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS	S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
							13.2		86.8		81.5		18.5	
							13.2		86.8		68.8		31.2	
							13.2		86.8		59.5		40.5	
							13.2		86.8		52.5		47.5	
							13.2		86.8		46.9		53.1	
							13.2		86.8		42.4		57.6	
							13.2		86.8		38.7		61.3	
							13.2		86.8		35.6		64.4	
							13.2		86.8		32.9		67.1	
							13.2		86.8		30.5		69.5	
							13.2		86.8		28.5		71.5	
							13.2		86.8		26.8		73.2	
							13.2		86.8		25.2		74.8	
							13.2		86.8		23.9		76.1	
							13.2		86.8		22.7		77.3	
							13.2		86.8		21.5		78.5	
							13.2		86.8		20.5		79.5	
							13.2		86.8		19.6		80.4	
							13.2		86.8		18.8		81.2	
							13.2		86.8		18.0		82.0	
							13.2		86.8		17.3		82.7	
							13.2		86.8		16.7		83.3	
							13.2		86.8		16.1		83.9	
							13.2		86.8		15.5		84.5	
							13.2		86.8		15.0		85.0	
							13.2		86.8		14.4		85.6	
							13.2		86.8		14.0		86.0	
							13.2		86.8		13.6		86.4	
							13.2		86.8		13.2		86.8	
							13.2		86.8		12.8		87.2	
							13.2		86.8		12.4		87.6	
							13.2		86.8		12.1		87.9	
							13.2		86.8		11.8		88.2	
							13.2		86.8		11.4		88.6	
							13.2		86.8		11.2		88.8	
							13.2		86.8		10.9		89.1	

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
			TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBTS %	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
1500	50									12.8		87.2	
	100									12.8		87.2	
	150									12.8		87.2	
	200									12.8		87.2	
	250									12.8		87.2	
	300									12.8		87.2	
	350									12.8		87.2	
	400									12.8		87.2	
	450									12.8		87.2	
	500									12.8		87.2	
	550									12.8		87.2	
	600									12.8		87.2	
	650									12.8		87.2	
	700									12.8		87.2	
	750									12.8		87.2	
	800									12.8		87.2	
	850									12.8		87.2	
	900									12.8		87.2	
	950									12.8		87.2	
	1000									12.8		87.2	
	1050									12.8		87.2	
	1100									12.8		87.2	
	1150									12.8		87.2	
	1200									12.8		87.2	
	1250									12.8		87.2	
	1300									12.8		87.2	
	1350									12.8		87.2	
	1400									12.8		87.2	
	1450									12.8		87.2	
	1500									12.8		87.2	
	1550									12.8		87.2	
	1600									12.8		87.2	
	1650									12.8		87.2	
	1700									12.8		87.2	
	1750									12.8		87.2	
	1800									12.8		87.2	
TOTAL													

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
UMS ARSITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						12.8		87.2		81.5		18.5	
						12.8		87.2		68.8		31.2	
						12.8		87.2		59.5		40.5	
						12.8		87.2		52.5		47.5	
						12.8		87.2		46.9		53.1	
						12.8		87.2		42.4		57.6	
						12.8		87.2		38.7		61.3	
						12.8		87.2		35.6		64.4	
						12.8		87.2		32.9		67.1	
						12.8		87.2		30.5		69.5	
						12.8		87.2		28.5		71.5	
						12.8		87.2		26.8		73.2	
						12.8		87.2		25.2		74.8	
						12.8		87.2		23.9		76.1	
						12.8		87.2		22.7		77.3	
						12.8		87.2		21.5		78.5	
						12.8		87.2		20.5		79.5	
						12.8		87.2		19.6		80.4	
						12.8		87.2		18.8		81.2	
						12.8		87.2		18.0		82.0	
						12.8		87.2		17.3		82.7	
						12.8		87.2		16.7		83.3	
						12.8		87.2		16.1		83.9	
						12.8		87.2		15.5		84.5	
						12.8		87.2		15.0		85.0	
						12.8		87.2		14.4		85.6	
						12.8		87.2		14.0		86.0	
						12.8		87.2		13.6		86.4	
						12.8		87.2		13.2		86.8	
						12.8		87.2		12.8		87.2	
						12.8		87.2		12.4		87.6	
						12.8		87.2		12.1		87.9	
						12.8		87.2		11.8		88.2	
						12.8		87.2		11.4		88.6	
						12.8		87.2		11.2		88.8	
						12.8		87.2		10.9		89.1	

TABULATION M

SOUTHBOUND

Ex. No.2 to V.S. No.11A

1	2	3	4	5	6	7	8	9	10	11	12	13	14
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
1550	50									12.4		87.6	
	100									12.4		87.6	
	150									12.4		87.6	
	200									12.4		87.6	
	250									12.4		87.6	
	300									12.4		87.6	
	350									12.4		87.6	
	400									12.4		87.6	
	450									12.4		87.6	
	500									12.4		87.6	
	550									12.4		87.6	
	600									12.4		87.6	
	650									12.4		87.6	
	700									12.4		87.6	
	750									12.4		87.6	
	800									12.4		87.6	
	850									12.4		87.6	
	900									12.4		87.6	
	950									12.4		87.6	
	1000									12.4		87.6	
	1050									12.4		87.6	
	1100									12.4		87.6	
	1150									12.4		87.6	
	1200									12.4		87.6	
	1250									12.4		87.6	
	1300									12.4		87.6	
	1350									12.4		87.6	
	1400									12.4		87.6	
	1450									12.4		87.6	
	1500									12.4		87.6	
	1550									12.4		87.6	
	1600									12.4		87.6	
	1650									12.4		87.6	
	1700									12.4		87.6	
	1750									12.4		87.6	
	1800									12.4		87.6	
TOTAL													

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS	S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
							12.4		87.6		81.5		18.5	
							12.4		87.6		68.8		31.2	
							12.4		87.6		59.5		40.5	
							12.4		87.6		52.5		47.5	
							12.4		87.6		46.9		53.1	
							12.4		87.6		42.4		57.6	
							12.4		87.6		38.7		61.3	
							12.4		87.6		35.6		64.4	
							12.4		87.6		32.9		67.1	
							12.4		87.6		30.5		69.5	
							12.4		87.6		28.5		71.5	
							12.4		87.6		26.8		73.2	
							12.4		87.6		25.2		74.8	
							12.4		87.6		23.9		76.1	
							12.4		87.6		22.7		77.3	
							12.4		87.6		21.5		78.5	
							12.4		87.6		20.5		79.5	
							12.4		87.6		19.6		80.4	
							12.4		87.6		18.8		81.2	
							12.4		87.6		18.0		82.0	
							12.4		87.6		17.3		82.7	
							12.4		87.6		16.7		83.3	
							12.4		87.6		16.1		83.9	
							12.4		87.6		15.5		84.5	
							12.4		87.6		15.0		85.0	
							12.4		87.6		14.4		85.6	
							12.4		87.6		14.0		86.0	
							12.4		87.6		13.6		86.4	
							12.4		87.6		13.2		86.8	
							12.4		87.6		12.8		87.2	
							12.4		87.6		12.4		87.6	
							12.4		87.6		12.1		87.9	
							12.4		87.6		11.8		88.2	
							12.4		87.6		11.4		88.6	
							12.4		87.6		11.2		88.8	
							12.4		87.6		10.9		89.1	

TABULATION M

Ex. No.2 to V.S. No.11A o

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
1600	50									12.1		87.9	
	100									12.1		87.9	
	150									12.1		87.9	
	200									12.1		87.9	
	250									12.1		87.9	
	300									12.1		87.9	
	350									12.1		87.9	
	400									12.1		87.9	
	450									12.1		87.9	
	500									12.1		87.9	
	550									12.1		87.9	
	600									12.1		87.9	
	650									12.1		87.9	
	700									12.1		87.9	
	750									12.1		87.9	
	800									12.1		87.9	
	850									12.1		87.9	
	900									12.1		87.9	
	950									12.1		87.9	
	1000									12.1		87.9	
	1050									12.1		87.9	
	1100									12.1		87.9	
	1150									12.1		87.9	
	1200									12.1		87.9	
	1250									12.1		87.9	
	1300									12.1		87.9	
	1350									12.1		87.9	
	1400									12.1		87.9	
	1450									12.1		87.9	
	1500									12.1		87.9	
	1550									12.1		87.9	
	1600									12.1		87.9	
	1650									12.1		87.9	
	1700									12.1		87.9	
	1750									12.1		87.9	
	1800									12.1		87.9	
TOTAL													

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						12.1		87.9		81.5		18.5	
						12.1		87.9		68.8		31.2	
						12.1		87.9		59.5		40.5	
						12.1		87.9		52.5		47.5	
						12.1		87.9		46.9		53.1	
						12.1		87.9		42.4		57.6	
						12.1		87.9		38.7		61.3	
						12.1		87.9		35.6		64.4	
						12.1		87.9		32.9		67.1	
						12.1		87.9		30.5		69.5	
						12.1		87.9		28.5		71.5	
						12.1		87.9		26.8		73.2	
						12.1		87.9		25.2		74.8	
						12.1		87.9		23.9		76.1	
						12.1		87.9		22.7		77.3	
						12.1		87.9		21.5		78.5	
						12.1		87.9		20.5		79.5	
						12.1		87.9		19.6		80.4	
						12.1		87.9		18.8		81.2	
						12.1		87.9		18.0		82.0	
						12.1		87.9		17.3		82.7	
						12.1		87.9		16.7		83.3	
						12.1		87.9		16.1		83.9	
						12.1		87.9		15.5		84.5	
						12.1		87.9		15.0		85.0	
						12.1		87.9		14.4		85.6	
						12.1		87.9		14.0		86.0	
						12.1		87.9		13.6		86.4	
						12.1		87.9		13.2		86.8	
						12.1		87.9		12.8		87.2	
						12.1		87.9		12.4		87.6	
						12.1		87.9		12.1		87.9	
						12.1		87.9		11.8		88.2	
						12.1		87.9		11.4		88.6	
						12.1		87.9		11.2		88.8	
						12.1		87.9		10.9		89.1	

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
			TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
1650	50									11.8		88.2	
	100									11.8		88.2	
	150									11.8		88.2	
	200									11.8		88.2	
	250									11.8		88.2	
	300									11.8		88.2	
	350									11.8		88.2	
	400									11.8		88.2	
	450									11.8		88.2	
	500									11.8		88.2	
	550									11.8		88.2	
	600									11.8		88.2	
	650									11.8		88.2	
	700									11.8		88.2	
	750									11.8		88.2	
	800									11.8		88.2	
	850									11.8		88.2	
	900									11.8		88.2	
	950									11.8		88.2	
	1000									11.8		88.2	
	1050									11.8		88.2	
	1100									11.8		88.2	
	1150									11.8		88.2	
	1200									11.8		88.2	
	1250									11.8		88.2	
	1300									11.8		88.2	
	1350									11.8		88.2	
	1400									11.8		88.2	
	1450									11.8		88.2	
	1500									11.8		88.2	
	1550									11.8		88.2	
	1600									11.8		88.2	
	1650									11.8		88.2	
	1700									11.8		88.2	
	1750									11.8		88.2	
	1800									11.8		88.2	
TOTAL													

TABULATION M

SOUTHBOUND

Ex. No.2 to V.S. No.11A

1	2	3	4	5	6	7	8	9	10	11	12	13	14
MILES SOUTH	MILES NORTH	CARS	REVENUE AS SETTLED TOTAL TONS	ARBITRS.	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	AMOUNT	LINE HAUL %	AMOUNT
1700	50									11.4		88.6	
	100									11.4		88.6	
	150									11.4		88.6	
	200									11.4		88.6	
	250									11.4		88.6	
	300									11.4		88.6	
	350									11.4		88.6	
	400									11.4		88.6	
	450									11.4		88.6	
	500									11.4		88.6	
	550									11.4		88.6	
	600									11.4		88.6	
	650									11.4		88.6	
	700									11.4		88.6	
	750									11.4		88.6	
	800									11.4		88.6	
	850									11.4		88.6	
	900									11.4		88.6	
	950									11.4		88.6	
	1000									11.4		88.6	
	1050									11.4		88.6	
	1100									11.4		88.6	
	1150									11.4		88.6	
	1200									11.4		88.6	
	1250									11.4		88.6	
	1300									11.4		88.6	
	1350									11.4		88.6	
	1400									11.4		88.6	
	1450									11.4		88.6	
	1500									11.4		88.6	
	1550									11.4		88.6	
	1600									11.4		88.6	
	1650									11.4		88.6	
	1700									11.4		88.6	
	1750									11.4		88.6	
	1800									11.4		88.6	
TOTAL													

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						11.4		88.6		81.5		18.5	
						11.4		88.6		68.8		31.2	
						11.4		88.6		59.5		40.5	
						11.4		88.6		52.5		47.5	
						11.4		88.6		46.9		53.1	
						11.4		88.6		42.4		57.6	
						11.4		88.6		38.7		61.3	
						11.4		88.6		35.6		64.4	
						11.4		88.6		32.9		67.1	
						11.4		88.6		30.5		69.5	
						11.4		88.6		28.5		71.5	
						11.4		88.6		26.8		73.2	
						11.4		88.6		25.2		74.8	
						11.4		88.6		23.9		76.1	
						11.4		88.6		22.7		77.3	
						11.4		88.6		21.5		78.5	
						11.4		88.6		20.5		79.5	
						11.4		88.6		19.6		80.4	
						11.4		88.6		18.8		81.2	
						11.4		88.6		18.0		82.0	
						11.4		88.6		17.3		82.7	
						11.4		88.6		16.7		83.3	
						11.4		88.6		16.1		83.9	
						11.4		88.6		15.5		84.5	
						11.4		88.6		15.0		85.0	
						11.4		88.6		14.4		85.6	
						11.4		88.6		14.0		86.0	
						11.4		88.6		13.6		86.4	
						11.4		88.6		13.2		86.8	
						11.4		88.6		12.8		87.2	
						11.4		88.6		12.4		87.6	
						11.4		88.6		12.1		87.9	
						11.4		88.6		11.8		88.2	
						11.4		88.6		11.4		88.6	
						11.4		88.6		11.2		88.8	
						11.4		88.6		10.9		89.1	

TABULATION M

Ex. No.2 to V.S. No.11A of

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
			TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
1750	50									11.2		88.8	
	100									11.2		88.8	
	150									11.2		88.8	
	200									11.2		88.8	
	250									11.2		88.8	
	300									11.2		88.8	
	350									11.2		88.8	
	400									11.2		88.8	
	450									11.2		88.8	
	500									11.2		88.8	
	550									11.2		88.8	
	600									11.2		88.8	
	650									11.2		88.8	
	700									11.2		88.8	
	750									11.2		88.8	
	800									11.2		88.8	
	850									11.2		88.8	
	900									11.2		88.8	
	950									11.2		88.8	
	1000									11.2		88.8	
	1050									11.2		88.8	
	1100									11.2		88.8	
	1150									11.2		88.8	
	1200									11.2		88.8	
	1250									11.2		88.8	
	1300									11.2		88.8	
	1350									11.2		88.8	
	1400									11.2		88.8	
	1450									11.2		88.8	
	1500									11.2		88.8	
	1550									11.2		88.8	
	1600									11.2		88.8	
	1650									11.2		88.8	
	1700									11.2		88.8	
	1750									11.2		88.8	
	1800									11.2		88.8	
TOTAL													

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
							11.8		88.2		81.5		18.5	
							11.8		88.2		68.8		31.2	
							11.8		88.2		59.5		40.5	
							11.8		88.2		52.5		47.5	
							11.8		88.2		46.9		53.1	
							11.8		88.2		42.4		57.6	
							11.8		88.2		38.7		61.3	
							11.8		88.2		35.6		64.4	
							11.8		88.2		32.9		67.1	
							11.8		88.2		30.5		69.5	
							11.8		88.2		28.5		71.5	
							11.8		88.2		26.8		73.2	
							11.8		88.2		25.2		74.8	
							11.8		88.2		23.9		76.1	
							11.8		88.2		22.7		77.3	
							11.8		88.2		21.5		78.5	
							11.8		88.2		20.5		79.5	
							11.8		88.2		19.6		80.4	
							11.8		88.2		18.8		81.2	
							11.8		88.2		18.0		82.0	
							11.8		88.2		17.3		82.7	
							11.8		88.2		16.7		83.3	
							11.8		88.2		16.1		83.9	
							11.8		88.2		15.5		84.5	
							11.8		88.2		15.0		85.0	
							11.8		88.2		14.4		85.6	
							11.8		88.2		14.0		86.0	
							11.8		88.2		13.6		86.4	
							11.8		88.2		13.2		86.8	
							11.8		88.2		12.8		87.2	
							11.8		88.2		12.4		87.6	
							11.8		88.2		12.1		87.9	
							11.8		88.2		11.8		88.2	
							11.8		88.2		11.4		88.6	
							11.8		88.2		11.2		88.8	
							11.8		88.2		10.9		89.1	

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
							11.2		88.8		81.5		18.5	
							11.2		88.8		68.8		31.2	
							11.2		88.8		59.5		40.5	
							11.2		88.8		52,5		47.5	
							11.2		88.8		46.9		53.1	
							11.2		88.8		42.4		57.6	
							11.2		88.8		38.7		61.3	
							11.2		88.8		35.6		64.4	
							11.2		88.8		32.9		67.1	
							11.2		88.8		30.5		69.5	
							11.2		88.8		28.5		71.5	
							11.2		88.8		26.8		73.2	
							11.2		88.8		25.2		74.8	
							11.2		88.8		23.9		76.1	
							11.2		88.8		22.7		77.3	
							11.2		88.8		21.5		78.5	
							11.2		88.8		20.5		79.5	
							11.2		88.8		19.6		80.4	
							11.2		88.8		18.8		81.2	
							11.2		88.8		18.0		82.0	
							11.2		88.8		17.3		82.7	
							11.2		88.8		16.7		83.3	
							11.2		88.8		16.1		83.9	
							11.2		88.8		15.5		84.5	
							11.2		88.8		15.0		85.0	
							11.2		88.8		14.4		85.6	
							11.2		88.8		14.0		86.0	
							11.2		88.8		13.6		86.4	
							11.2		88.8		13.2		86.8	
							11.2		88.8		12.8		87.2	
							11.2		88.8		12.4		87.6	
							11.2		88.8		12.1		87.9	
							11.2		88.8		11.8		88.2	
							11.2		88.8		11.4		88.6	
							11.2		88.8		11.2		88.8	
							11.2		88.8		10.9		89.1	

TABULATION M

Ex. No.2 to V.S. No.11

SOUTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
			TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
1800	50									10.9		89.1	
	100									10.9		89.1	
	150									10.9		89.1	
	200									10.9		89.1	
	250									10.9		89.1	
	300									10.9		89.1	
	350									10.9		89.1	
	400									10.9		89.1	
	450									10.9		89.1	
	500									10.9		89.1	
	550									10.9		89.1	
	600									10.9		89.1	
	650									10.9		89.1	
	700									10.9		89.1	
	750									10.9		89.1	
	800									10.9		89.1	
	850									10.9		89.1	
	900									10.9		89.1	
	950									10.9		89.1	
	1000									10.9		89.1	
	1050									10.9		89.1	
	1100									10.9		89.1	
	1150									10.9		89.1	
	1200									10.9		89.1	
	1250									10.9		89.1	
	1300									10.9		89.1	
	1350									10.9		89.1	
	1400									10.9		89.1	
	1450									10.9		89.1	
	1500									10.9		89.1	
	1550									10.9		89.1	
	1600									10.9		89.1	
	1650									10.9		89.1	
	1700									10.9		89.1	
	1750									10.9		89.1	
	1800									10.9		89.1	
TOTAL													

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRARY.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
							10.9		89.1		81.5		18.5	
							10.9		89.1		68.8		31.2	
							10.9		89.1		59.5		40.5	
							10.9		89.1		52.5		47.5	
							10.9		89.1		46.9		53.1	
							10.9		89.1		42.4		57.6	
							10.9		89.1		38.7		61.3	
							10.9		89.1		35.6		64.4	
							10.9		89.1		32.9		67.1	
							10.9		89.1		30.5		69.5	
							10.9		89.1		28.5		71.5	
							10.9		89.1		26.8		73.2	
							10.9		89.1		25.2		74.8	
							10.9		89.1		23.9		76.1	
							10.9		89.1		22.7		77.3	
							10.9		89.1		21.5		78.5	
							10.9		89.1		20.5		79.5	
							10.9		89.1		19.6		80.4	
							10.9		89.1		18.8		81.2	
							10.9		89.1		18.0		82.0	
							10.9		89.1		17.3		82.7	
							10.9		89.1		16.7		83.3	
							10.9		89.1		16.1		83.9	
							10.9		89.1		15.5		84.5	
							10.9		89.1		15.0		85.0	
							10.9		89.1		14.4		85.6	
							10.9		89.1		14.0		86.0	
							10.9		89.1		13.6		86.4	
							10.9		89.1		13.2		86.8	
							10.9		89.1		12.8		87.2	
							10.9		89.1		12.4		87.6	
							10.9		89.1		12.1		87.9	
							10.9		89.1		11.8		88.2	
							10.9		89.1		11.4		88.6	
							10.9		89.1		11.2		88.8	
							10.9		89.1		10.9		89.1	

TABULATION M

NORTHBOUND

Ex. No.2 to V.S. No.11A

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT
50	50	243	7,758.0		27,367	13,683	50.0	13,684	50.0	81.5	11,152	18.5	2,531
	100	39	1,190.8		4,771	2,193	46.0	2,578	54.0	81.5	1,787	18.5	406
	150	330	13,847.6		57,234	24,029	42.0	33,205	58.0	81.5	19,584	18.5	4,445
	200	100	3,638.8		31,264	12,181	39.0	19,083	61.0	81.5	9,928	18.5	2,253
	250	63	1,711.7		14,638	5,735	39.2	8,903	60.8	81.5	4,674	18.5	1,061
	300	681	21,892.7		237,579	80,762	34.0	156,817	66.0	81.5	65,821	18.5	14,941
	350	63	2,091.9		20,460	4,933	24.1	15,527	75.9	81.5	4,020	18.5	913
	400	82	2,181.8		21,656	6,499	30.0	15,157	70.0	81.5	5,297	18.5	1,202
	450	101	2,664.6		29,765	9,263	31.1	20,502	68.9	81.5	7,549	18.5	1,714
	500									81.5		18.5	
	550	86	1,990.9		25,149	6,539	26.0	18,610	74.0	81.5	5,329	18.5	1,210
	600	443	13,897.4		249,653	62,424	25.0	187,229	75.0	81.5	50,876	18.5	11,548
	650	1,026	33,004.6		539,885	129,165	23.9	410,720	76.1	81.5	105,269	18.5	23,896
	700	133	4,192.3		66,166	16,278	24.6	49,898	75.4	81.5	13,267	18.5	3,011
	750	43	929.6		14,666	3,233	22.0	11,433	78.0	81.5	2,635	18.5	598
	800	161	4,223.8		78,094	16,416	21.0	61,678	79.0	81.5	13,379	18.5	3,037
	850	68	1,673.5		37,201	7,397	19.9	29,804	80.1	81.5	6,029	18.5	1,368
	900	436	12,174.3		220,550	42,829	19.4	177,721	80.6	81.5	34,906	18.5	7,923
	950	19	288.6		4,662	888	19.0	3,774	81.0	81.5	724	18.5	164
	1000	226	5,241.7		110,494	19,900	18.0	90,594	82.0	81.5	16,219	18.5	3,681
	1050									81.5		18.5	
	1100									81.5		18.5	
	1150									81.5		18.5	
	1200									81.5		18.5	
	1250									81.5		18.5	
	1300									81.5		18.5	
	1350									81.5		18.5	
	1400									81.5		18.5	
	1450									81.5		18.5	
	1500									81.5		18.5	
	1550									81.5		18.5	
	1600									81.5		18.5	
	1650									81.5		18.5	
	1700									81.5		18.5	
	1750									81.5		18.5	
	1800									81.5		18.5	
TOTAL		4,343	134,494.6		1,791,254	464,347		1,326,907			378,445		85,902

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
58.0		27,367	13,683	50.0	13,684	50.0	81.5	11,152	18.5	2,531	81.5	11,152	18.5	2,532
90.8		4,771	2,193	46.0	2,578	54.0	81.5	1,787	18.5	406	68.8	1,774	31.2	804
47.6		57,234	24,029	42.0	33,205	58.0	81.5	19,584	18.5	4,445	59.5	19,757	40.5	13,448
38.6		31,264	12,181	39.0	19,083	61.0	81.5	9,928	18.5	2,253	52.5	10,019	47.5	9,064
11.7		14,638	5,735	39.2	8,903	60.8	81.5	4,674	18.5	1,061	46.9	4,176	53.1	4,727
92.7		237,579	80,762	34.0	156,817	66.0	81.5	65,821	18.5	14,941	42.4	66,490	57.6	90,327
91.9		20,460	4,933	24.1	15,527	75.9	81.5	4,020	18.5	913	38.7	6,009	61.3	9,518
81.8		21,656	6,499	30.0	15,157	70.0	81.5	5,297	18.5	1,202	35.6	5,396	64.4	9,761
64.6		29,765	9,263	31.1	20,502	68.9	81.5	7,549	18.5	1,714	32.9	6,745	67.1	13,757
							81.5		18.5		30.5		69.5	
90.9		25,149	6,539	26.0	18,610	74.0	81.5	5,329	18.5	1,210	28.5	5,304	71.5	13,306
97.4		249,653	62,424	25.0	187,229	75.0	81.5	50,876	18.5	11,548	26.8	50,177	73.2	137,052
04.6		539,885	129,165	23.9	410,720	76.1	81.5	105,269	18.5	23,896	25.2	103,501	74.8	307,219
92.3		66,166	16,278	24.6	49,888	75.4	81.5	13,267	18.5	3,011	23.9	11,923	76.1	37,965
29.6		14,666	3,233	22.0	11,433	78.0	81.5	2,635	18.5	598	22.7	2,595	77.3	8,838
23.8		78,094	16,416	21.0	61,678	79.0	81.5	13,379	18.5	3,037	21.5	13,261	78.5	48,417
73.5		37,201	7,397	19.9	29,804	80.1	81.5	6,029	18.5	1,368	20.5	6,110	79.5	23,694
74.3		220,550	42,829	19.4	177,721	80.6	81.5	34,906	18.5	7,923	19.6	34,833	80.4	142,888
88.6		4,662	888	19.0	3,774	81.0	81.5	724	18.5	164	18.8	710	81.2	3,064
41.7		110,494	19,900	18.0	90,594	82.0	81.5	16,219	18.5	3,681	18.0	16,307	82.0	74,287
							81.5		18.5		17.3		82.7	
							81.5		18.5		16.7		83.3	
							81.5		18.5		16,1		83.9	
							81.5		18.5		15.5		84.5	
							81.5		18.5		15.0		85.0	
							81.5		18.5		14.4		85.6	
							81.5		18.5		14.0		86.0	
							81.5		18.5		13.6		86.4	
							81.5		18.5		13.2		86.8	
							81.5		18.5		12.8		87.2	
							81.5		18.5		12.4		87.6	
							81.5		18,5		12.1		87.9	
							81.5		18.5		11.8		88.2	
							81.5		18.5		11.4		88.6	
							81.5		18.5		11.2		88.8	
							81.5		18.5		10.9		89.1	
94.6		1,791,254	464,347		1,326,907			378,445		85,902		376,239		950,668

TABULATION M

NORTHBOUND

Ex. No.2 to V.S. No.11A o

1	2	3	4	5	6	7	8	9	10	11	12	13	14
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT
100	50	440	15,382.2		53,305	29,044	54.5	24,261	45.5	68.8	19,982	31.2	9,062
	100	142	3,386.8		22,290	11,145	50.0	11,145	50.0	68.8	7,668	31.2	3,477
	150	178	5,649.6		35,707	16,425	46.0	19,282	54.0	68.8	11,300	31.2	5,125
	200	292	8,451.6		67,633	29,164	43.1	38,469	56.9	68.8	20,065	31.2	9,099
	250	927	35,869.6		306,505	125,602	41.0	180,903	59.0	68.8	86,414	31.2	39,188
	300	1,067	25,783.1		323,838	123,992	38.3	199,846	61.7	68.8	85,306	31.2	38,686
	350	2,074	65,743.6		724,852	259,544	35.8	465,308	64.2	68.8	178,566	31.2	80,978
	400	417	12,285.0		166,107	56,584	34.1	109,523	65.9	68.8	38,930	31.2	17,654
	450	931	23,324.5		327,600	104,862	32.0	222,738	68.0	68.8	72,145	31.2	32,717
	500	628	19,528.2		245,093	75,863	31.0	169,230	69.0	68.8	52,194	31.2	23,669
	550	3,057	105,840.6		1,740,756	496,413	28.5	1,244,343	71.5	68.8	341,532	31.2	154,881
	600	1,628	50,183.7		811,929	227,161	28.0	584,768	72.0	68.8	156,287	31.2	70,874
	650	1,106	39,703.0		680,430	184,235	27.1	496,195	72.9	68.8	126,754	31.2	57,481
	700	512	18,940.0		277,669	72,184	26.0	205,485	74.0	68.8	49,663	31.2	22,521
	750	837	12,035.5		278,387	69,598	25.0	208,789	75.0	68.8	47,883	31.2	21,715
	800	196	3,815.1		102,850	24,684	24.0	78,166	76.0	68.8	16,983	31.2	7,701
	850	201	6,196.5		103,770	23,843	23.0	79,927	77.0	68.8	16,404	31.2	7,439
	900	237	7,252.3		160,277	35,283	22.0	124,994	78.0	68.8	24,275	31.2	11,008
	950	61	2,394.3		34,725	9,263	26.7	25,462	73.3	68.8	6,373	31.2	2,890
	1000	312	14,637.3		275,051	58,049	21.1	217,002	78.9	68.8	39,938	31.2	18,111
	1050	53	1,847.4		101,083	20,211	20.0	80,872	80.0	68.8	13,905	31.2	6,306
	1100									68.8		31.2	
	1150									68.8		31.2	
	1200	27	1,482.2		21,977	3,954	18.0	18,023	82.0	68.8	2,720	31.2	1,234
	1250	40	1,202.0		17,831	3,204	18.0	14,627	82.0	68.8	2,204	31.2	1,000
	1300									68.8		31.2	
	1350									68.8		31.2	
	1400									68.8		31.2	
	1450									68.8		31.2	
	1500									68.8		31.2	
	1550									68.8		31.2	
	1600									68.8		31.2	
	1650									68.8		31.2	
	1700									68.8		31.2	
	1750									68.8		31.2	
	1800									68.8		31.2	
TOTAL		15,363	480,934.1		6,879,665	2,060,307		4,819,358			1,417,491		642,816

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRARYS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
82.2		53,305	29,044	54.5	24,261	45.5	68.8	19,982	31.2	9,062	81.5	19,773	18.5	4,488
86.8		22,290	11,145	50.0	11,145	50.0	68.8	7,668	31.2	3,477	68.8	7,668	31.2	3,477
49.6		35,707	16,425	46.0	19,282	54.0	68.8	11,300	31.2	5,125	59.5	11,473	40.5	7,809
51.6		67,633	29,164	43.1	38,469	56.9	68.8	20,065	31.2	9,099	52.5	20,196	47.5	18,273
69.6		306,505	125,602	41.0	180,903	59.0	68.8	86,414	31.2	39,188	46.9	84,844	53.1	96,059
83.1		323,838	123,992	38.3	199,846	61.7	68.8	85,306	31.2	38,686	42.4	84,735	57.6	115,111
43.6		724,852	259,544	35.8	465,308	64.2	68.8	178,566	31.2	80,978	38.7	180,074	61.3	285,234
85.0		166,107	56,584	34.1	109,523	65.9	68.8	38,930	31.2	17,654	35.6	38,990	64.4	70,533
24.5		327,600	104,862	32.0	222,738	68.0	68.8	72,145	31.2	32,717	32.9	73,281	67.1	149,457
28.2		245,093	75,863	31.0	169,230	69.0	68.8	52,194	31.2	23,669	30.5	51,615	69.5	117,615
40.6		1,740,756	496,413	28.5	1,244,343	71.5	68.8	341,532	31.2	154,881	28.5	354,638	71.5	889,705
83.7		811,929	227,161	28.0	584,768	72.0	68.8	156,287	31.2	70,874	26.8	156,718	73.2	428,050
03.0		680,430	184,235	27.1	496,195	72.9	68.8	126,754	31.2	57,481	25.2	125,041	74.8	371,154
40.0		277,669	72,184	26.0	205,485	74.0	68.8	49,663	31.2	22,521	23.9	49,111	76.1	156,374
35.5		278,387	69,598	25.0	208,789	75.0	68.8	47,883	31.2	21,715	22.7	47,395	77.3	161,394
15.1		102,850	24,684	24.0	78,166	76.0	68.8	16,983	31.2	7,701	21.5	16,806	78.5	61,360
96.5		103,770	23,843	23.0	79,927	77.0	68.8	16,404	31.2	7,439	20.5	16,385	79.5	63,542
52.3		160,277	35,283	22.0	124,994	78.0	68.8	24,275	31.2	11,008	19.6	24,499	80.4	100,495
94.3		34,725	9,263	26.7	25,462	73.3	68.8	6,373	31.2	2,890	18.8	4,787	81.2	20,675
37.3		275,051	58,049	21.1	217,002	78.9	68.8	39,938	31.2	18,111	18.0	39,060	82.0	177,942
47.4		101,083	20,211	20.0	80,872	80.0	68.8	13,905	31.2	6,306	17.3	13,991	82.7	66,881
							68.8		31.2		16.7		83.3	
							68.8		31.2		16.1		83.9	
82.2		21,977	3,954	18.0	18,023	82.0	68.8	2,720	31.2	1,234	15.5	2,794	84.5	15,229
02.0		17,831	3,204	18.0	14,627	82.0	68.8	2,204	31.2	1,000	15.0	2,194	85.0	12,433
							68.8		31.2		14.4		85.6	
							68.8		31.2		14.0		86.0	
							68.8		31.2		13.6		86.4	
							68.8		31.2		13.2		86.8	
							68.8		31.2		12.8		87.2	
							68.8		31.2		12.4		87.6	
							68.8		31.2		12.1		87.9	
							68.8		31.2		11.8		88.2	
							68.8		31.2		11.4		88.6	
							68.8		31.2		11.2		88.8	
							68.8		31.2		10.9		89.1	
34.1		6,879,665	2,060,307		4,819,358			1,417,491		642,816		1,426,068		3,393,290

TABULATION M

NORTHBOUND

Ex. No.2 to V.S. No.11A

1	2	3	4	5	6	7	8	9	10	11	12	13	14
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
150	50	882	25,372.5		116,401	67,536	58.0	48,865	42.0	59.5	40,184	40.5	27,352
	100	3,058	71,640.2		409,838	221,651	54.1	188,187	45.9	59.5	131,882	40.5	89,769
	150	512	20,655.7		163,395	80,285	49.1	83,110	50.9	59.5	47,770	40.5	32,515
	200	941	30,400.2		229,755	108,004	47.0	121,751	53.0	59.5	64,262	40.5	43,742
	250	508	14,741.8		145,863	64,242	44.0	81,621	56.0	59.5	38,224	40.5	26,018
	300	861	24,408.4		274,415	115,306	42.0	159,109	58.0	59.5	68,607	40.5	46,699
	350	593	22,089.2		228,082	87,810	38.5	140,272	61.5	59.5	52,247	40.5	35,563
	400	616	25,857.5		262,634	97,594	37.2	165,040	62.8	59.5	58,068	40.5	39,526
	450	649	28,269.3		293,129	107,003	36.5	186,126	63.5	59.5	63,667	40.5	43,336
	500	745	34,333.8		397,855	136,516	34.3	261,339	65.7	59.5	81,227	40.5	55,289
	550	423	10,258.7		176,964	56,825	32.1	120,139	67.9	59.5	33,811	40.5	23,014
	600	880	22,311.9		399,988	124,002	31.0	275,986	69.0	59.5	73,781	40.5	50,221
	650	537	15,829.8	552	309,374	92,820	30.0	216,554	70.0	59.5	55,228	40.5	37,592
	700	415	8,364.2		189,704	55,000	29.0	134,704	71.0	59.5	32,725	40.5	22,275
	750	634	10,564.9		249,977	69,940	28.0	180,037	72.0	59.5	41,614	40.5	28,326
	800	967	32,823.6		525,068	140,966	26.8	384,102	73.2	59.5	83,875	40.5	57,091
	850	350	7,905.5		171,062	44,480	26.0	126,582	74.0	59.5	26,466	40.5	18,014
	900	495	14,143.3		313,999	78,572	25.0	235,427	75.0	59.5	46,750	40.5	31,822
	950	208	4,780.4		100,990	24,278	24.0	76,712	76.0	59.5	14,445	40.5	9,833
	1000	61	1,923.3		27,488	13,304	48.4	14,184	51.6	59.5	7,916	40.5	5,388
	1050	284	9,126.5		277,919	64,249	23.1	213,670	76.9	59.5	38,228	40.5	26,021
	1100	62	914.7		25,401	5,109	20.1	20,292	79.9	59.5	3,040	40.5	2,069
	1150	24	540.0		16,536	3,480	21.0	13,056	79.0	59.5	2,071	40.5	1,409
	1200									59.5		40.5	
	1250									59.5		40.5	
	1300	23	568.3		21,899	4,389	20.0	17,510	80.0	59.5	2,611	40.5	1,778
	1350									59.5		40.5	
	1400									59.5		40.5	
	1450									59.5		40.5	
	1500									59.5		40.5	
	1550									59.5		40.5	
	1600									59.5		40.5	
	1650									59.5		40.5	
	1700									59.5		40.5	
	1750									59.5		40.5	
	1800									59.5		40.5	
TOTAL		14,728	437,833.7	552	5,327,736	1,863,361		3,464,375			1,108,699		754,662

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED						REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
NS ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
5	116,401	67,536	58.0	48,865	42.0	59.5	40,184	40.5	27,352	81.5	39,825	18.5	9,040
2	409,838	221,651	54.1	188,187	45.9	59.5	131,882	40.5	89,769	68.8	129,473	31.2	58,714
7	163,395	80,285	49.1	83,110	50.9	59.5	47,770	40.5	32,515	59.5	49,450	40.5	33,660
2	229,755	108,004	47.0	121,751	53.0	59.5	64,262	40.5	43,742	52.5	63,919	47.5	57,832
8	145,863	64,242	44.0	81,621	56.0	59.5	38,224	40.5	26,018	46.9	38,280	53.1	43,341
4	274,415	115,306	42.0	159,109	58.0	59.5	68,607	40.5	46,699	42.4	67,462	57.6	91,647
2	228,082	87,810	38.5	140,272	61.5	59.5	52,247	40.5	35,563	38.7	54,285	61.3	85,987
5	262,634	97,594	37.2	165,040	62.8	59.5	58,068	40.5	39,526	35.6	58,754	64.4	106,286
3	293,129	107,003	36.5	186,126	63.5	59.5	63,667	40.5	43,336	32.9	61,235	67.1	124,891
8	397,855	136,516	34.3	261,339	65.7	59.5	81,227	40.5	55,289	30.5	79,708	69.5	181,631
7	176,964	56,825	32.1	120,139	67.9	59.5	33,811	40.5	23,014	28.5	34,240	71.5	85,899
9	399,988	124,002	31.0	275,986	69.0	59.5	73,781	40.5	50,221	26.8	73,964	73.2	202,022
8 552	309,374	92,820	30.0	216,554	70.0	59.5	55,228	40.5	37,592	25.2	54,572	74.8	161,982
2	189,704	55,000	29.0	134,704	71.0	59.5	32,725	40.5	22,275	23.9	32,194	76.1	102,510
9	249,977	69,940	28.0	180,037	72.0	59.5	41,614	40.5	28,326	22.7	40,868	77.3	139,169
6	525,068	140,966	26.8	384,102	73.2	59.5	83,875	40.5	57,091	21.5	82,582	78.5	301,520
5	171,062	44,480	26.0	126,582	74.0	59.5	26,466	40.5	18,014	20.5	25,949	79.5	100,633
3	313,999	78,572	25.0	235,427	75.0	59.5	46,750	40.5	31,822	19.6	46,144	80.4	189,283
4	100,990	24,278	24.0	76,712	76.0	59.5	14,445	40.5	9,833	18.8	14,422	81.2	62,290
3	27,488	13,304	48.4	14,184	51.6	59.5	7,916	40.5	5,388	18.0	2,553	82.0	11,631
5	277,919	64,249	23.1	213,670	76.9	59.5	38,228	40.5	26,021	17.3	36,965	82.7	176,705
7	25,401	5,109	20.1	20,292	79.9	59.5	3,040	40.5	2,069	16.7	3,389	83.3	16,903
0	16,536	3,480	21.0	13,056	79.0	59.5	2,071	40.5	1,409	16.1	2,102	83.9	10,054
						59.5		40.5		15.5		84.5	
						59.5		40.5		15.0		85.0	
3	21,899	4,389	20.0	17,510	80.0	59.5	2,611	40.5	1,778	14.4	2,521	85.6	14,989
						59.5		40.5		14.0		86.0	
						59.5		40.5		13.6		86.4	
						59.5		40.5		13.2		86.8	
						59.5		40.5		12.8		87.2	
						59.5		40.5		12.4		87.6	
						59.5		40.5		12.1		87.9	
						59.5		40.5		11.8		88.2	
						59.5		40.5		11.4		88.6	
						59.5		40.5		11.2		88.8	
						59.5		40.5		10.9		89.1	
552	5,327,736	4,863,361		3,464,375			1,108,699		754,662		1,094,856		2,369,519

TABULATION M

NORTHBOUND

Ex. No.2 to V.S. No.

1	2	3	4	5	6	7	8	9	10	11	12	13	
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AM
200	50	372	9,712.2		54,403	32,989	60.6	21,414	39.4	52.5	17,319	47.5	15
	100	777	22,626.1		83,120	47,371	57.0	35,749	43.0	52.5	24,870	47.5	22
	150	1,251	60,805.8		341,060	180,846	53.0	160,214	47.0	52.5	94,944	47.5	85
	200	408	11,453.9		134,989	67,493	50.0	67,496	50.0	52.5	35,434	47.5	32
	250	584	16,505.4		198,246	93,220	47.0	105,026	53.0	52.5	48,941	47.5	44
	300	1,358	50,739.8		593,164	267,479	45.1	325,685	54.9	52.5	140,426	47.5	127
	350	1,398	46,151.8		605,118	254,782	42.1	350,336	57.9	52.5	133,761	47.5	121
	400	1,510	65,839.0	470	767,116	306,816	40.0	460,300	60.0	52.5	161,078	47.5	145
	450	978	37,935.0	226	571,765	222,350	38.9	349,415	61.1	52.5	116,734	47.5	105
	500	1,142	45,375.8		502,637	186,136	37.0	316,501	63.0	52.5	97,721	47.5	88
	550	1,003	31,812.7		497,810	175,963	35.3	321,847	64.7	52.5	92,381	47.5	83
	600	630	14,438.1		251,443	85,487	34.0	165,956	66.0	52.5	44,881	47.5	40
	650	429	17,632.7	591	235,924	75,502	32.0	160,422	68.0	52.5	39,639	47.5	35
	700	611	19,941.0		318,386	98,688	31.0	219,698	69.0	52.5	51,811	47.5	46
	750	403	5,052.0		112,082	33,607	30.0	78,475	70.0	52.5	17,644	47.5	15
	800	1,071	26,132.6		722,501	209,425	29.0	513,076	71.0	52.5	109,948	47.5	99
	850	331	7,760.4		202,391	56,679	28.0	145,712	72.0	52.5	29,756	47.5	26
	900	202	4,210.1		121,500	33,177	27.3	88,323	72.7	52.5	17,418	47.5	15
	950	253	5,442.6		111,612	29,151	26.1	82,461	73.9	52.5	15,304	47.5	13
	1000	364	8,359.0		189,917	49,370	26.0	140,547	74.0	52.5	25,919	47.5	23
	1050	221	4,023.5		135,134	33,780	25.0	101,354	75.0	52.5	17,735	47.5	16
	1100	605	12,720.6		334,098	80,175	24.0	253,923	76.0	52.5	42,092	47.5	38
	1150	313	6,769.3		175,797	35,836	20.4	139,961	79.6	52.5	18,814	47.5	17
	1200	76	1,893.4		56,024	12,875	23.0	43,149	77.0	52.5	6,759	47.5	6
	1250	490	7,956.7		306,411	67,360	22.0	239,051	78.0	52.5	35,364	47.5	31
	1300	108	2,356.5		61,907	13,478	21.8	48,429	78.2	52.5	7,076	47.5	6
	1350	26	1,056.3		38,885	8,173	21.0	30,712	79.0	52.5	4,291	47.5	3
	1400									52.5		47.5	
	1450	45	594.3		29,073	5,822	20.0	23,251	80.0	52.5	3,057	47.5	2
	1500									52.5		47.5	
	1550	22	252.7		14,861	2,830	19.0	12,031	81.0	52.5	1,486	47.5	1
	1600									52.5		47.5	
	1650									52.5		47.5	
	1700									52.5		47.5	
	1750									52.5		47.5	
	1800									52.5		47.5	
TOTAL		16,981	545,549.3	1,287	7,767,374	2,766,860		5,000,514			1,452,603		1,31

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
712.2		54,403	32,989	60.6	21,414	39.4	52.5	17,319	47.5	15,670	81.5	17,452	18.5	3,962
626.1		83,120	47,371	57.0	35,749	43.0	52.5	24,870	47.5	22,501	68.8	24,595	31.2	11,154
805.8		341,060	180,846	53.0	160,214	47.0	52.5	94,944	47.5	85,902	59.5	95,327	40.5	64,887
453.9		134,989	67,493	50.0	67,496	50.0	52.5	35,434	47.5	32,059	52.5	35,435	47.5	32,061
505.4		198,246	93,220	47.0	105,026	53.0	52.5	48,941	47.5	44,279	46.9	49,257	53.1	55,769
739.8		593,164	267,479	45.1	325,685	54.9	52.5	140,426	47.5	127,053	42.4	138,090	57.6	187,595
151.8		605,118	254,782	42.1	350,336	57.9	52.5	133,761	47.5	121,021	38.7	135,580	61.3	214,756
839.0	470	767,116	306,816	40.0	460,300	60.0	52.5	161,078	47.5	145,738	35.6	163,867	64.4	296,433
935.0	226	571,765	222,350	38.9	349,415	61.1	52.5	116,734	47.5	105,616	32.9	114,958	67.1	234,457
375.8		502,637	186,136	37.0	316,501	63.0	52.5	97,721	47.5	88,415	30.5	96,533	69.5	219,968
812.7		497,810	175,963	35.3	321,847	64.7	52.5	92,381	47.5	83,582	28.5	91,726	71.5	230,121
438.1		251,443	85,487	34.0	165,956	66.0	52.5	44,881	47.5	40,606	26.8	44,476	73.2	121,480
632.7	591	235,924	75,502	32.0	160,422	68.0	52.5	39,639	47.5	35,863	25.2	40,426	74.8	119,996
941.0		318,386	98,688	31.0	219,698	69.0	52.5	51,811	47.5	46,877	23.9	52,508	76.1	167,190
052.0		112,082	33,607	30.0	78,475	70.0	52.5	17,644	47.5	15,963	22.7	17,814	77.3	60,661
132.6		722,501	209,425	29.0	513,076	71.0	52.5	109,948	47.5	99,477	21.5	110,311	78.5	402,765
760.4		202,391	56,679	28.0	145,712	72.0	52.5	29,756	47.5	26,923	20.5	29,871	79.5	115,841
210.1		121,500	33,177	27.3	88,323	72.7	52.5	17,418	47.5	15,759	19.6	17,311	80.4	71,012
442.6		111,612	29,151	26.1	82,461	73.9	52.5	15,304	47.5	13,847	18.8	15,503	81.2	66,958
359.0		189,917	49,370	26.0	140,547	74.0	52.5	25,919	47.5	23,451	18.0	25,298	82.0	115,249
023.5		135,134	33,780	25.0	101,354	75.0	52.5	17,735	47.5	16,045	17.3	17,534	82.7	83,820
720.6		334,098	80,175	24.0	253,923	76.0	52.5	42,092	47.5	38,083	16.7	42,405	83.3	211,518
769.3		175,797	35,836	20.4	139,961	79.6	52.5	18,814	47.5	17,022	16.1	22,534	83.9	117,427
893.4		56,024	12,875	23.0	43,149	77.0	52.5	6,759	47.5	6,116	15.5	6,688	84.5	36,461
956.7		306,411	67,360	22.0	239,051	78.0	52.5	35,364	47.5	31,996	15.0	35,858	85.0	203,193
356.5		61,907	13,478	21.8	48,429	78.2	52.5	7,076	47.5	6,402	14.4	6,974	85.6	41,455
056.3		38,885	8,173	21.0	30,712	79.0	52.5	4,291	47.5	3,882	14.0	4,300	86.0	26,412
							52.5		47.5		13.6		86.4	
594.3		29,073	5,822	20.0	23,251	80.0	52.5	3,057	47.5	2,765	13.2	3,069	86.8	20,182
							52.5		47.5		12.8		87.2	
252.7		14,861	2,830	19.0	12,031	81.0	52.5	1,486	47.5	1,344	12.4	1,492	87.6	10,539
							52.5		47.5		12.1		87.9	
							52.5		47.5		11.8		88.2	
							52.5		47.5		11.4		88.6	
							52.5		47.5		11.2		88.8	
							52.5		47.5		10.9		89.1	
549.3	1,287	7,767,374	2,766,860		5,000,514			1,452,603		1,314,257		1,457,192		3,543,322

TABULATION M

NORTHBOUND

Ex. No.2 to V.S. No.

1	2	3	4	5	6	7	8	9	10	11	12	13	1
MILES SOUTH	MILES NORTH	CARS	TONS	REVENUE AS SETTLED TOTAL ARBITRARIES	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMO
250	50	559	20,824.2		167,172	105,309	63.0	61,863	37.0	46.9	49,390	53.1	55,
	100	1,776	60,644.2		303,654	178,791	58.9	124,863	41.1	46.9	83,853	53.1	94,
	150	631	23,212.2		167,008	93,556	56.0	73,452	44.0	46.9	43,878	53.1	49,
	200	739	37,478.9		284,758	150,875	53.0	133,883	47.0	46.9	70,760	53.1	80,
	250	711	23,493.3		234,854	119,224	50.8	115,630	49.2	46.9	55,916	53.1	63,
	300	1,360	52,520.1		736,380	345,572	46.9	390,808	53.1	46.9	162,073	53.1	183,
	350	2,053	93,803.7		1,059,194	476,811	45.0	582,383	55.0	46.9	223,624	53.1	253,
	400	1,091	47,112.7		500,178	215,347	43.1	284,831	56.9	46.9	100,998	53.1	114,
	450	1,010	30,814.8		523,452	215,961	41.3	307,491	58.7	46.9	101,286	53.1	114,
	500	310	6,845.3		132,101	50,864	38.5	81,237	61.5	46.9	23,855	53.1	27,
	550	397	9,773.4	388	146,444	55,797	38.1	90,647	61.9	46.9	26,169	53.1	29,
	600	464	13,555.8		261,397	94,071	36.0	167,326	64.0	46.9	44,119	53.1	49,
	650	341	10,547.3		162,951	57,016	35.0	105,935	65.0	46.9	26,741	53.1	30,
	700	740	17,735.0		386,539	131,725	34.1	254,814	65.9	46.9	61,779	53.1	69,
	750	498	5,510.8		122,888	39,555	32.2	83,333	67.8	46.9	18,551	53.1	21,
	800	257	9,552.6		214,591	66,539	31.0	148,052	69.0	46.9	31,207	53.1	35,
	850	296	12,090.9		285,164	81,479	28.6	203,685	71.4	46.9	38,214	53.1	43,
	900	129	5,201.1		146,087	43,822	30.0	102,265	70.0	46.9	20,553	53.1	23,
	950	121	1,877.5		51,293	14,881	29.0	36,412	71.0	46.9	6,979	53.1	7,
	1000	140	2,932.5		95,825	26,844	28.0	68,981	72.0	46.9	12,590	53.1	14,
	1050	59	813.0		23,274	6,292	27.0	16,982	73.0	46.9	2,951	53.1	3,
	1100	196	3,172.9		73,558	19,117	26.0	54,441	74.0	46.9	8,966	53.1	10,
	1150	24	1,207.2		21,240	5,736	27.0	15,504	73.0	46.9	2,690	53.1	3,
	1200	20	431.8		12,000	3,005	25.0	8,995	75.0	46.9	1,409	53.1	1,
	1250	47	1,189.4	992	35,389	10,524	29.7	24,865	70.3	46.9	4,936	53.1	5,
	1300									46.9		53.1	
	1350									46.9		53.1	
	1400									46.9		53.1	
	1450									46.9		53.1	
	1500									46.9		53.1	
	1550									46.9		53.1	
	1600									46.9		53.1	
	1650									46.9		53.1	
	1700									46.9		53.1	
	1750									46.9		53.1	
	1800									46.9		53.1	
TOTAL		13,969	492,340.6	1,380	6,147,391	2,608,713		3,538,678			1,223,487		1,385,

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
24.2		167,172	105,309	63.0	61,863	37.0	46.9	49,390	53.1	55,919	81.5	50,418	18.5	11,445
44.2		303,654	178,791	58.9	124,863	41.1	46.9	83,853	53.1	94,938	68.8	85,906	31.2	38,957
12.2		167,008	93,556	56.0	73,452	44.0	46.9	43,878	53.1	49,678	59.5	43,704	40.5	29,748
78.9		284,758	150,875	53.0	133,883	47.0	46.9	70,760	53.1	80,115	52.5	70,289	47.5	63,594
93.3		234,854	119,224	50.8	115,630	49.2	46.9	55,916	53.1	63,308	46.9	54,230	53.1	61,400
20.1		736,380	345,572	46.9	390,808	53.1	46.9	162,073	53.1	183,499	42.4	165,703	57.6	225,105
03.7		1,059,194	476,811	45.0	582,383	55.0	46.9	223,624	53.1	253,187	38.7	225,382	61.3	357,001
12.7		500,178	215,347	43.1	284,831	56.9	46.9	100,998	53.1	114,349	35.6	101,400	64.4	183,431
14.8		523,452	215,961	41.3	307,491	58.7	46.9	101,286	53.1	114,675	32.9	101,165	67.1	206,326
45.3		132,101	50,864	38.5	81,237	61.5	46.9	23,855	53.1	27,009	30.5	24,777	69.5	56,460
73.4	388	146,444	55,797	38.1	90,647	61.9	46.9	26,169	53.1	29,628	28.5	25,834	71.5	64,813
55.8		261,397	94,071	36.0	167,326	64.0	46.9	44,119	53.1	49,952	26.8	44,843	73.2	122,483
47.3		162,951	57,016	35.0	105,935	65.0	46.9	26,741	53.1	30,275	25.2	26,696	74.8	79,239
35.0		386,539	131,725	34.1	254,814	65.9	46.9	61,779	53.1	69,946	23.9	60,901	76.1	193,913
10.8		122,888	39,555	32.2	83,333	67.8	46.9	18,551	53.1	21,004	22.7	18,917	77.3	64,416
52.6		214,591	66,539	31.0	148,052	69.0	46.9	31,207	53.1	35,332	21.5	31,831	78.5	116,221
90.9		285,164	81,479	28.6	203,685	71.4	46.9	38,214	53.1	43,265	20.5	41,755	79.5	161,930
01.1		146,087	43,822	30.0	102,265	70.0	46.9	20,553	53.1	23,269	19.6	20,044	80.4	82,221
77.5		51,293	14,881	29.0	36,412	71.0	46.9	6,979	53.1	7,902	18.8	6,845	81.2	29,567
32.5		95,825	26,844	28.0	68,981	72.0	46.9	12,590	53.1	14,254	18.0	12,417	82.0	56,564
13.0		23,274	6,292	27.0	16,982	73.0	46.9	2,951	53.1	3,341	17.3	2,938	82.7	14,044
72.9		73,558	19,117	26.0	54,441	74.0	46.9	8,966	53.1	10,151	16.7	9,092	83.3	45,349
07.2		21,240	5,736	27.0	15,504	73.0	46.9	2,690	53.1	3,046	16.1	2,496	83.9	13,008
31.8		12,000	3,005	25.0	8,995	75.0	46.9	1,409	53.1	1,596	15.5	1,394	84.5	7,601
89.4	992	35,389	10,524	29.7	24,865	70.3	46.9	4,936	53.1	5,588	15.0	3,730	85.0	21,135
							46.9		53.1		14.4		85.6	
							46.9		53.1		14.0		86.0	
							46.9		53.1		13.6		86.4	
							46.9		53.1		13.2		86.8	
							46.9		53.1		12.8		87.2	
							46.9		53.1		12.4		87.6	
							46.9		53.1		12.1		87.9	
							46.9		53.1		11.8		88.2	
							46.9		53.1		11.4		88.6	
							46.9		53.1		11.2		88.8	
							46.9		53.1		10.9		89.1	
60.6	1,380	6,147,391	2,608,713		3,538,678			1,223,487		1,385,226		1,232,707		2,305,971

TABULATION M

Ex. No.2 to V.S.

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE %
300	50	841	23,349.2		220,583	145,565	66.0	75,018	34.0	42.4	61,720	57.6
	100	512	13,358.9		143,240	89,186	62.3	54,054	37.7	42.4	37,815	57.6
	150	1,745	66,469.4		608,475	353,230	58.1	255,245	41.9	42.4	149,770	57.6
	200	660	20,073.4		250,109	138,698	55.5	111,411	44.5	42.4	58,808	57.6
	250	1,534	38,660.5		704,540	374,460	53.1	330,080	46.9	42.4	158,771	57.6
	300	2,961	110,584.3		1,561,408	780,396	50.0	781,012	50.0	42.4	330,888	57.6
	350	2,777	93,679.1		1,359,592	649,821	47.8	709,771	52.2	42.4	275,524	57.6
	400	1,720	64,536.1		931,099	428,211	46.0	502,888	54.0	42.4	181,561	57.6
	450	1,087	26,602.3		402,093	178,046	44.3	224,047	55.7	42.4	75,492	57.6
	500	1,593	65,547.6		759,038	318,405	41.9	440,633	58.1	42.4	135,004	57.6
	550	869	29,360.1		467,044	185,791	39.8	281,253	60.2	42.4	78,775	57.6
	600	1,509	55,913.3		814,018	312,829	38.4	501,189	61.6	42.4	132,639	57.6
	650	721	19,444.5		316,461	117,092	37.0	199,369	63.0	42.4	49,647	57.6
	700	458	12,528.1		189,708	66,180	34.9	123,528	65.1	42.4	28,060	57.6
	750	1,223	29,292.9		591,693	206,084	34.8	385,609	65.2	42.4	87,380	57.6
	800	338	12,598.2		213,849	71,116	33.3	142,733	66.7	42.4	30,153	57.6
	850	576	21,688.9		375,908	123,788	32.9	252,120	67.1	42.4	52,486	57.6
	900	752	19,045.2	591	473,656	151,452	32.0	322,204	68.0	42.4	64,216	57.6
	950	228	7,807.6		150,027	47,459	31.6	102,568	68.4	42.4	20,123	57.6
	1000	143	4,802.5		85,641	25,234	29.5	60,407	70.5	42.4	10,699	57.6
	1050	302	5,157.0		155,284	42,209	27.2	113,075	72.8	42.4	17,897	57.6
	1100	290	5,115.7		127,508	35,762	28.0	91,746	72.0	42.4	15,163	57.6
	1150	221	7,493.2		146,324	39,771	27.2	106,553	72.8	42.4	16,863	57.6
	1200	59	1,311.6		27,405	7,392	27.0	20,013	73.0	42.4	3,134	57.6
	1250	206	6,376.6		120,765	31,409	26.0	89,356	74.0	42.4	13,317	57.6
	1300	42	1,081.4		23,942	5,420	22.6	18,522	77.4	42.4	2,298	57.6
	1350	55	1,404.8		32,698	9,141	28.0	23,557	72.0	42.4	3,876	57.6
	1400									42.4		57.6
	1450									42.4		57.6
	1500									42.4		57.6
	1550									42.4		57.6
	1600									42.4		57.6
	1650									42.4		57.6
	1700									42.4		57.6
	1750									42.4		57.6
	1800									42.4		57.6
TOTAL		23,422	763,282.4	591	11,252,108	4,934,147		6,317,961			2,092,079	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
ONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
9.2		220,583	145,565	66.0	75,018	34.0	42.4	61,720	57.6	83,845	81.5	61,140	18.5	13,878
8.9		143,240	89,186	62.3	54,054	37.7	42.4	37,815	57.6	51,371	68.8	37,189	31.2	16,865
9.4		608,475	353,230	58.1	255,245	41.9	42.4	149,770	57.6	203,460	59.5	151,871	40.5	103,374
3.4		250,109	138,698	55.5	111,411	44.5	42.4	58,808	57.6	79,890	52.5	58,491	47.5	52,920
0.5		704,540	374,460	53.1	330,080	46.9	42.4	158,771	57.6	215,689	46.9	154,808	53.1	175,272
4.3		1,561,408	780,396	50.0	781,012	50.0	42.4	330,888	57.6	449,508	42.4	331,149	57.6	449,863
9.1		1,359,592	649,821	47.8	709,771	52.2	42.4	275,524	57.6	374,297	38.7	274,681	61.3	435,090
6.1		931,099	428,211	46.0	502,888	54.0	42.4	181,561	57.6	246,650	35.6	179,028	64.4	323,860
2.3		402,093	178,046	44.3	224,047	55.7	42.4	75,492	57.6	102,554	32.9	73,711	67.1	150,336
7.6		759,038	318,405	41.9	440,633	58.1	42.4	135,004	57.6	183,401	30.5	134,393	69.5	306,240
0.1		467,044	185,791	39.8	281,253	60.2	42.4	78,775	57.6	107,016	28.5	80,157	71.5	201,096
3.3		814,018	312,829	38.4	501,189	61.6	42.4	132,639	57.6	180,190	26.8	134,319	73.2	366,870
4.5		316,461	117,092	37.0	199,369	63.0	42.4	49,647	57.6	67,445	25.2	50,241	74.8	149,128
8.1		189,708	66,180	34.9	123,528	65.1	42.4	28,060	57.6	38,120	23.9	29,523	76.1	94,005
2.9		591,693	206,084	34.8	385,609	65.2	42.4	87,380	57.6	118,704	22.7	87,533	77.3	298,076
8.2		213,849	71,116	33.3	142,733	66.7	42.4	30,153	57.6	40,963	21.5	30,688	78.5	112,045
8.9		375,908	123,788	32.9	252,120	67.1	42.4	52,486	57.6	71,302	20.5	51,685	79.5	200,435
5.2	591	473,656	151,452	32.0	322,204	68.0	42.4	64,216	57.6	87,236	19.6	63,152	80.4	259,052
7.6		150,027	47,459	31.6	102,568	68.4	42.4	20,123	57.6	27,336	18.8	19,283	81.2	83,285
2.5		85,641	25,234	29.5	60,407	70.5	42.4	10,699	57.6	14,535	18.0	10,873	82.0	49,534
7.0		155,284	42,209	27.2	113,075	72.8	42.4	17,897	57.6	24,312	17.3	19,562	82.7	93,513
5.7		127,508	35,762	28.0	91,746	72.0	42.4	15,163	57.6	20,599	16.7	15,322	83.3	76,424
3.2		146,324	39,771	27.2	106,553	72.8	42.4	16,863	57.6	22,908	16.9	17,155	83.9	89,398
1.6		27,405	7,392	27.0	20,013	73.0	42.4	3,134	57.6	4,258	15.5	3,102	84.5	16,911
6.6		120,765	31,409	26.0	89,356	74.0	42.4	13,317	57.6	18,092	15.0	13,403	85.0	75,953
1.4		23,942	5,420	22.6	18,522	77.4	42.4	2,298	57.6	3,122	14.4	2,667	85.6	15,855
4.8		32,698	9,141	28.0	23,557	72.0	42.4	3,876	57.6	5,265	14.0	3,298	86.0	20,259
							42.4		57.6		13.6		86.4	
							42.4		57.6		13.2		86.8	
							42.4		57.6		12.8		87.2	
							42.4		57.6		12.4		87.6	
							42.4		57.6		12.1		87.9	
							42.4		57.6		11.8		88.2	
							42.4		57.6		11.4		88.6	
							42.4		57.6		11.2		88.8	
							42.4		57.6		10.9		89.1	
2.4	591	11,252,108	4,934,147		6,317,961			2,092,079		2,842,068		2,088,424		4,229,537

TABULATION M

NORTHBOUND

Ex. No.2 to V.S. No.

1	2	3	4	5	6	7	8	9	10	11	12	13	14
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMO
350	50	917	33,893.9		344,022	234,144	68.1	109,878	31.9	38.7	90,614	61.3	143,
	100	786	21,532.3		238,172	152,434	64.0	85,738	36.0	38.7	58,992	61.3	93,
	150	908	28,169.8		255,439	155,806	61.0	99,633	39.0	38.7	60,297	61.3	95,
	200	1,087	47,248.6		419,651	243,382	58.0	176,269	42.0	38.7	94,189	61.3	149,
	250	2,423	91,325.3		1,559,867	857,986	55.0	701,881	45.0	38.7	332,041	61.3	525,
	300	3,826	129,007.9		1,953,740	1,014,574	51.9	939,166	48.1	38.7	392,640	61.3	621,
	350	2,692	92,233.8		1,243,986	621,699	50.0	622,287	50.0	38.7	240,598	61.3	381,
	400	2,250	71,328.4		1,128,732	545,528	48.3	583,204	51.7	38.7	211,119	61.3	334,
	450	1,741	53,133.8		983,945	452,486	46.0	531,459	54.0	38.7	175,112	61.3	277,
	500	1,419	32,835.0		566,399	249,543	44.1	316,856	55.9	38.7	96,573	61.3	152,
	550	1,684	42,454.7		878,631	372,713	42.4	505,918	57.6	38.7	144,240	61.3	228,
	600	1,684	42,919.3		861,718	353,340	41.0	508,378	59.0	38.7	136,743	61.3	216,
	650	1,002	28,793.4		594,018	231,770	39.0	362,248	61.0	38.7	89,695	61.3	142,
	700	627	16,557.1		313,056	118,935	38.0	194,121	62.0	38.7	46,028	61.3	72,
	750	1,879	60,443.1		1,277,472	472,604	37.0	804,868	63.0	38.7	182,898	61.3	289,
	800	261	11,062.2		283,532	102,075	36.0	181,457	64.0	38.7	39,503	61.3	62,
	850	190	3,215.8		104,177	36,469	35.0	67,708	65.0	38.7	14,114	61.3	22,
	900	1,103	25,422.8		592,889	201,624	34.0	391,265	66.0	38.7	78,028	61.3	123,
	950	141	2,979.3		69,746	23,042	33.0	46,704	67.0	38.7	8,917	61.3	14,
	1000	513	10,298.0		275,120	88,031	32.0	187,089	68.0	38.7	34,068	61.3	53,
	1050	396	12,692.7		270,085	85,308	31.6	184,777	68.4	38.7	33,014	61.3	52,
	1100	1,181	34,305.5		809,031	238,649	29.5	570,382	70.5	38.7	92,357	61.3	146,
	1150	21	578.8		12,465	3,625	29.1	8,840	70.9	38.7	1,403	61.3	2,
	1200	100	1,857.0		53,077	15,255	28.7	37,822	71.3	38.7	5,904	61.3	9,
	1250	354	9,221.0		214,435	60,314	28.1	154,121	71.9	38.7	23,342	61.3	36,
	1300	84	2,121.0		50,673	13,692	27.0	36,981	73.0	38.7	5,299	61.3	8,
	1350	144	4,867.0		108,858	29,362	27.0	79,496	73.0	38.7	11,363	61.3	17,
	1400	21	525.0		20,055	5,208	26.0	14,847	74.0	38.7	2,015	61.3	3,
	1450									38.7		61.3	
	1500									38.7		61.3	
	1550	21	114.5		7,971	1,908	23.9	6,063	76.1	38.7	738	61.3	1,
	1600	21	231.0	1,197	19,278	4,620	24.0	14,658	76.0	38.7	1,788	61.3	2,
	1650									38.7		61.3	
	1700									38.7		61.3	
	1750									38.7		61.3	
	1800									38.7		61.3	
TOTAL		29,476	911,368.0	1,197	15,510,240	6,986,126		8,524,114			2,703,632		4,282,

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
93.9		344,022	234,144	68.1	109,878	31.9	38.7	90,614	61.3	143,530	81.5	89,551	18.5	20,327
32.3		238,172	152,434	64.0	85,738	36.0	38.7	58,992	61.3	93,442	68.8	58,988	31.2	26,750
69.8		255,439	155,806	61.0	99,633	39.0	38.7	60,297	61.3	95,509	59.5	59,282	40.5	40,351
48.6		419,651	243,382	58.0	176,269	42.0	38.7	94,189	61.3	149,193	52.5	92,541	47.5	83,728
25.3		1,559,867	857,986	55.0	701,881	45.0	38.7	332,041	61.3	525,945	46.9	329,182	53.1	372,699
07.9		1,953,740	1,014,574	51.9	939,166	48.1	38.7	392,640	61.3	621,934	42.4	398,206	57.6	540,960
33.8		1,243,986	621,699	50.0	622,287	50.0	38.7	240,598	61.3	381,101	38.7	240,825	61.3	381,462
28.4		1,128,732	545,528	48.3	583,204	51.7	38.7	211,119	61.3	334,409	35.6	207,621	64.4	375,583
33.8		983,945	452,486	46.0	531,459	54.0	38.7	175,112	61.3	277,374	32.9	174,850	67.1	356,609
35.0		566,399	249,543	44.1	316,856	55.9	38.7	96,573	61.3	152,970	30.5	96,641	69.5	220,215
54.7		878,631	372,713	42.4	505,918	57.6	38.7	144,240	61.3	228,473	28.5	144,187	71.5	361,731
19.3		861,718	353,340	41.0	508,378	59.0	38.7	136,743	61.3	216,597	26.8	136,245	73.2	372,133
93.4		594,018	231,770	39.0	362,248	61.0	38.7	89,695	61.3	142,075	25.2	91,286	74.8	270,962
57.1		313,056	118,935	38.0	194,121	62.0	38.7	46,028	61.3	72,907	23.9	46,395	76.1	147,726
43.1		1,277,472	472,604	37.0	804,868	63.0	38.7	182,898	61.3	289,706	22.7	182,705	77.3	622,163
62.2		283,532	102,075	36.0	181,457	64.0	38.7	39,503	61.3	62,572	21.5	39,013	78.5	142,444
15.8		104,177	36,469	35.0	67,708	65.0	38.7	14,114	61.3	22,355	20.5	13,880	79.5	53,828
22.8		592,889	201,624	34.0	391,265	66.0	38.7	78,028	61.3	123,596	19.6	76,688	80.4	314,577
79.3		69,746	23,042	33.0	46,704	67.0	38.7	8,917	61.3	14,125	18.8	8,780	81.2	37,924
98.0		275,120	88,031	32.0	187,089	68.0	38.7	34,068	61.3	53,963	18.0	33,676	82.0	153,413
92.7		270,085	85,308	31.6	184,777	68.4	38.7	33,014	61.3	52,294	17.3	31,966	82.7	152,811
85.5		809,031	238,649	29.5	570,382	70.5	38.7	92,357	61.3	146,292	16.7	95,254	83.3	475,128
78.8		12,465	3,625	29.1	8,840	70.9	38.7	1,403	61.3	2,222	16.1	1,423	83	7,417
67.0		53,077	15,255	28.7	37,822	71.3	38.7	5,904	61.3	9,351	15.5	5,862	84	31,960
21.0		214,435	60,314	28.1	154,121	71.9	38.7	23,342	61.3	36,972	15.0	23,118	85.0	131,003
21.0		50,673	13,692	27.0	36,981	73.0	38.7	5,299	61.3	8,393	14.4	5,325	85.6	31,656
07.0		108,858	29,362	27.8	79,496	73.0	38.7	11,363	61.3	17,999	14.0	11,129	86.0	68,367
25.0		20,055	5,208	26.0	14,847	74.0	38.7	2,015	61.3	3,193	13.6	2,019	86.4	12,828
							38.7		61.3		13.2		86.8	
							38.7		61.3		12.8		87.2	
14.5		7,971	1,908	23.9	6,063	76.1	38.7	738	61.3	1,170	12.4	752	87.6	5,311
01.0	1,197	19,278	4,620	24.0	14,658	76.0	38.7	1,788	61.3	2,832	12.1	1,774	87.9	12,884
							38.7		61.3		11.8		88.2	
							38.7		61.3		11.4		88.6	
							38.7		61.3		11.2		88.8	
							38.7		61.3		10.9		89.1	
68.0	1,197	15,510,240	6,986,126		8,524,114			2,703,632		4,282,494		2,699,164		5,824,950

TABULATION B M

NORTHBOUND

Ex. No.2 to V.S. No.1

1	2	3	4	5	6	7	8	9	10	11	12	13	14
MILES SOUTH	MILES NORTH	CARS	TONS	REVENUE AS SETTLED TOTAL ARBITRS.	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOU
400	50	558	16,572.6		167,590	118,025	70.4	49,565	29.6	35.6	42,017	64.4	76,0
	100	1,034	31,743.4		324,651	214,165	66.0	110,486	34.0	35.6	76,243	64.4	137,9
	150	2,971	89,594.5		968,071	609,398	62.9	358,673	37.1	35.6	216,946	64.4	392,4
	200	1,043	31,503.2		433,496	260,681	60.1	172,815	39.9	35.6	92,802	64.4	167,8
	250	2,458	89,111.7		946,188	538,878	57.0	407,310	43.0	35.6	191,841	64.4	347,0
	300	3,697	108,852.4		1,615,531	873,349	54.1	742,182	45.9	35.6	310,912	64.4	562,4
	350	3,488	107,397.2	462	1,783,363	926,797	52.0	856,566	48.0	35.6	329,940	64.4	596,8
	400	1,841	53,275.9		899,683	447,315	49.7	452,368	50.3	35.6	159,244	64.4	288,0
	450	2,116	71,007.5		1,052,899	505,677	48.0	547,222	52.0	35.6	180,021	64.4	325,6
	500	2,872	61,068.0		1,103,219	507,901	46.0	595,318	54.0	35.6	180,813	64.4	327,0
	550	1,971	56,782.0		1,022,119	450,293	44.1	571,826	55.9	35.6	160,304	64.4	289,9
	600	2,973	86,699.3		1,581,442	680,861	43.1	900,581	56.9	35.6	242,387	64.4	438,4
	650	1,462	35,024.8		719,255	301,391	41.9	417,864	58.1	35.6	107,295	64.4	194,0
	700	1,738	54,093.1		1,144,217	458,617	40.1	685,600	59.9	35.6	163,268	64.4	295,3
	750	1,213	33,696.7		745,194	290,871	39.0	454,323	61.0	35.6	103,550	64.4	187,3
	800	344	7,994.4		205,878	78,191	38.0	127,687	62.0	35.6	27,836	64.4	50,3
	850	1,828	30,598.1		1,116,019	416,774	37.3	699,245	62.7	35.6	148,372	64.4	268,4
	900	561	18,360.1		406,484	145,908	35.9	260,576	64.1	35.6	51,943	64.4	93,9
	950	320	7,489.9		166,537	58,398	35.1	108,139	64.9	35.6	20,790	64.4	37,6
	1000	905	13,247.8		425,280	144,800	34.0	280,480	66.0	35.6	51,549	64.4	93,2
	1050	944	8,666.1		427,360	141,019	33.0	286,341	67.0	35.6	50,203	64.4	90,8
	1100	235	5,270.6		149,346	48,324	32.4	101,022	67.6	35.6	17,203	64.4	31,1
	1150	38	837.7		20,035	6,205	31.0	13,830	69.0	35.6	2,209	64.4	3,9
	1200	78	2,363.9		64,628	19,887	30.8	44,741	69.2	35.6	7,080	64.4	12,8
	1250	24	432.0		9,408	2,832	30.1	6,576	69.9	35.6	1,008	64.4	1,8
	1300									35.6		64.4	
	1350	21	525.0		12,243	3,549	29.0	8,694	71.0	35.6	1,263	64.4	2,2
	1400									35.6		64.4	
	1450									35.6		64.4	
	1500									35.6		64.4	
	1550									35.6		64.4	
	1600									35.6		64.4	
	1650									35.6		64.4	
	1700									35.6		64.4	
	1750									35.6		64.4	
	1800									35.6		64.4	
TOTAL		36,733	1,022,207.9	462	17,510,136	8,250,106		9,260,030			2,937,039		5,313,0

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		TOTAL	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
572.6		167,590	118,025	70.4	49,565	29.6	35.6	42,017	64.4	76,008	81.5	40,395	18.5	9,170
743.4		324,651	214,165	66.0	110,486	34.0	35.6	76,243	64.4	137,922	68.8	76,014	31.2	34,472
594.5		968,071	609,398	62.9	358,673	37.1	35.6	216,946	64.4	392,452	59.5	213,410	40.5	145,263
503.2		433,496	260,681	60.1	172,815	39.9	35.6	92,802	64.4	167,879	52.5	90,728	47.5	82,087
111.7		946,188	538,878	57.0	407,310	43.0	35.6	191,841	64.4	347,037	46.9	191,028	53.1	216,282
852.4		1,615,531	873,349	54.1	742,182	45.9	35.6	310,912	64.4	562,437	42.4	314,685	57.6	427,497
397.2	462	1,783,363	926,797	52.0	856,566	48.0	35.6	329,940	64.4	596,857	38.7	331,491	61.3	525,075
275.9		899,683	447,315	49.7	452,368	50.3	35.6	159,244	64.4	288,071	35.6	161,043	64.4	291,325
007.5		1,052,899	505,677	48.0	547,222	52.0	35.6	180,021	64.4	325,656	32.9	180,036	67.1	367,186
068.0		1,103,219	507,901	46.0	595,318	54.0	35.6	180,813	64.4	327,088	30.5	181,572	69.5	413,746
782.0		1,022,119	450,293	44.1	571,826	55.9	35.6	160,304	64.4	289,989	28.5	162,970	71.5	408,856
699.3		1,581,442	680,861	43.1	900,581	56.9	35.6	242,387	64.4	438,474	26.8	241,356	73.2	659,225
024.8		719,255	301,391	41.9	417,864	58.1	35.6	107,295	64.4	194,096	25.2	105,302	74.8	312,562
093.1		1,144,217	458,617	40.1	685,600	59.9	35.6	163,268	64.4	295,349	23.9	163,858	76.1	521,742
696.7		745,194	290,871	39.0	454,323	61.0	35.6	103,550	64.4	187,321	22.7	103,131	77.3	351,192
994.4		205,878	78,191	38.0	127,687	62.0	35.6	27,836	64.4	50,355	21.5	27,453	78.5	100,234
598.1		1,116,019	416,774	37.3	699,245	62.7	35.6	148,372	64.4	268,402	20.5	143,345	79.5	555,900
360.1		406,484	145,908	35.9	260,576	64.1	35.6	51,943	64.4	93,965	19.6	51,073	80.4	209,503
489.9		166,537	58,398	35.1	108,139	64.9	35.6	20,790	64.4	37,608	18.8	20,330	81.2	87,809
247.8		425,280	144,800	34.0	280,480	66.0	35.6	51,549	64.4	93,251	18.0	50,486	82.0	229,994
666.1		427,360	141,019	33.0	286,341	67.0	35.6	50,203	64.4	90,816	17.3	49,537	82.7	236,804
270.6		149,346	48,324	32.4	101,022	67.6	35.6	17,203	64.4	31,121	16.7	16,871	83.3	84,151
837.7		20,035	6,205	31.0	13,830	69.0	35.6	2,209	64.4	3,996	16.1	2,227	83.9	11,603
363.9		64,628	19,887	30.8	44,741	69.2	35.6	7,080	64.4	12,807	15.5	6,935	84.5	37,806
432.0		9,408	2,832	30.1	6,576	69.9	35.6	1,008	64.4	1,824	15.0	986	85.0	5,590
525.0		12,243	3,549	29.0	8,694	71.0	35.6		64.4		14.4		85.6	
							35.6	1,263	64.4	2,286	14.0	1,217	86.0	7,477
							35.6		64.4		13.6		86.4	
							35.6		64.4		13.2		86.8	
							35.6		64.4		12.8		87.2	
							35.6		64.4		12.4		87.6	
							35.6		64.4		12.1		87.9	
							35.6		64.4		11.8		88.2	
							35.6		64.4		11.4		88.6	
							35.6		64.4		11.2		88.8	
							35.6		64.4		10.9		89.1	
207.9	462	17,510,136	8,250,106		9,260,030			2,937,039		5,313,067		2,927,479		6,332,551

TABULATION M

Ex. No.2 to V.S. No.11

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRARYS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT
450	50	3,472	157,753.1		1,671,200	1,186,386	71.0	484,814	29.0	32.9	390,321	67.1	796,06
	100	1,119	30,048.0		370,506	252,108	68.0	118,398	32.0	32.9	82,944	67.1	169,16
	150	3,020	102,729.3		1,161,514	742,828	64.0	418,686	36.0	32.9	244,390	67.1	498,43
	200	1,674	55,901.3		731,984	447,267	61.1	284,717	38.9	32.9	147,151	67.1	300,11
	250	3,636	108,842.9		1,577,263	931,680	59.1	645,583	40.9	32.9	306,523	67.1	625,15
	300	5,139	152,146.5		2,267,116	1,271,709	56.1	995,407	43.9	32.9	418,392	67.1	853,31
	350	1,764	45,994.8		754,891	406,933	53.9	347,958	46.1	32.9	133,881	67.1	273,05
	400	1,865	54,286.6		953,043	495,264	52.0	457,779	48.0	32.9	162,942	67.1	332,32
	450	1,803	62,422.4	180	1,002,589	501,952	50.1	500,637	49.9	32.9	165,142	67.1	336,81
	500	1,197	28,600.6		559,366	271,774	48.6	287,592	51.4	32.9	89,414	67.1	182,36
	550	1,284	30,192.1	173	600,585	275,615	45.9	324,970	54.1	32.9	90,677	67.1	184,93
	600	932	19,777.4		425,671	191,211	44.9	234,460	55.1	32.9	62,908	67.1	128,30
	650	655	14,852.9		314,019	135,165	43.0	178,854	57.0	32.9	44,469	67.1	90,69
	700	337	12,123.9		237,684	99,672	41.9	138,012	58.1	32.9	32,792	67.1	66,88
	750	1,336	26,821.1		636,734	262,056	41.2	374,678	58.8	32.9	86,216	67.1	175,84
	800	133	3,400.1		72,028	28,565	39.7	43,463	60.3	32.9	9,398	67.1	19,16
	850	370	8,331.5		167,030	63,433	38.0	103,597	62.0	32.9	20,869	67.1	42,56
	900	474	17,265.1		340,356	125,766	37.0	214,590	63.0	32.9	41,377	67.1	84,38
	950	115	3,060.4		56,697	20,729	36.6	35,968	63.4	32.9	6,820	67.1	13,94
	1000	132	2,880.2		75,839	26,551	35.0	49,288	65.0	32.9	8,735	67.1	17,81
	1050	279	7,000.6		155,345	52,841	34.0	102,504	66.0	32.9	17,385	67.1	35,45
	1100	167	3,660.6		89,484	30,339	33.9	59,145	66.1	32.9	9,982	67.1	20,33
	1150	73	1,608.1		44,684	14,755	33.0	29,929	67.0	32.9	4,854	67.1	9,90
	1200	38	1,326.2		31,041	8,838	28.5	22,203	71.5	32.9	2,908	67.1	5,93
	1250	132	3,307.6		87,045	26,958	31.0	60,087	69.0	32.9	8,869	67.1	18,0
	1300	26	724.7		19,584	5,860	29.9	13,724	70.1	32.9	1,928	67.1	3,9
	1350									32.9		67.1	
	1400									32.9		67.1	
	1450	27	1,076.0		27,761	8,043	29.0	19,718	71.0	32.9	2,646	67.1	5,3
	1500									32.9		67.1	
	1550									32.9		67.1	
	1600									32.9		67.1	
	1650									32.9		67.1	
	1700									32.9		67.1	
	1750									32.9		67.1	
	1800									32.9		67.1	
TOTAL		31,199	956,134.0	353	14,431,059	7,884,298		6,546,761			2,593,933		5,290,3

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	1,671,200	1,186,386	71.0	484,814	29.0	32.9	390,321	67.1	796,065	81.5	395,123	18.5	89,691
	370,506	252,108	68.0	118,398	32.0	32.9	82,944	67.1	169,164	68.8	81,458	31.2	36,940
	1,161,514	742,828	64.0	418,686	36.0	32.9	244,390	67.1	498,438	59.5	249,118	40.5	169,568
	731,984	447,267	61.1	284,717	38.9	32.9	147,151	67.1	300,116	52.5	149,476	47.5	135,241
	1,577,263	931,680	59.1	645,583	40.9	32.9	306,523	67.1	625,157	46.9	302,778	53.1	342,805
	2,267,116	1,271,709	56.1	995,407	43.9	32.9	418,392	67.1	853,317	42.4	422,053	57.6	573,354
	754,891	406,933	53.9	347,958	46.1	32.9	133,881	67.1	273,052	38.7	134,660	61.3	213,298
	953,043	495,264	52.0	457,779	48.0	32.9	162,942	67.1	332,322	35.6	162,969	64.4	294,810
180	1,002,589	501,952	50.1	500,637	49.9	32.9	165,142	67.1	336,810	32.9	164,710	67.1	335,927
	559,366	271,774	48.6	287,592	51.4	32.9	89,414	67.1	182,360	30.5	87,716	69.5	199,876
173	600,585	275,615	45.9	324,970	54.1	32.9	90,677	67.1	184,938	28.5	92,616	71.5	232,354
	425,671	191,211	44.9	234,460	55.1	32.9	62,908	67.1	128,303	26.8	62,835	73.2	171,625
	314,019	135,165	43.0	178,854	57.0	32.9	44,469	67.1	90,696	25.2	45,071	74.8	133,783
	237,684	99,672	41.9	138,012	58.1	32.9	32,792	67.1	66,880	23.9	32,985	76.1	105,027
	636,734	262,056	41.2	374,678	58.8	32.9	86,216	67.1	175,840	22.7	85,052	77.3	289,626
	72,028	28,565	39.7	43,463	60.3	32.9	9,398	67.1	19,167	21.5	9,345	78.5	34,118
	167,030	63,433	38.0	103,597	62.0	32.9	20,869	67.1	42,564	20.5	21,237	79.5	82,360
	340,356	125,766	37.0	214,590	63.0	32.9	41,377	67.1	84,389	19.6	42,060	80.4	172,530
	56,697	20,729	36.6	35,968	63.4	32.9	6,820	67.1	13,909	18.8	6,762	81.2	29,206
	75,839	26,551	35.0	49,288	65.0	32.9	8,735	67.1	17,816	18.0	8,872	82.0	40,416
	155,345	52,841	34.0	102,504	66.0	32.9	17,385	67.1	35,456	17.3	17,733	82.7	84,771
	89,484	30,339	33.9	59,145	66.1	32.9	9,982	67.1	20,357	16.7	9,877	83.3	49,268
	44,684	14,755	33.0	29,929	67.0	32.9	4,854	67.1	9,901	16.1	4,819	83.9	25,110
	31,041	8,838	28.5	22,203	71.5	32.9	2,908	67.1	5,930	15.5	3,441	84.5	18,762
	87,045	26,958	31.0	60,087	69.0	32.9	8,869	67.1	18,089	15.0	9,013	85.0	51,074
	19,584	5,860	29.9	13,724	70.1	32.9	1,928	67.1	3,932	14.4	1,976	85.6	11,748
						32.9		67.1		14.0		86.0	
						32.9		67.1		13.6		86.4	
	27,761	8,043	29.0	19,718	71.0	32.9	2,646	67.1	5,397	13.2	2,603	86.8	17,115
						32.9		67.1		12.8		87.2	
						32.9		67.1		12.4		87.6	
						32.9		67.1		12.1		87.9	
						32.9		67.1		11.8		88.2	
						32.9		67.1		11.4		88.6	
						32.9		67.1		11.2		88.8	
						32.9		67.1		10.9		89.1	
353	14,431,059	7,884,298		6,546,761			2,593,933		5,290,365		2,606,358		3,940,403

TABULATION M

Ex. No.2 to V.S. No.11A

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	14
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS	TOTAL REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT
500	50	756	21,094.7		266,888	193,744	72.6	73,144	27.4	30.5	59,092	69.5	134,652
	100	395	10,693.4		164,966	113,821	69.0	51,145	31.0	30.5	34,715	69.5	79,106
	150	1,815	47,887.6		717,625	469,991	65.5	247,634	34.5	30.5	143,347	69.5	326,644
	200	1,448	34,102.0		536,347	335,301	62.5	201,046	37.5	30.5	102,267	69.5	233,034
	250	5,104	158,141.9		2,332,886	1,422,433	61.0	910,453	39.0	30.5	433,842	69.5	988,591
	300	4,428	113,470.7		1,962,778	1,140,452	58.1	822,326	41.9	30.5	347,838	69.5	792,614
	350	4,224	112,419.8		1,973,518	1,102,629	55.9	870,889	44.1	30.5	336,302	69.5	766,327
	400	1,984	53,529.1		869,796	468,745	53.9	401,051	46.1	30.5	142,967	69.5	325,778
	450	3,097	104,360.3		1,731,454	926,982	52.0	854,472	48.0	30.5	282,730	69.5	644,252
	500	1,678	45,248.3		823,906	412,287	50.0	411,619	50.0	30.5	125,748	69.5	286,539
	550	1,949	49,886.6		1,004,528	481,341	47.9	523,187	52.1	30.5	146,809	69.5	334,532
	600	3,704	114,126.0		2,089,096	981,057	47.0	1,108,039	53.0	30.5	299,222	69.5	681,835
	650	738	16,679.4		383,123	172,796	45.1	210,327	54.9	30.5	52,703	69.5	120,093
	700	566	16,053.7		310,355	137,454	44.3	172,901	55.7	30.5	41,923	69.5	95,531
	750	358	9,144.7		187,374	79,242	42.3	108,132	57.7	30.5	24,169	69.5	55,073
	800	477	21,950.2		405,919	170,672	42.0	235,247	58.0	30.5	52,055	69.5	118,617
	850	582	19,048.6		354,351	141,844	40.0	212,507	60.0	30.5	43,262	69.5	98,582
	900	376	8,962.8		200,971	78,381	39.0	122,590	61.0	30.5	23,906	69.5	54,475
	950	58	1,184.1		23,462	8,912	38.0	14,550	62.0	30.5	2,718	69.5	6,194
	1000	204	4,404.8	458	93,980	34,935	37.2	59,045	62.8	30.5	10,655	69.5	24,280
	1050	310	14,848.5		325,177	117,691	36.2	207,486	63.8	30.5	35,896	69.5	81,795
	1100	225	6,088.4		138,000	48,802	35.4	89,198	64.6	30.5	14,885	69.5	33,917
	1150	20	395.9		8,683	3,038	35.0	5,645	65.0	30.5	927	69.5	2,111
	1200	60	2,551.7		56,358	19,167	34.0	37,191	66.0	30.5	5,846	69.5	13,321
	1250									30.5		69.5	
	1300	42	1,106.6		27,476	8,798	32.0	18,678	68.0	30.5	2,683	69.5	6,115
	1350	140	7,259.2		174,240	56,480	32.4	117,760	67.6	30.5	17,226	69.5	39,254
	1400	40	1,673.1		38,471	14,236	37.0	24,235	63.0	30.5	4,342	69.5	9,894
	1450									30.5		69.5	
	1500									30.5		69.5	
	1550	24	446.4		11,592	3,360	29.0	8,232	71.0	30.5	1,025	69.5	2,335
	1600									30.5		69.5	
	1650									30.5		69.5	
	1700									30.5		69.5	
	1750									30.5		69.5	
	1800									30.5		69.5	
TOTAL		34,802	996,758.5	458	17,263,320	9,144,591		8,118,729			2,789,100		6,355,491

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %	LINE HAUL AMOUNT	TERMINAL %	TERMINAL AMOUNT	LINE-HAUL %	LINE-HAUL AMOUNT
4.7		266,888	193,744	72.6	73,144	27.4	30.5	59,092	69.5	134,652	81.5	59,612	18.5	13,532
3.4		164,966	113,821	69.0	51,145	31.0	30.5	34,715	69.5	79,106	68.8	35,188	31.2	15,957
7.6		717,625	469,991	65.5	247,634	34.5	30.5	143,347	69.5	326,644	59.5	147,342	40.5	100,292
2.0		536,347	335,301	62.5	201,046	37.5	30.5	102,267	69.5	233,034	52.5	105,549	47.5	95,497
1.9		2,332,886	1,422,433	61.0	910,453	39.0	30.5	433,842	69.5	988,591	46.9	427,002	53.1	483,451
0.7		1,962,778	1,140,452	58.1	822,326	41.9	30.5	347,838	69.5	792,614	42.4	348,666	57.6	473,660
9.8		1,973,518	1,102,629	55.9	870,889	44.1	30.5	336,302	69.5	766,327	38.7	337,034	61.3	533,855
9.1		869,796	468,745	53.9	401,051	46.1	30.5	142,967	69.5	325,778	35.6	142,774	64.4	258,277
0.3		1,781,454	926,982	52.0	854,472	48.0	30.5	282,730	69.5	644,252	32.9	281,121	67.1	573,351
8.3		823,906	412,287	50.0	411,619	50.0	30.5	125,748	69.5	286,539	30.5	125,544	69.5	286,075
6.6		1,004,528	481,341	47.9	523,187	52.1	30.5	146,809	69.5	334,532	28.5	149,108	71.5	374,079
6.0		2,089,096	981,057	47.0	1,108,039	53.0	30.5	299,222	69.5	681,835	26.8	296,954	73.2	811,085
9.4		383,123	172,796	45.1	210,327	54.9	30.5	52,703	69.5	120,093	25.2	53,002	74.8	157,325
3.7		310,355	137,454	44.3	172,901	55.7	30.5	41,923	69.5	95,531	23.9	41,323	76.1	131,578
4.7		187,374	79,242	42.3	108,132	57.7	30.5	24,169	69.5	55,073	22.7	24,546	77.3	83,586
0.2		405,919	170,672	42.0	235,247	58.0	30.5	52,055	69.5	118,617	21.5	50,578	78.5	184,669
8.6		354,351	141,844	40.0	212,507	60.0	30.5	43,262	69.5	98,582	20.5	43,564	79.5	168,943
2.8		200,971	78,381	39.0	122,590	61.0	30.5	23,906	69.5	54,475	19.6	24,028	80.4	98,562
4.1		23,462	8,912	38.0	14,550	62.0	30.5	2,718	69.5	6,194	18.8	2,735	81.2	11,815
4.8	458	93,980	34,935	37.2	59,045	62.8	30.5	10,655	69.5	24,280	18.0	10,628	82.0	48,417
8.5		325,177	117,691	36.2	207,486	63.8	30.5	35,896	69.5	81,795	17.3	35,895	82.7	171,591
8.4		138,000	48,802	35.4	89,198	64.6	30.5	14,885	69.5	33,917	16.7	14,896	83.3	74,302
5.9		8,683	3,038	35.0	5,645	65.0	30.5	927	69.5	2,111	16.1	909	83.9	4,736
1.7		56,358	19,167	34.0	37,191	66.0	30.5	5,846	69.5	13,321	15.5	5,765	84.5	31,426
							30.5		69.5		15.0		85.0	
6.6		27,476	8,798	32.0	18,678	68.0	30.5	2,683	69.5	6,115	14.4	2,690	85.6	15,988
9.2		174,240	56,480	32.4	117,760	67.6	30.5	17,226	69.5	39,254	14.0	16,486	86.0	101,274
3.1		38,471	14,236	37.0	24,235	63.0	30.5	4,342	69.5	9,894	13.6	3,296	86.4	20,939
							30.5		69.5		13.2		86.8	
							30.5		69.5		12.8		87.2	
6.4		11,592	3,360	29.0	8,232	71.0	30.5	1,025	69.5	2,335	12.4	1,021	87.6	7,211
							30.5		69.5		12.1		87.9	
							30.5		69.5		11.8		88.2	
							30.5		69.5		11.4		88.6	
							30.5		69.5		11.2		88.8	
							30.5		69.5		10.9		89.1	
8.5	458	17,263,320	9,144,591		8,118,729			2,789,100		6,355,491		2,787,256		5,331,473

TABULATION M

NORTHBOUND

Ex. No.2 to V.S. No.

1	2	3	4	5	6	7	8	9	10	11	12	13	
MILES SOUTH	MILES NORTH	CARS	TONS	REVENUE AS SETTLED TOTAL ARBITRARIES	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	AMOUNT	LINE HAUL %	AM
550	50	528	14,797.9		185,940	137,204	73.8	48,736	26.2	28.5	39,103	71.5	98
	100	911	42,165.7		449,711	319,928	70.9	130,783	29.1	28.5	90,894	71.5	228
	150	2,530	77,688.0		1,067,916	725,899	68.0	342,017	32.0	28.5	206,881	71.5	519
	200	1,184	34,949.0		516,905	333,371	64.5	183,534	35.5	28.5	95,011	71.5	238
	250	2,560	58,997.7		1,118,411	693,959	62.0	424,452	38.0	28.5	197,778	71.5	496
	300	5,977	125,825.0		2,499,549	1,498,843	60.0	1,000,706	40.0	28.5	427,170	71.5	1,071
	350	3,087	69,010.0	888	1,285,739	746,080	58.0	539,659	42.0	28.5	212,633	71.5	533
	400	3,364	97,146.2		1,651,126	916,375	55.5	734,751	44.5	28.5	261,167	71.5	655
	450	2,153	65,929.7		1,207,014	652,130	54.0	554,884	46.0	28.5	185,857	71.5	466
	500	3,279	98,315.8		1,814,053	941,795	51.9	872,258	48.1	28.5	268,412	71.5	673
	550	2,845	78,399.0	191	1,537,616	768,698	50.0	768,918	50.0	28.5	219,079	71.5	549
	600	1,875	60,804.1		1,164,502	559,991	48.1	604,511	51.9	28.5	159,597	71.5	400
	650	1,037	33,213.6		691,643	324,302	46.9	367,341	53.1	28.5	92,426	71.5	231
	700	624	21,427.2		353,894	162,716	46.0	191,178	54.0	28.5	46,374	71.5	116
	750	1,320	41,851.8		880,029	388,134	44.1	491,895	55.9	28.5	110,618	71.5	277
	800	329	12,583.3		230,411	99,072	43.0	131,339	57.0	28.5	28,236	71.5	70
	850	230	7,808.9		149,202	62,664	42.0	86,538	58.0	28.5	17,859	71.5	44
	900	348	9,057.4		206,327	84,570	41.0	121,757	59.0	28.5	24,102	71.5	60
	950	144	3,069.8		89,735	37,103	41.3	52,632	58.7	28.5	10,574	71.5	26
	1000	551	17,853.8		398,500	155,423	39.0	243,077	61.0	28.5	44,296	71.5	110
	1050	118	3,912.5		106,829	40,597	38.0	66,232	62.0	28.5	11,570	71.5	29
	1100	1,203	32,610.0		749,802	279,620	37.3	470,182	62.7	28.5	79,692	71.5	198
	1150	105	2,618.0		62,340	20,363	32.7	41,977	67.3	28.5	5,803	71.5	14
	1200	350	12,423.2		303,504	105,025	34.6	198,479	65.4	28.5	29,932	71.5	74
	1250	82	2,193.4		54,051	18,381	34.0	35,670	66.0	28.5	5,239	71.5	13
	1300	42	801.0		34,470	11,725	34.0	22,745	66.0	28.5	3,342	71.5	8
	1350									28.5		71.5	
	1400									28.5		71.5	
	1450									28.5		71.5	
	1500									28.5		71.5	
	1550									28.5		71.5	
	1600	74	2,275.5		69,875	20,961	30.0	48,914	70.0	28.5	5,974	71.5	14
	1650									28.5		71.5	
	1700									28.5		71.5	
	1750									28.5		71.5	
	1800									28.5		71.5	
TOTAL		36,850	1,027,727.5	1,079	18,879,094	10,103,929		8,775,165			2,879,619		7,22

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		TOTAL	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
			SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TONS	ARBITS	S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
97.9		185,940	137,204	73.8	48,736	26.2	28.5	39,103	71.5	98,101	81.5	39,720	18.5	9,016
65.7		449,711	310,928	70.9	130,783	29.1	28.5	90,894	71.5	228,034	68.8	89,979	31.2	40,804
88.0		1,067,916	725,899	68.0	342,017	32.0	28.5	206,881	71.5	519,018	59.5	203,500	40.5	138,517
49.0		516,905	333,371	64.5	183,534	35.5	28.5	95,011	71.5	238,360	52.5	96,355	47.5	87,179
97.7		1,118,411	693,959	62.0	424,452	38.0	28.5	197,778	71.5	496,181	46.9	199,068	53.1	225,384
25.0		2,499,549	1,498,843	60.0	1,000,706	40.0	28.5	427,170	71.5	1,071,673	42.4	424,299	57.6	576,407
10.0	888	1,285,739	746,080	58.0	539,659	42.0	28.5	212,633	71.5	533,447	38.7	208,848	61.3	330,811
46.2		1,651,126	916,375	55.5	734,751	44.5	28.5	261,167	71.5	655,208	35.6	261,571	64.4	473,180
29.7		1,207,014	652,130	54.0	554,884	46.0	28.5	185,857	71.5	466,273	32.9	182,557	67.1	372,327
15.8		1,814,053	941,795	51.9	872,258	48.1	28.5	268,412	71.5	673,383	30.5	266,039	69.5	606,219
99.0	191	1,537,616	768,698	50.0	768,918	50.0	28.5	219,079	71.5	549,619	28.5	219,142	71.5	549,776
04.1		1,164,502	559,991	48.1	604,511	51.9	28.5	159,597	71.5	400,394	26.8	162,009	73.2	442,502
13.6		691,643	324,302	46.9	367,341	53.1	28.5	92,426	71.5	231,876	25.2	92,570	74.8	274,771
27.2		353,894	162,716	46.0	191,178	54.0	28.5	46,374	71.5	116,342	23.9	45,692	76.1	145,486
61.8		880,029	388,134	44.1	491,895	55.9	28.5	110,618	71.5	277,516	22.7	111,660	77.3	380,235
33.3		230,411	99,072	43.0	131,339	57.0	28.5	28,236	71.5	70,836	21.5	28,238	78.5	103,101
08.9		149,202	62,664	42.0	86,538	58.0	28.5	17,859	71.5	44,805	20.5	17,740	79.5	68,798
87.4		206,327	84,570	41.0	121,757	59.0	28.5	24,102	71.5	60,468	19.6	23,864	80.4	97,893
89.8		89,735	37,103	41.3	52,632	58.7	28.5	10,574	71.5	26,529	18.8	9,895	81.2	42,737
53.8		398,500	155,423	39.0	243,077	61.0	28.5	44,296	71.5	111,127	18.0	43,754	82.0	199,323
12.5		106,829	40,597	38.0	66,232	62.0	28.5	11,570	71.5	29,027	17.3	11,458	82.7	54,774
10.0		749,802	279,620	37.3	470,182	62.7	28.5	79,692	71.5	199,928	16.7	78,520	83.3	391,662
18.0		62,340	20,363	32.7	41,977	67.3	28.5	5,803	71.5	14,560	16.1	6,758	83.9	35,219
23.2		303,504	105,025	34.6	198,479	65.4	28.5	29,932	71.5	75,093	15.5	30,764	84.5	167,715
93.4		54,051	18,381	34.0	35,670	66.0	28.5	5,239	71.5	13,142	15.0	5,351	85.0	30,319
81.0		34,470	11,725	34.0	22,745	66.0	28.5	3,342	71.5	8,383	14.4	3,275	85.6	19,470
							28.5		71.5		14.0		86.0	
							28.5		71.5		13.6		86.4	
							28.5		71.5		13.2		86.8	
							28.5		71.5		12.8		87.2	
							28.5		71.5		12.4		87.6	
25.5		69,875	20,961	30.0	48,914	70.0	28.5	5,974	71.5	14,987	12.1	5,919	87.9	42,995
							28.5		71.5		11.8		88.2	
							28.5		71.5		11.4		88.6	
							28.5		71.5		11.2		88.8	
							28.5		71.5		10.9		89.1	
77.5	1,079	18,879,094	10,103,929		8,775,165			2,879,619		7,224,310		2,868,545		5,906,620

TABULATION M

Ex. No.2 to V.S. N

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
MILES SOUTH	MILES NORTH	CARS	TOTAL TONS	ARBITS	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAU %	
600	50	1,261	41,897.8		544,328	409,175	75.2	135,153	24.8	26.8	109,659	73.2	29
	100	919	28,091.5	299	401,638	289,198	72.0	112,440	28.0	26.8	77,505	73.2	21
	150	2,052	60,815.6		854,200	589,309	69.0	264,891	31.0	26.8	157,935	73.2	43
	200	2,038	63,323.1		861,248	568,479	66.0	292,769	34.0	26.8	152,352	73.2	41
	250	3,160	102,741.0		1,620,933	1,038,347	64.1	582,586	35.9	26.8	278,277	73.2	76
	300	7,021	205,878.1	557	3,498,546	2,136,500	61.1	1,362,046	38.9	26.8	572,582	73.2	1,56
	350	4,629	123,702.6	418	2,240,828	1,326,573	59.2	914,255	40.8	26.8	355,522	73.2	97
	400	4,544	172,997.3		2,791,666	1,591,317	57.0	1,200,349	43.0	26.8	426,473	73.2	1,16
	450	2,469	85,187.5	469	1,513,227	835,755	55.2	677,472	44.8	26.8	223,982	73.2	61
	500	2,576	89,463.2		1,527,193	808,418	52.9	718,775	47.1	26.8	216,656	73.2	59
	550	2,060	71,686.5		1,392,019	725,478	52.1	666,541	47.9	26.8	194,428	73.2	53
	600	2,292	79,393.2		1,409,869	704,020	49.9	705,849	50.1	26.8	188,677	73.2	51
	650	902	35,621.4		594,097	291,088	49.0	303,009	51.0	26.8	78,012	73.2	21
	700	2,062	90,883.1		1,537,168	743,194	48.3	793,974	51.7	26.8	199,176	73.2	54
	750	1,673	81,161.0		1,350,803	622,792	46.1	728,011	53.9	26.8	166,908	73.2	45
	800	188	6,434.6		149,154	66,493	44.6	82,661	55.4	26.8	17,820	73.2	
	850	144	3,201.5		66,179	28,453	43.0	37,726	57.0	26.8	7,625	73.2	
	900	223	5,935.4		162,124	71,174	43.9	90,950	56.1	26.8	19,075	73.2	
	950	157	3,665.0		99,068	40,578	41.0	58,490	59.0	26.8	10,875	73.2	
	1000	210	5,554.3		157,886	63,389	40.1	94,497	59.9	26.8	16,988	73.2	
	1050	563	16,716.0		373,783	145,712	39.0	228,071	61.0	26.8	39,051	73.2	1
	1100	81	1,660.9		40,124	15,223	37.9	24,901	62.1	26.8	4,080	73.2	
	1150	99	2,041.1		50,110	19,050	38.0	31,060	62.0	26.8	5,105	73.2	
	1200	467	10,333.7		270,209	98,667	36.5	171,542	63.5	26.8	26,443	73.2	
	1250	123	2,772.4		80,701	29,389	36.4	51,312	63.6	26.8	7,876	73.2	
	1300	46	708.4		11,391	3,985	35.0	7,406	65.0	26.8	1,068	73.2	
	1350	21	443.1		14,056	4,770	33.9	9,286	66.1	26.8	1,278	73.2	
	1400	42	1,000.6		31,779	10,007	31.5	21,772	68.5	26.8	2,682	73.2	
	1450									26.8		73.2	
	1500									26.8		73.2	
	1550									26.8		73.2	
	1600	38	766.3		28,930	7,662	26.5	21,268	73.5	26.8	2,053	73.2	
	1650									26.8		73.2	
	1700									26.8		73.2	
	1750									26.8		73.2	
	1800									26.8		73.2	
TOTAL		42,060	1,394,076.2	1,743	23,673,257	13,284,195		10,389,062			3,560,163		9,7

6	7	8	9	10	11	12	13	14	15	16	17	18
E AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
544,328	409,175	75.2	135,153	24.8	26.8	109,659	73.2	299,516	81.5	110,150	18.5	25,003
299 401,638	289,198	72.0	112,440	28.0	26.8	77,505	73.2	211,693	68.8	77,359	31.2	35,081
854,200	589,309	69.0	264,891	31.0	26.8	157,935	73.2	431,374	59.5	157,610	40.5	107,281
861,248	568,479	66.0	292,769	34.0	26.8	152,352	73.2	416,127	52.5	153,704	47.5	139,065
1,620,933	1,038,347	64.1	582,586	35.9	26.8	278,277	73.2	760,070	46.9	273,233	53.1	309,353
557 3,498,546	2,136,500	61.1	1,362,046	38.9	26.8	572,582	73.2	1,563,918	42.4	577,508	57.6	784,538
418 2,240,828	1,326,573	59.2	914,255	40.8	26.8	355,522	73.2	971,051	38.7	353,817	61.3	560,438
2,791,666	1,591,317	57.0	1,200,349	43.0	26.8	426,473	73.2	1,164,844	35.6	427,324	64.4	773,025
469 1,513,227	835,755	55.2	677,472	44.8	26.8	223,982	73.2	611,773	32.9	222,888	67.1	454,584
1,527,193	808,418	52.9	718,775	47.1	26.8	216,656	73.2	591,762	30.5	219,226	69.5	499,549
1,392,019	725,478	52.1	666,541	47.9	26.8	194,428	73.2	531,050	28.5	189,964	71.5	476,577
1,409,869	704,020	49.9	705,849	50.1	26.8	188,677	73.2	515,343	26.8	189,168	73.2	516,681
594,097	291,088	49.0	303,009	51.0	26.8	78,012	73.2	213,076	25.2	76,358	74.8	226,651
1,537,168	743,194	48.3	793,974	51.7	26.8	199,176	73.2	544,018	23.9	189,760	76.1	604,214
1,350,803	622,792	46.1	728,011	53.9	26.8	166,908	73.2	455,884	22.7	165,258	77.3	562,753
149,154	66,493	44.6	82,661	55.4	26.8	17,820	73.2	48,673	21.5	17,772	78.5	64,889
66,179	28,453	43.0	37,726	57.0	26.8	7,625	73.2	20,828	20.5	7,734	79.5	29,992
162,124	71,174	43.9	90,950	56.1	26.8	19,075	73.2	52,099	19.6	17,826	80.4	73,124
99,068	40,578	41.0	58,490	59.0	26.8	10,875	73.2	29,703	18.8	10,996	81.2	47,494
157,886	63,389	40.1	94,497	59.9	26.8	16,988	73.2	46,401	18.0	17,009	82.0	77,488
373,783	145,712	39.0	228,071	61.0	26.8	39,051	73.2	106,661	17.3	39,456	82.7	188,615
40,124	15,223	37.9	24,901	62.1	26.8	4,080	73.2	11,143	16.7	4,158	83.3	20,743
50,110	19,050	38.0	31,060	62.0	26.8	5,105	73.2	13,945	16.1	5,001	83.9	26,059
270,209	98,667	36.5	171,542	63.5	26.8	26,443	73.2	72,224	15.5	26,589	84.5	144,953
80,701	29,389	36.4	51,312	63.6	26.8	7,876	73.2	21,513	15.0	7,697	85.0	43,615
11,391	3,985	35.0	7,406	65.0	26.8	1,068	73.2	2,917	14.4	1,066	85.6	6,340
14,056	4,770	33.9	9,286	66.1	26.8	1,278	73.2	3,492	14.0	1,300	86.0	7,986
31,779	10,007	31.5	21,772	68.5	26.8	2,682	73.2	7,325	13.6	2,961	86.4	18,811
					26.8		73.2		13.2		86.8	
					26.8		73.2		12.8		87.2	
					26.8		73.2		12.4		87.6	
28,930	7,662	26.5	21,268	73.5	26.8	2,053	73.2	5,609	12.1	2,573	87.9	18,695
					26.8		73.2		11.8		88.2	
					26.8		73.2		11.4		88.6	
					26.8		73.2		11.2		88.8	
					26.8		73.2		10.9		89.1	
,743 23,673,257	13,284,195		10,389,062			3,560,163		9,724,032		3,545,465		6,843,597

TABULATION M

NORTHBOUND

Ex. No.2 to V.S.

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRARY	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE HAUL %
650	50	837	27,559.8		355,955	270,028	75.9	85,927	24.1	25.2	68,047	74.8
	100	1,299	30,423.5		571,719	417,925	73.1	153,794	26.9	25.2	105,317	74.8
	150	3,213	78,701.1		1,373,237	957,015	69.7	416,222	30.3	25.2	241,168	74.8
	200	2,196	96,629.9		988,895	673,000	68.1	315,895	31.9	25.2	169,596	74.8
	250	4,200	177,349.4		2,069,359	1,345,775	65.0	723,584	35.0	25.2	339,135	74.8
	300	4,215	128,777.5		2,231,188	1,405,752	63.0	825,436	37.0	25.2	354,250	74.8
	350	3,546	108,793.4		1,951,958	1,190,378	61.0	761,580	39.0	25.2	299,975	74.8
	400	1,963	54,931.7		1,079,074	626,830	58.1	452,244	41.9	25.2	157,961	74.8
	450	2,417	72,036.1		1,339,369	763,292	57.0	576,077	43.0	25.2	192,350	74.8
	500	2,117	69,066.0		1,235,812	677,711	54.8	558,101	45.2	25.2	170,783	74.8
	550	1,582	45,007.2		866,295	461,379	53.3	404,916	46.7	25.2	116,268	74.8
	600	1,773	58,381.2		1,165,789	595,515	51.1	570,274	48.9	25.2	150,070	74.8
	650	879	28,495.7		524,758	262,412	50.0	262,346	50.0	25.2	66,128	74.8
	700	748	32,526.0		552,008	270,084	48.9	281,924	51.1	25.2	68,061	74.8
	750	374	8,973.3		195,019	92,602	47.5	102,417	52.5	25.2	23,336	74.8
	800	207	8,717.2		125,460	56,430	45.0	69,030	55.0	25.2	14,220	74.8
	850	251	6,363.3		145,405	65,802	45.3	79,603	54.7	25.2	16,582	74.8
	900	508	12,620.5		253,013	111,240	44.0	141,773	56.0	25.2	28,032	74.8
	950	202	5,819.0		123,776	52,042	42.0	71,734	58.0	25.2	13,115	74.8
	1000	2,305	132,821.5		1,303,281	546,356	41.9	756,925	58.1	25.2	137,682	74.8
	1050	862	30,537.1		677,279	275,201	40.6	402,078	59.4	25.2	69,351	74.8
	1100	84	2,448.1		59,128	23,506	39.8	35,622	60.2	25.2	5,924	74.8
	1150	342	8,417.5		212,390	87,551	41.2	124,839	58.8	25.2	22,063	74.8
	1200	279	5,640.2		148,554	56,888	38.3	91,666	61.7	25.2	14,336	74.8
	1250	21	550.7		14,179	5,254	37.1	8,925	62.9	25.2	1,324	74.8
	1300									25.2		74.8
	1350	296	12,927.4		300,031	108,010	36.0	192,021	64.0	25.2	27,219	74.8
	1400	19	557.8		16,965	6,446	38.0	10,519	62.0	25.2	1,624	74.8
	1450									25.2		74.8
	1500									25.2		74.8
	1550									25.2		74.8
	1600	19	415.0		15,073	4,825	32.0	10,248	68.0	25.2	1,216	74.8
	1650									25.2		74.8
	1700									25.2		74.8
	1750									25.2		74.8
	1800									25.2		74.8
TOTAL		36,754	1,245,487.1		19,894,969	11,409,249		8,485,720			2,875,133	

6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED					REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	REVENUE AS SETTLED				TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TOTAL U.S. REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
355,955	270,028	75.9	85,927	24.1	25.2	68,047	74.8	201,981	81.5	70,031	18.5	15,896
571,719	417,925	73.1	153,794	26.9	25.2	105,317	74.8	312,608	68.8	105,810	31.2	47,984
1,373,237	957,015	69.7	416,222	30.3	25.2	241,168	74.8	715,847	59.5	247,652	40.5	168,570
988,895	673,000	68.1	315,895	31.9	25.2	169,596	74.8	503,404	52.5	165,845	47.5	150,050
2,069,359	1,345,775	65.0	723,584	35.0	25.2	339,135	74.8	1,006,640	46.9	339,361	53.1	384,223
2,231,188	1,405,752	63.0	825,436	37.0	25.2	354,250	74.8	1,051,502	42.4	349,985	57.6	475,451
1,951,958	1,190,378	61.0	761,580	39.0	25.2	299,975	74.8	890,403	38.7	294,731	61.3	466,849
1,079,074	626,830	58.1	452,244	41.9	25.2	157,961	74.8	468,869	35.6	160,999	64.4	291,245
1,339,369	763,292	57.0	576,077	43.0	25.2	192,350	74.8	570,942	32.9	189,529	67.1	386,548
1,235,812	677,711	54.8	558,101	45.2	25.2	170,783	74.8	506,928	30.5	170,221	69.5	387,880
866,295	461,379	53.3	404,916	46.7	25.2	116,268	74.8	345,111	28.5	115,401	71.5	289,515
1,165,789	595,515	51.1	570,274	48.9	25.2	150,070	74,8	445,445	26.8	152,833	73.2	417,441
524,758	262,412	50.0	262,346	50.0	25.2	66,128	74.8	196,284	25.2	66,111	74.8	196,235
552,008	270,084	48.9	281,924	51.1	25.2	68,061	74.8	202,023	23.9	67,380	76.1	214,544
195,019	92,602	47.5	102,417	52.5	25.2	23,336	74.8	69,266	22.7	23,249	77.3	79,168
125,460	56,430	45.0	69,030	55.0	25.2	14,220	74.8	42,210	21.5	14,841	78.5	54,189
145,405	65,802	45.3	79,603	54.7	25.2	16,582	74.8	49,220	20.5	16,319	79.5	63,284
253,013	111,240	44.0	141,773	56.0	25.2	28,032	74.8	83,208	19.6	27,788	80.4	113,985
123,776	52,042	42.0	71,734	58.0	25.2	13,115	74.8	38,927	18.8	13,486	81.2	58,248
1,303,281	546,356	41.9	756,925	58.1	25.2	137,682	74.8	408,674	18.0	136,247	82.0	620,678
677,279	275,201	40.6	402,078	59.4	25.2	69,351	74.8	205,850	17.3	69,559	82.7	332,519
59,128	23,506	39.8	35,622	60.2	25.2	5,924	74.8	17,582	16.7	5,949	83.3	29,673
212,390	87,551	41.2	124,839	58.8	25.2	22,063	74.8	65,488	16.1	20,099	83.9	104,740
148,554	56,888	38.3	91,666	61.7	25.2	14,336	74.8	42,552	15.5	14,208	84.5	77,458
14,179	5,254	37.1	8,925	62.9	25.2	1,324	74.8	3,930	15.0	1,339	85.0	7,586
					25.2		74.8		14.4		85.6	
300,031	108,010	36.0	192,021	64.0	25.2	27,219	74.8	80,791	14.0	26,883	86.0	165,138
16,965	6,446	38.0	10,519	62.0	25.2	1,624	74.8	4,822	13.6	1,431	86.4	9,088
					25.2		74.8		13.2		86.8	
					25.2		74.8		12.8		87.2	
					25.2		74.8		12.4		87.6	
15,073	4,825	32.0	10,248	68.0	25.2	1,216	74.8	3,609	12.1	1,240	87.9	9,008
					25.2		74.8		11.8		88.2	
					25.2		74.8		11.4		88.6	
					25.2		74.8		11.2		88.8	
					25.2		74.8		10.9		89.1	
19,894,969	11,409,249		8,485,720			2,875,133		8,534,116		2,868,527		5,617,193

TABULATION M

Ex. No.2 to V.S

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LIN %
700	50	1,147	32,949.9		473,682	361,689	76.4	111,993	23.6	23.9	86,444	76.1
	100	614	16,562.1		284,068	210,226	74.0	73,842	26.0	23.9	50,244	76.1
	150	3,411	86,469.6		1,343,574	954,736	71.1	388,838	28.9	23.9	228,182	76.1
	200	1,751	63,270.9		966,918	663,677	68.6	303,241	31.4	23.9	158,619	76.1
	250	2,648	79,828.0		1,424,958	942,059	66.1	482,899	33.9	23.9	225,152	76.1
	300	6,710	202,396.0	6,795	3,533,805	2,267,013	64.2	1,266,792	35.8	23.9	541,816	76.1
	350	3,163	87,271.2	1,137	1,562,072	969,483	62.1	592,589	37.9	23.9	231,706	76.1
	400	2,789	80,473.3	2,725	1,538,944	923,712	60.0	615,232	40.0	23.9	220,767	76.1
	450	1,572	48,758.0	2,604	960,048	557,256	58.0	402,792	42.0	23.9	133,184	76.1
	500	2,366	73,918.8	2,697	1,366,520	764,135	55.9	602,385	44.1	23.9	182,628	76.1
	550	2,046	47,499.1	3,979	1,145,783	618,216	54.0	527,567	46.0	23.9	147,754	76.1
	600	2,432	78,921.4	4,886	1,476,800	783,278	53.0	693,522	47.0	23.9	187,203	76.1
	650	634	24,145.6		450,187	229,631	51.0	220,556	49.0	23.9	54,882	76.1
	700	267	9,161.7	386	210,109	105,064	50.0	105,045	50.0	23.9	25,110	76.1
	750	602	22,184.2	931	488,538	242,565	49.7	245,973	50.3	23.9	57,973	76.1
	800	21	844.4		13,647	6,416	47.0	7,231	53.0	23.9	1,533	76.1
	850	366	11,334.7	528	229,797	103,842	45.2	125,955	54.8	23.9	24,818	76.1
	900	388	12,406.4		385,027	173,229	45.0	211,798	55.0	23.9	41,402	76.1
	950	599	22,740.8		424,533	182,823	43.1	241,710	56.9	23.9	43,695	76.1
	1000	445	16,307.9		403,304	173,589	43.0	229,715	57.0	23.9	41,488	76.1
	1050	1,170	35,354.9		793,041	333,742	42.1	459,299	57.9	23.9	79,764	76.1
	1100	19	569.4		13,317	5,462	41.0	7,855	59.0	23.9	1,305	76.1
	1150	652	25,484.7		499,972	199,997	40.0	299,975	60.0	23.9	47,799	76.1
	1200	238	5,629.6		139,613	55,077	39.4	84,536	60.6	23.9	13,163	76.1
	1250									23.9		76.1
	1300	42	1,304.8		32,578	12,395	38.0	20,183	62.0	23.9	2,962	76.1
	1350									23.9		76.1
	1400									23.9		76.1
	1450									23.9		76.1
	1500									23.9		76.1
	1550									23.9		76.1
	1600									23.9		76.1
	1650									23.9		76.1
	1700									23.9		76.1
	1750									23.9		76.1
	1800									23.9		76.1
TOTAL		36,092	1,085,787.4	26,668	20,160,835	11,839,312		8,321,523			2,829,593	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	473,682	361,689	76.4	111,993	23.6	23.9	86,444	76.1	275,245	81.5	91,274	18.5	20,719
	284,068	210,226	74.0	73,842	26.0	23.9	50,244	76.1	159,982	68.8	50,803	31.2	23,039
	1,343,574	954,736	71.1	388,838	28.9	23.9	228,182	76.1	726,554	59.5	231,359	40.5	157,479
	966,918	663,677	68.6	303,241	31.4	23.9	158,619	76.1	505,058	52.5	159,202	47.5	144,039
	1,424,958	942,059	66.1	482,899	33.9	23.9	225,152	76.1	716,907	46.9	226,480	53.1	256,419
6,795	3,533,805	2,267,013	64.2	1,266,792	35.8	23.9	541,816	76.1	1,725,197	42.4	537,120	57.6	729,672
1,137	1,562,072	969,483	62.1	592,589	37.9	23.9	231,706	76.1	737,777	38.7	229,332	61.3	363,257
2,725	1,538,944	923,712	60.0	615,232	40.0	23.9	220,767	76.1	702,945	35.6	219,023	64.4	396,209
2,604	960,048	557,256	58.0	402,792	42.0	23.9	133,184	76.1	424,072	32.9	132,519	67.1	270,273
2,697	1,366,520	764,135	55.9	602,385	44.1	23.9	182,628	76.1	581,507	30.5	183,727	69.5	418,658
3,979	1,145,783	618,216	54.0	527,567	46.0	23.9	147,754	76.1	470,462	28.5	150,357	71.5	377,210
4,886	1,476,800	783,278	53.0	693,522	47.0	23.9	187,203	76.1	596,075	26.8	185,864	73.2	507,658
	450,187	229,631	51.0	220,556	49.0	23.9	54,882	76.1	174,749	25.2	55,580	74.8	164,976
386	210,109	105,064	50.0	105,045	50.0	23.9	25,110	76.1	79,954	23.9	25,106	76.1	79,939
931	488,538	242,565	49.7	245,973	50.3	23.9	57,973	76.1	184,592	22.7	55,836	77.3	190,137
	13,647	6,416	47.0	7,231	53.0	23.9	1,533	76.1	4,883	21.5	1,555	78.5	5,676
528	229,797	103,842	45.2	125,955	54.8	23.9	24,818	76.1	79,024	20.5	25,821	79.5	100,134
	385,027	173,229	45.0	211,798	55.0	23.9	41,402	76.1	131,827	19.6	41,512	80.4	170,286
	424,533	182,823	43.1	241,710	56.9	23.9	43,695	76.1	139,128	18.8	45,441	81.2	196,269
	403,304	173,589	43.0	229,715	57.0	23.9	41,488	76.1	132,101	18.0	41,349	82.0	188,366
	793,041	333,742	42.1	459,299	57.9	23.9	79,764	76.1	253,978	17.3	79,459	82.7	379,840
	13,317	5,462	41.0	7,855	59.0	23.9	1,305	76.1	4,157	16.7	1,312	83.3	6,543
	499,972	199,997	40.0	299,975	60.0	23.9	47,799	76.1	152,198	16.1	48,296	83.9	251,679
	139,613	55,077	39.4	84,536	60.6	23.9	13,163	76.1	41,914	15.5	13,103	84.5	71,433
						23.9		76.1		15.0		85.0	
	32,578	12,395	38.0	20,183	62.0	23.9	2,962	76.1	9,433	14.4	2,906	85.6	17,277
						23.9		76.1		14.0		86.0	
						23.9		76.1		13.6		86.4	
						23.9		76.1		13.2		86.8	
						23.9		76.1		12.8		87.2	
						23.9		76.1		12.4		87.6	
						23.9		76.1		12.1		87.9	
						23.9		76.1		11.8		88.2	
						23.9		76.1		11.4		88.6	
						23.9		76.1		11.2		88.8	
						23.9		76.1		10.9		89.1	
26,668	20,160,835	11,839,312		8,321,523			2,829,593		9,009,719		2,834,336		5,487,187

TABULATION M

Ex. No.2 to V.S.

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
			TOTAL			SOUTH		NORTH		TERMINAL		LINE
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
750	50	1,746	54,342.0		828,843	646,336	78.0	182,507	22.0	22.7	146,718	77.3
	100	1,328	45,951.9		749,954	562,452	75.0	187,502	25.0	22.7	127,677	77.3
	150	2,315	62,150.3		1,069,730	769,045	71.9	300,685	28.1	22.7	174,573	77.3
	200	1,843	59,997.3	3,936	1,140,690	798,432	70.0	342,258	30.0	22.7	181,244	77.3
	250	4,607	139,195.2		2,600,476	1,745,202	67.1	855,274	32.9	22.7	396,161	77.3
	300	5,737	193,537.2	9,007	3,122,638	2,030,339	65.0	1,092,299	35.0	22.7	460,887	77.3
	350	4,378	212,739.6	6,099	2,061,984	1,299,509	63.0	762,475	37.0	22.7	294,989	77.3
	400	3,826	118,511.6	2,596	2,227,515	1,357,863	61.0	869,652	39.0	22.7	308,235	77.3
	450	2,181	55,925.3	1,740	1,293,828	763,164	59.0	530,664	41.0	22.7	173,238	77.3
	500	849	23,370.3	3,110	495,410	280,411	56.6	214,999	43.4	22.7	63,653	77.3
	550	1,176	33,803.6	4,283	806,504	453,311	56.2	353,193	43.8	22.7	102,902	77.3
	600	1,509	41,159.9	9,139	894,273	483,434	54.1	410,839	45.9	22.7	109,740	77.3
	650	613	18,076.1	3,493	414,470	219,794	53.0	194,676	47.0	22.7	49,893	77.3
	700	423	10,155.4	1,889	279,501	142,985	51.2	136,516	48.8	22.7	32,458	77.3
	750	954	25,647.1		527,459	263,574	50.0	263,885	50.0	22.7	59,831	77.3
	800	243	7,930.6		214,232	104,944	49.0	109,288	51.0	22.7	23,822	77.3
	850	84	1,896.5		47,804	21,039	44.0	26,765	56.0	22.7	4,776	77.3
	900	333	8,361.1		213,978	98,429	46.0	115,549	54.0	22.7	22,343	77.3
	950	36	719.1		18,833	8,473	45.0	10,360	55.0	22.7	1,923	77.3
	1000	149	3,420.0		89,640	40,776	45.5	48,864	54.5	22.7	9,256	77.3
	1050	527	14,164.9		367,239	157,918	43.0	209,321	57.0	22.7	35,847	77.3
	1100	21	529.2		14,259	5,985	42.0	8,274	58.0	22.7	1,359	77.3
	1150	205	6,213.2		151,954	63,954	42.1	88,000	57.9	22.7	14,518	77.3
	1200	63	1,530.9		42,105	17,304	41.1	24,801	58.9	22.7	3,928	77.3
	1250									22.7		77.3
	1300									22.7		77.3
	1350	63	1,108.8		35,238	13,398	38.0	21,840	62.0	22.7	3,041	77.3
	1400									22.7		77.3
	1450									22.7		77.3
	1500									22.7		77.3
	1550									22.7		77.3
	1600									22.7		77.3
	1650									22.7		77.3
	1700									22.7		77.3
	1750									22.7		77.3
	1800									22.7		77.3
TOTAL		35,209	1,140,437.1	45,292	19,708,557	12,348,071		7,360,486			2,803,012	

6	7	8	9	10	11	12	13	14	15	16	17	18
AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
828,843	646,336	78.0	182,507	22.0	22.7	146,718	77.3	499,618	81.5	148,743	18.5	33,764
749,954	562,452	75.0	187,502	25.0	22.7	127,677	77.3	434,775	68.8	129,001	31.2	58,501
1,069,730	769,045	71.9	300,685	28.1	22.7	174,573	77.3	594,472	59.5	178,908	40.5	121,777
36 1,140,690	798,432	70.0	342,258	30.0	22.7	181,244	77.3	617,188	52.5	179,685	47.5	162,573
2,600,476	1,745,202	67.1	855,274	32.9	22.7	396,161	77.3	1,349,041	46.9	401,124	53.1	454,150
07 3,122,638	2,030,339	65.0	1,092,299	35.0	22.7	460,887	77.3	1,569,452	42.4	463,135	57.6	629,164
99 2,061,984	1,299,509	63.0	762,475	37.0	22.7	294,989	77.3	1,004,520	38.7	295,078	61.3	467,397
96 2,227,515	1,357,863	61.0	869,652	39.0	22.7	308,235	77.3	1,049,628	35.6	309,596	64.4	560,056
40 1,293,828	763,164	59.0	530,664	41.0	22.7	173,238	77.3	589,926	32.9	174,588	67.1	356,076
10 495,410	280,411	56.6	214,999	43.4	22.7	63,653	77.3	216,758	30.5	65,575	69.5	149,424
83 806,504	453,311	56.2	353,193	43.8	22.7	102,902	77.3	350,409	28.5	100,660	71.5	252,533
39 894,273	483,434	54.1	410,839	45.9	22.7	109,740	77.3	373,694	26.8	110,105	73.2	300,734
93 414,470	219,794	53.0	194,676	47.0	22.7	49,893	77.3	169,901	25.2	49,058	74.8	145,618
89 279,501	142,985	51.2	136,516	48.8	22.7	32,458	77.3	110,527	23.9	32,627	76.1	103,889
527,459	263,574	50.0	263,885	50.0	22.7	59,831	77.3	203,743	22.7	59,902	77.3	203,983
214,232	104,944	49.0	109,288	51.0	22.7	23,822	77.3	81,122	21.5	23,497	78.5	85,791
47,804	21,039	44.0	26,765	56.0	22.7	4,776	77.3	16,263	20.5	5,487	79.5	21,278
213,978	98,429	46.0	115,549	54.0	22.7	22,343	77.3	76,086	19.6	22,648	80.4	92,901
18,833	8,473	45.0	10,360	55.0	22.7	1,923	77.3	6,550	18.8	1,948	81.2	8,412
89,640	40,776	45.5	48,864	54.5	22.7	9,256	77.3	31,520	18.0	8,796	82.0	40,068
367,239	157,918	43.0	209,321	57.0	22.7	35,847	77.3	122,071	17.3	36,213	82.7	173,108
14,259	5,985	42.0	8,274	58.0	22.7	1,359	77.3	4,626	16.7	1,382	83.3	6,892
151,954	63,954	42.1	88,000	57.9	22.7	14,518	77.3	49,436	16.1	14,168	83.9	73,832
42,105	17,304	41.1	24,801	58.9	22.7	3,928	77.3	13,376	15.5	3,844	84.5	20,957
					22.7		77.3		15.0		85.0	
					22.7		77.3		14.4		85.6	
35,238	13,398	38.0	21,840	62.0	22.7	3,041	77.3	10,357	14.0	3,058	86.0	13,782
					22.7		77.3		13.6		86.4	
					22.7		77.3		13.2		86.8	
					22.7		77.3		12.8		87.2	
					22.7		77.3		12.4		87.6	
					22.7		77.3		12.1		87.9	
					22.7		77.3		11.8		88.2	
					22.7		77.3		11.4		88.6	
					22.7		77.3		11.2		86.8	
					22.7		77.3		10.9		89.1	
92 19,708,557	12,348,071		7,360,486			2,803,012		9,545,059		2,818,826		4,541,660

TABULATION M

. Ex. No.2 to V.S. N

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7	SOUTH	
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HA
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
800	50	307	7,740.3		136,441	107,805	79.0	28,636	21.0	21.5	23,178	78.5
	100	536	17,145.6	2,454	277,213	210,994	76.1	66,219	23.9	21.5	45,364	78.5
	150	1,845	53,710.3	204	939,707	686,285	73.0	253,422	27.0	21.5	147,551	78.5
	200	2,089	81,711.8	5,758	1,190,965	845,408	71.0	345,557	29.0	21.5	181,763	78.5
	250	2,019	60,716.6	858	1,169,158	808,535	69.2	360,623	30.8	21.5	173,835	78.5
	300	5,265	159,137.8	16,551	2,914,594	1,918,417	65.8	996,177	34.2	21.5	412,460	78.5
	350	4,161	120,268.1	29,887	2,305,731	1,470,754	63.8	834,977	36.2	21.5	316,212	78.5
	400	3,103	109,040.1	11,934	2,096,900	1,306,799	62.3	790,101	37.7	21.5	280,962	78.5
	450	2,522	89,580.9	18,531	1,539,447	919,942	59.8	619,505	40.2	21.5	197,788	78.5
	500	1,747	43,220.4	8,243	895,754	529,236	59.1	366,518	40.9	21.5	113,786	78.5
	550	1,178	36,488.6	13,128	780,366	446,895	57.3	333,471	42.7	21.5	96,082	78.5
	600	2,764	87,366.7	23,534	1,579,793	867,275	54.9	712,518	45.1	21.5	186,464	78.5
	650	657	33,045.7	1,721	449,878	242,955	54.0	206,923	46.0	21.5	52,235	78.5
	700	1,813	98,920.2	5,094	1,154,420	611,698	53.0	542,722	47.0	21.5	131,515	78.5
	750	697	24,745.0	2,862	424,640	216,373	51.0	208,267	49.0	21.5	46,520	78.5
	800	20	629.6		12,870	6,435	50.0	6,435	50.0	21.5	1,384	78.5
	850	835	47,041.2	188	612,351	294,963	48.2	317,388	51.8	21.5	63,417	78.5
	900	242	5,663.2		152,438	73,205	48.0	79,233	52.0	21.5	15,739	78.5
	950	132	3,363.2		74,641	35,098	47.0	39,543	53.0	21.5	7,546	78.5
	1000	37	1,306.8		27,838	12,807	46.0	15,031	54.0	21.5	2,754	78.5
	1050									21.5		78.5
	1100									21.5		78.5
	1150									21.5		78.5
	1200									21.5		78.5
	1250									21.5		78.5
	1300									21.5		78.5
	1350									21.5		78.5
	1400									21.5		78.5
	1450									21.5		78.5
	1500									21.5		78.5
	1550									21.5		78.5
	1600									21.5		78.5
	1650									21.5		78.5
	1700									21.5		78.5
	1750									21.5		78.5
	1800									21.5		78.5
TOTAL		31,969	1,080,842.1	140,947	18,735,145	11,611,879		7,123,266			2,496,555	9.

6	7	8	9	10.	11.	12	13	14	15	16	17	18
UE AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	136,441	107,805	79.0	28,636	21.0	21.5	23,178	78.5	84,627	81.5	23,338	18.5	5,298
2,454	277,213	210,994	76.1	66,219	23.9	21.5	45,364	78.5	165,630	68.8	45,559	31.2	20,660
204	939,707	686,285	73.0	253,422	27.0	21.5	147,551	78.5	538,734	59.5	150,786	40.5	102,636
5,758	1,190,965	845,408	71.0	345,557	29.0	21.5	181,763	78.5	663,645	52.5	181,417	47.5	164,140
858	1,169,158	808,535	69.2	360,623	30.8	21.5	173,835	78.5	634,700	46.9	169,132	53.1	191,491
6,551	2,914,594	1,918,417	65.8	996,177	34.2	21.5	412,460	78.5	1,505,957	42.4	422,379	57.6	573,798
9,887	2,305,731	1,470,754	63.8	834,977	36.2	21.5	316,272	78.5	1,154,542	38.7	323,136	61.3	511,841
1,934	2,096,900	1,306,799	62.3	790,101	37.7	21.5	280,962	78.5	1,025,837	35.6	281,276	64.4	508,825
8,531	1,539,447	919,942	59.8	619,505	40.2	21.5	197,788	78.5	722,154	32.9	203,817	67.1	415,688
8,243	895,754	529,236	59.1	366,518	40.9	21.5	113,786	78.5	415,450	30.5	111,788	69.5	254,730
34,128	780,366	446,895	57.3	333,471	42.7	21.5	96,082	78.5	350,813	28.5	95,039	71.5	238,432
3,534	1,579,793	867,275	54.9	712,518	45.1	21.5	186,464	78.5	680,811	26.8	190,955	73.2	521,563
1,721	449,878	242,955	54.0	206,923	46.0	21.5	52,235	78.5	190,720	25.2	52,145	74.8	154,778
5,094	1,154,420	611,698	53.0	542,722	47.0	21.5	131,515	78.5	480,183	23.9	129,711	76.1	413,011
2,862	424,640	216,373	51.0	208,267	49.0	21.5	46,520	78.5	169,853	22.7	47,277	77.3	160,990
	12,870	6,435	50.0	6,435	50.0	21.5	1,384	78.5	5,051	21.5	1,384	78.5	5,051
188	612,351	294,963	48.2	317,388	51.8	21.5	63,417	78.5	231,546	20.5	65,065	79.5	252,323
	152,438	73,205	48.0	79,233	52.0	21.5	15,739	78.5	57,466	19.6	15,530	80.4	63,703
	74,641	35,098	47.0	39,543	53.0	21.5	7,546	78.5	27,552	18.8	7,434	81.2	32,109
	27,838	12,807	46.0	15,031	54.0	21.5	2,754	78.5	10,053	18.0	2,706	82.0	12,325
						21.5		78.5		17.3		82.7	
						21.5		78.5		16.7		83.3	
						21.5		78.5		16.1		83.9	
						21.5		78.5		15.5		84.5	
						21.5		78.5		15.0		85.0	
						21.5		78.5		14.4		85.6	
						21.5		78.5		14.0		86.0	
						21.5		78.5		13.6		86.4	
						21.5		78.5		13.2		86.8	
						21.5		78.5		12.8		87.2	
						21.5		78.5		12.4		87.6	
						21.5		78.5		12.1		87.9	
						21.5		78.5		11.8		88.2	
						21.5		78.5		11.4		88.6	
						21.5		78.5		11.2		88.8	
						21.5		78.5		10.9		89.1	
0,947	18,735,145	11,611,879		7,123,266			2,496,555		9,115,324		2,519,874		4,603,392

TABULATION M

Ex. No.2 to V.S. N

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HA	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	
850	50	605	18,700.5	2,778	343,807	275,432	80.1	68,375	19.9	20.5	56,464	79.5	2
	100	252	7,005.7		121,624	93,238	76.7	28,386	23.3	20.5	19,114	79.5	
	150	2,218	84,139.7	7,747	1,341,824	992,933	74.0	348,891	26.0	20.5	203,551	79.5	7
	200	2,139	74,286.5	7,452	1,267,157	912,520	72.0	354,637	28.0	20.5	187,067	79.5	7
	250	3,605	132,100.4	468	2,128,072	1,488,071	69.9	640,001	30.1	20.5	305,055	79.5	1,1
	300	4,273	191,908.1	9,317	2,881,883	1,928,825	66.9	953,058	33.1	20.5	395,409	79.5	1,5
	350	5,281	181,528.3	21,238	3,341,059	2,172,398	65.0	1,168,661	35.0	20.5	445,342	79.5	1,7
	400	2,130	95,517.9	3,724	1,428,528	899,180	62.9	529,348	37.1	20.5	184,332	79.5	7
	450	2,009	63,139.6	15,669	1,306,195	810,273	62.0	495,922	38.0	20.5	166,106	79.5	6
	500	1,310	58,366.4	1,332	916,776	549,591	59.9	367,185	40.1	20.5	112,666	79.5	4
	550	3,575	196,022.8	7,909	2,514,454	1,459,168	58.0	1,055,286	42.0	20.5	299,129	79.5	1,1
	600	2,913	129,392.6	13,708	1,885,387	1,076,140	57.1	809,247	42.9	20.5	220,609	79.5	8
	650	451	21,283.3	2,799	295,990	163,337	55.2	132,653	44.8	20.5	33,484	79.5	1
	700	869	44,051.0	1,694	530,454	286,447	54.0	244,007	46.0	20.5	58,722	79.5	2
	750	494	28,395.6	353	388,762	201,245	51.8	187,517	48.2	20.5	41,255	79.5	1
	800	667	44,521.8		502,885	256,469	51.0	246,416	49.0	20.5	52,576	79.5	2
	850	105	2,661.1	183	60,130	30,076	50.0	30,054	50.0	20.5	6,166	79.5	
	900	144	5,217.3		102,239	50,089	49.0	52,150	51.0	20.5	10,268	79.5	
	950	20	799.9		15,662	7,524	48.0	8,138	52.0	20.5	1,542	79.5	
	1000									20.5		79.5	
	1050									20.5		79.5	
	1100									20.5		79.5	
	1150									20.5		79.5	
	1200									20.5		79.5	
	1250									20.5		79.5	
	1300									20.5		79.5	
	1350									20.5		79.5	
	1400									20.5		79.5	
	1450									20.5		79.5	
	1500									20.5		79.5	
	1550									20.5		79.5	
	1600									20.5		79.5	
	1650									20.5		79.5	
	1700									20.5		79.5	
	1750									20.5		79.5	
	1800									20.5		79.5	
TOTAL		33,060	1,379,038.5	96,371	21,372,888	13,652,956		7,719,932			2,798,857		10,

6	7	8	9	10	11	12	13	14	15	16	17	18
AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
					TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TOTAL REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
78 343,807	275,432	80.1	68,375	19.9	20.5	56,464	79.5	218,968	81.5	55,726	18.5	12,649
121,624	93,238	76.7	28,386	23.3	20.5	19,114	79.5	74,124	68.8	19,530	31.2	8,856
47 1,341,824	992,933	74.0	348,891	26.0	20.5	203,551	79.5	789,382	59.5	207,590	40.5	141,301
52 1,267,157	912,520	72.0	354,637	28.0	20.5	187,067	79.5	725,453	52.5	186,184	47.5	168,453
68 2,128,072	1,488,071	69.9	640,001	30.1	20.5	305,055	79.5	1,183,016	46.9	300,160	53.1	339,841
17 2,881,883	1,928,825	66.9	953,058	33.1	20.5	395,409	79.5	1,533,416	42.4	404,097	57.6	548,961
38 3,341,059	2,172,398	65.0	1,168,661	35.0	20.5	445,342	79.5	1,727,056	38.7	452,272	61.3	716,389
24 1,428,528	899,180	62.9	529,348	37.1	20.5	184,332	79.5	714,848	35.6	188,448	64.4	340,900
69 1,306,195	810,273	62.0	495,922	38.0	20.5	166,106	79.5	644,167	32.9	163,158	67.1	332,764
32 916,776	549,591	59.9	367,185	40.1	20.5	112,666	79.5	436,925	30.5	111,991	69.5	255,194
09 2,514,454	1,459,168	58.0	1,055,286	42.0	20.5	299,129	79.5	1,160,039	28.5	300,757	71.5	754,529
08 1,885,387	1,076,140	57.1	809,247	42.9	20.5	220,609	79.5	855,531	26.8	216,878	73.2	592,369
99 295,990	163,337	55.2	132,653	44.8	20.5	33,484	79.5	129,853	25.2	33,429	74.8	99,224
94 530,454	286,447	54.0	244,007	46.0	20.5	58,722	79.5	227,725	23.9	58,318	76.1	185,689
53 388,762	201,245	51.8	187,517	48.2	20.5	41,255	79.5	159,990	22.7	42,566	77.3	144,951
502,885	256,469	51.0	246,416	49.0	20.5	52,576	79.5	203,893	21.5	52,979	78.5	193,437
83 60,130	30,076	50.0	30,054	50.0	20.5	6,166	79.5	23,910	20.5	6,161	79.5	23,893
102,239	50,089	49.0	52,150	51.0	20.5	10,268	79.5	39,821	19.6	10,221	80.4	41,929
15,662	7,524	48.0	8,138	52.0	20.5	1,542	79.5	5,982	18.8	1,530	81.2	6,608
					20.5		79.5		18.0		82.0	
					20.5		79.5		17.3		82.7	
					20.5		79.5		16.7		83.3	
					20.5		79.5		16.1		83.9	
					20.5		79.5		15.5		84.5	
					20.5		79.5		15.0		85.0	
					20.5		79.5		14.4		85.6	
					20.5		79.5		14.0		86.0	
					20.5		79.5		13.6		86.4	
					20.5		79.5		13.2		86.8	
					20.5		79.5		12.8		87.2	
					20.5		79.5		12.4		87.6	
					20.5		79.5		12.1		87.9	
					20.5		79.5		11.8		88.2	
					20.5		79.5		11.4		88.6	
					20.5		79.5		11.2		88.8	
					20.5		79.5		10.9		89.1	
371 21,372,888	13,652,956		7,719,932			2,798,857		10,854,099		2,811,995		4,907,937

TABULATION M

Ex. No.2 to V.S.

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7	SOUTH	
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE %
900	50	199	9,047.5	329	168,866	136,791	81.0	32,075	19.0	19.6	26,811	80.4
	100	480	16,812.1		213,389	166,421	78.0	46,968	22.0	19.6	32,619	80.4
	150	889	46,484.2	707	550,298	413,439	75.1	136,859	24.9	19.6	81,034	80.4
	200	555	27,101.1		303,809	221,791	73.0	82,018	27.0	19.6	43,471	80.4
	250	1,107	58,479.3	4,172	690,151	481,416	69.8	208,735	30.2	19.6	94,358	80.4
	300	1,598	62,015.5	6,060	869,551	591,047	68.0	278,504	32.0	19.6	115,845	80.4
	350	1,624	56,737.2	11,622	931,753	615,963	66.1	315,790	33.9	19.6	120,729	80.4
	400	835	36,315.1	5,314	522,422	337,755	64.7	184,667	35.3	19.6	66,200	80.4
	450	966	21,615.0	11,508	560,539	355,385	63.4	205,154	36.6	19.6	69,655	80.4
	500	363	12,597.9	1,341	266,822	162,937	61.1	103,885	38.9	19.6	31,936	80.4
	550	230	12,945.5		287,382	169,553	59.0	117,829	41.0	19.6	33,232	80.4
	600	189	5,038.5	850	117,826	68,317	58.0	49,509	42.0	19.6	13,390	80.4
	650	92	1,956.3	2,946	45,586	25,529	56.0	20,057	44.0	19.6	5,004	80.4
	700	40	817.0		22,669	12,290	54.2	10,379	45.8	19.6	2,409	80.4
	750									19.6		80.4
	800	18	1,005.0		22,511	11,706	52.0	10,805	48.0	19.6	2,294	80.4
	850	21	580.9		13,334	6,720	50.4	6,614	49.6	19.6	1,317	80.4
	900									19.6		80.4
	950									19.6		80.4
	1000									19.6		80.4
	1050									19.6		80.4
	1100									19.6		80.4
	1150									19.6		80.4
	1200									19.6		80.4
	1250									19.6		80.4
	1300									19.6		80.4
	1350									19.6		80.4
	1400									19.6		80.4
	1450									19.6		80.4
	1500									19.6		80.4
	1550									19.6		80.4
	1600									19.6		80.4
	1650									19.6		80.4
	1700									19.6		80.4
	1750									19.6		80.4
	1800									19.6		80.4
TOTAL		9,206	369,548.1	44,849	5,586,908	3,777,060		1,809,848			740,304	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
329	168,866	136,791	81.0	32,075	19.0	19.6	26,811	80.4	109,980	81.5	26,141	18.5	5,934
	213,389	166,421	78.0	46,968	22.0	19.6	32,619	80.4	133,802	68.8	32,314	31.2	14,654
707	550,298	413,439	75.1	136,859	24.9	19.6	81,034	80.4	332,405	59.5	81,431	40.5	55,428
	303,809	221,791	73.0	82,018	27.0	19.6	43,471	80.4	178,320	52.5	43,059	47.5	38,959
4,172	690,151	481,416	69.8	208,735	30.2	19.6	94,358	80.4	387,058	46.9	97,897	53.1	110,838
6,060	869,551	591,047	68.0	278,504	32.0	19.6	115,845	80.4	475,202	42.4	118,086	57.6	160,418
1,622	931,753	615,963	66.1	315,790	33.9	19.6	120,729	80.4	495,234	38.7	122,211	61.3	193,579
5,314	522,422	337,755	64.7	184,667	35.3	19.6	66,200	80.4	271,555	35.6	65,741	64.4	118,926
1,508	560,589	355,385	63.4	205,154	36.6	19.6	69,655	80.4	285,730	32.9	67,496	67.1	137,658
1,341	266,822	162,937	61.1	103,885	38.9	19.6	31,936	80.4	131,001	30.5	31,685	69.5	72,200
	287,382	169,553	59.0	117,829	41.0	19.6	33,232	80.4	136,321	28.5	33,581	71.5	84,248
850	117,826	68,317	58.0	49,509	42.0	19.6	13,890	80.4	54,927	26.8	13,268	73.2	36,241
2,946	45,586	25,529	56.0	20,057	44.0	19.6	5,004	80.4	20,525	25.2	5,054	74.8	15,003
	22,669	12,290	54.2	10,379	45.8	19.6	2,409	80.4	9,881	23.9	2,481	76.1	7,898
						19.6		80.4		22.7		77.3	
	22,511	11,706	52.0	10,805	48.0	19.6	2,294	80.4	9,412	21.5	2,323	78.5	8,482
	13,334	6,720	50.4	6,614	49.6	19.6	1,317	80.4	5,403	20.5	1,356	79.5	5,258
						19.6		80.4		19.6		80.4	
						19.6		80.4		18.8		81.2	
						19.6		80.4		18.0		82.0	
						19.6		80.4		17.3		82.7	
						19.6		80.4		16.7		83.3	
						19.6		80.4		16.1		83.9	
						19.6		80.4		15.5		84.5	
						19.6		80.4		15.0		85.0	
						19.6		80.4		14.4		85.6	
						19.6		80.4		14.0		86.0	
						19.6		80.4		13.6		86.4	
						19.6		80.4		13.2		86.8	
						19.6		80.4		12.8		87.2	
						19.6		80.4		12.4		87.6	
						19.6		80.4		12.1		87.9	
						19.6		80.4		11.8		88.2	
						19.6		80.4		11.4		88.6	
						19.6		80.4		11.2		88.8	
						19.6		80.4		10.9		89.1	
44,849	5,586,908	3,777,060		1,809,848			740,304		3,036,756		744,124		1,065,724

TABULATION M

Ex. No.2 to V.S.

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE %
950	50	879	53,338.9		548,593	444,369	81.0	104,224	19.0	18.8	83,541	81.2
	100	244	10,317.5		296,776	232,735	78.4	64,041	21.6	18.8	43,754	81.2
	150	1,620	60,375.8		886,319	672,501	75.9	213,818	24.1	18.8	126,430	81.2
	200	1,369	48,267.8	4,137	764,900	565,438	73.9	199,462	26.1	18.8	106,302	81.2
	250	1,864	67,655.5	7,314	1,130,920	807,178	71.4	323,742	28.6	18.8	151,749	81.2
	300	3,294	123,675.2	14,338	1,962,787	1,352,152	68.9	610,635	31.1	18.8	254,205	81.2
	350	2,591	66,037.5	7,151	1,273,034	852,341	67.0	420,693	33.0	18.8	160,240	81.2
	400	687	20,506.5	1,405	380,769	248,420	65.2	132,349	34.8	18.8	46,703	81.2
	450	1,564	52,979.4	2,354	805,421	514,399	63.9	291,022	36.1	18.8	96,707	81.2
	500	761	14,124.8	5,398	372,002	230,798	62.0	141,204	38.0	18.8	43,390	81.2
	550	436	10,744.6		219,287	133,239	60.8	86,048	39.2	18.8	25,049	81.2
	600	1,154	18,309.3	8,397	537,051	317,034	59.0	220,017	41.0	18.8	59,602	81.2
	650									18.8		81.2
	700	18	272.7		8,583	4,813	56.1	3,770	43.9	18.8	905	81.2
	750	85	1,534.8		43,049	23,677	55.0	19,372	45.0	18.8	4,451	81.2
	800									18.8		81.2
	850	18	307.4		7,667	3,989	52.0	3,678	48.0	18.8	750	81.2
	900	20	455.1		16,173	8,254	51.0	7,919	49.0	18.8	1,552	81.2
	950									18.8		81.2
	1000									18.8		81.2
	1050									18.8		81.2
	1100									18.8		81.2
	1150									18.8		81.2
	1200									18.8		81.2
	1250									18.8		81.2
	1300									18.8		81.2
	1350									18.8		81.2
	1400									18.8		81.2
	1450									18.8		81.2
	1500									18.8		81.2
	1550									18.8		81.2
	1600									18.8		81.2
	1650									18.8		81.2
	1700									18.8		81.2
	1750									18.8		81.2
	1800									18.8		81.2
TOTAL		16,604	548,902.8	30,494	9,253,331	6,411,337		2,841,994			1,205,330	5

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	548,593	444,369	81.0	104,224	19.0	18.8	83,541	81.2	360,828	81.5	84,943	18.5	19,281
	296,776	232,735	78.4	64,041	21.6	18.8	43,754	81.2	188,981	68.8	44,060	31.2	19,981
	886,319	672,501	75.9	213,818	24.1	18.8	126,430	81.2	546,071	59.5	127,222	40.5	86,596
4,137	764,900	565,438	73.9	199,462	26.1	18.8	106,302	81.2	459,136	52.5	104,718	47.5	94,744
7,314	1,130,920	807,178	71.4	323,742	28.6	18.8	151,749	81.2	655,429	46.9	151,835	53.1	171,907
14,338	1,962,787	1,352,152	68.9	610,635	31.1	18.8	254,205	81.2	1,097,947	42.4	258,909	57.6	351,726
7,151	1,273,034	852,341	67.0	420,693	33.0	18.8	160,240	81.2	692,101	38.7	162,808	61.3	257,885
1,405	380,769	248,420	65.2	132,349	34.8	18.8	46,703	81.2	201,717	35.6	47,116	64.4	85,233
2,354	805,421	514,399	63.9	291,022	36.1	18.8	96,707	81.2	417,692	32.9	95,746	67.1	195,276
5,398	372,002	230,798	62.0	141,204	38.0	18.8	43,390	81.2	187,408	30.5	43,067	69.5	98,137
	219,287	133,239	60.8	86,048	39.2	18.8	25,049	81.2	108,190	28.5	24,524	71.5	61,524
8,397	537,051	317,034	59.0	220,017	41.0	18.8	59,602	81.2	257,432	26.8	58,965	73.2	161,052
						18.8		81.2		25.2		74.8	
	8,583	4,813	56.1	3,770	43.9	18.8	905	81.2	3,908	23.9	901	76.1	2,869
	43,049	23,677	55.0	19,372	45.0	18.8	4,451	81.2	19,226	22.7	4,397	77.3	14,975
						18.8		81.2		21.5		78.5	
	7,667	3,989	52.0	3,678	48.0	18.8	750	81.2	3,239	20.5	754	79.5	2,924
	16,173	8,254	51.0	7,919	49.0	18.8	1,552	81.2	6,702	19.6	1,552	80.4	6,367
						18.8		81.2		18.8		81.2	
						18.8		81.2		18.0		82.0	
						18.8		81.2		17.3		82.7	
						18.8		81.2		16.7		83.3	
						18.8		81.2		16.1		83.9	
						18.8		81.2		15.5		84.5	
						18.8		81.2		15.0		85.0	
						18.8		81.2		14.4		85.6	
						18.8		81.2		14.0		86.0	
						18.8		81.2		13.6		86.4	
						18.8		81.2		13.2		86.8	
						18.8		81.2		12.8		87.2	
						18.8		81.2		12.4		87.6	
						18.8		81.2		12.1		87.9	
						18.8		81.2		11.8		88.2	
						18.8		81.2		11.4		88.6	
						18.8		81.2		11.2		88.8	
						18.8		81.2		10.9		89.1	
0,494	9,253,331	6,411,337		2,841,994			1,205,330		5,206,007		1,211,517		1,630,477

TABULATION M —

Ex. No.2 to V.S.

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7	SOUTH	
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE %
1000	50	249	6,306.5		146,599	120,186	82.0	26,413	18.0	18.0	24,633	82.0
	100	562	26,263.5	338	348,326	275,345	79.0	72,981	21.0	18.0	49,562	82.0
	150	2,437	102,015.5	4,769	1,429,683	1,100,869	77.0	328,814	23.0	18.0	198,156	82.0
	200	493	15,734.7	1,886	367,341	268,949	73.2	98,392	26.8	18.0	48,411	82.0
	250	3,939	119,735.9	26,817	2,263,325	1,628,127	71.9	635,198	28.1	18.0	293,063	82.0
	300	2,292	96,127.3	13,484	1,395,212	975,256	69.9	419,956	30.1	18.0	175,546	82.0
	350	1,418	43,516.1	2,534	828,771	558,462	67.4	270,309	32.6	18.0	100,523	82.0
	400	540	10,737.3		260,341	172,757	66.4	87,584	33.6	18.0	31,096	82.0
	450	1,176	21,239.1	2,327	553,058	359,104	64.9	193,954	35.1	18.0	64,639	82.0
	500	728	19,233.2	1,444	480,278	302,570	63.0	177,708	37.0	18.0	54,463	82.0
	550	112	2,010.4		51,746	32,138	62.1	19,608	37.9	18.0	5,785	82.0
	600	610	11,628.3		337,995	205,167	60.7	132,828	39.3	18.0	36,930	82.0
	650	43	1,264.5		37,639	22,231	59.1	15,408	40.9	18.0	4,002	82.0
	700	80	1,763.8		61,409	35,026	57.0	26,383	43.0	18.0	6,305	82.0
	750									18.0		82.0
	800									18.0		82.0
	850									18.0		82.0
	900	13	371.5		11,403	4,675	41.0	6,728	59.0	18.0	842	82.0
	950									18.0		82.0
	1000									18.0		82.0
	1050									18.0		82.0
	1100									18.0		82.0
	1150									18.0		82.0
	1200									18.0		82.0
	1250									18.0		82.0
	1300									18.0		82.0
	1350									18.0		82.0
	1400									18.0		82.0
	1450									18.0		82.0
	1500									18.0		82.0
	1550									18.0		82.0
	1600									18.0		82.0
	1650									18.0		82.0
	1700									18.0		82.0
	1750									18.0		82.0
	1800									18.0		82.0
TOTAL		14,692	477,947.6	53,599	8,573,126	6,060,862		2,512,264			1,090,956	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	146,599	120,186	82.0	26,413	18.0	18.0	24,633	82.0	98,553	81.5	21,527	18.5	4,886
338	348,326	275,345	79.0	72,981	21.0	18.0	49,562	82.0	225,783	68.8	50,211	31.2	22,770
4,769	1,429,683	1,100,869	77.0	328,814	23.0	18.0	198,156	82.0	902,713	59.5	195,644	40.5	133,170
1,886	367,341	268,949	73.2	98,392	26.8	18.0	48,411	82.0	220,538	52.5	51,656	47.5	46,736
26,817	2,263,325	1,628,127	71.9	635,198	28.1	18.0	293,063	82.0	1,335,064	46.9	297,908	53.1	337,290
13,484	1,395,212	975,256	69.9	419,956	30.1	18.0	175,546	82.0	799,710	42.4	178,061	57.6	241,895
2,534	828,771	558,462	67.4	270,309	32.6	18.0	100,523	82.0	457,939	38.7	104,610	61.3	165,699
	260,341	172,757	66.4	87,584	33.6	18.0	31,096	82.0	141,661	35.6	31,180	64.4	56,404
2,327	553,058	359,104	64.9	193,954	35.1	18.0	64,639	82.0	294,465	32.9	63,811	67.1	130,143
1,444	480,278	302,570	63.0	177,708	37.0	18.0	54,463	82.0	248,107	30.5	54,201	69.5	123,507
	51,746	32,138	62.1	19,608	37.9	18.0	5,785	82.0	26,353	28.5	5,588	71.5	14,020
	337,995	205,167	60.7	132,828	39.3	18.0	36,930	82.0	168,237	26.8	35,598	73.2	97,230
	37,639	22,231	59.1	15,408	40.9	18.0	4,002	82.0	18,229	25.2	3,883	74.8	11,525
	61,409	35,026	57.0	26,383	43.0	18.0	6,305	82.0	28,721	23.9	6,306	76.1	20,077
						18.0		82.0		22.7		77.3	
						18.0		82.0		21.5		78.5	
						18.0		82.0		20.5		79.5	
	11,403	4,675	41.0	6,728	59.0	18.0	842	82.0	3,833	19.6	1,319	80.4	5,409
						18.0		82.0		18.8		81.2	
						18.0		82.0		18.0		82.0	
						18.0		82.0		17.3		82.7	
						18.0		82.0		16.7		83.3	
						18.0		82.0		16.1		83.9	
						18.0		82.0		15.5		84.5	
						18.0		82.0		15.0		85.0	
						18.0		82.0		14.4		85.6	
						18.0		82.0		14.0		86.0	
						18.0		82.0		13.6		86.4	
						18.0		82.0		13.2		86.8	
						18.0		82.0		12.8		87.2	
						18.0		82.0		12.4		87.6	
						18.0		82.0		12.1		87.9	
						18.0		82.0		11.8		88.2	
						18.0		82.0		11.4		88.6	
						18.0		82.0		11.2		88.8	
						18.0		82.0		10.9		89.1	
2,599	8,573,126	6,060,862		2,512,264			1,090,956		4,969,906		1,101,503		1,410,761

TABULATION & M

Ex. No.2 to V.S. No

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13	
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH			
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HAU	
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	A
1050	50	219	3,637.6		88,589	72,622	82.0	15,967	18.0	17.3	12,564	82.7	6
	100	58	2,250.3		50,248	40,183	80.0	10,065	20.0	17.3	6,952	82.7	3
	150	574	12,958.7	2,526	329,904	254,024	77.0	75,880	23.0	17.3	43,946	82.7	21
	200	102	3,083.3	535	77,055	57,788	75.0	19,267	25.0	17.3	9,997	82.7	4
	250	737	15,270.3	5,757	403,315	294,412	73.0	108,903	27.0	17.3	50,933	82.7	24
	300	805	15,485.8	5,167	361,166	256,475	71.0	104,691	29.0	17.3	44,370	82.7	21
	350	94	1,350.7		42,510	28,500	67.0	14,010	33.0	17.3	4,931	82.7	2
	400	396	7,331.0	1,071	167,566	112,252	67.0	55,314	33.0	17.3	19,420	82.7	9
	450	315	6,509.5		135,046	89,136	66.0	45,910	34.0	17.3	15,421	82.7	7
	500	416	5,411.6	567	188,042	120,336	64.0	67,706	36.0	17.3	20,818	82.7	9
	550	81	1,868.1		40,226	24,943	62.0	15,283	38.0	17.3	4,315	82.7	2
	600	222	3,681.5		104,645	63,850	61.0	40,795	39.0	17.3	11,046	82.7	5
	650	18	325.7		7,448	4,392	59.0	3,056	41.0	17.3	760	82.7	
	700									17.3		82.7	
	750	18	336.7		7,778	4,429	56.9	3,349	43.1	17.3	766	82.7	
	800									17.3		82.7	
	850									17.3		82.7	
	900									17.3		82.7	
	950									17.3		82.7	
	1000									17.3		82.7	
	1050									17.3		82.7	
	1100									17.3		82.7	
	1150									17.3		82.7	
	1200									17.3		82.7	
	1250									17.3		82.7	
	1300									17.3		82.7	
	1350									17.3		82.7	
	1400									17.3		82.7	
	1450									17.3		82.7	
	1500									17.3		82.7	
	1550									17.3		82.7	
	1600									17.3		82.7	
	1650									17.3		82.7	
	1700									17.3		82.7	
	1750									17.3		82.7	
	1800									17.3		82.7	
TOTAL		4,055	79,500.8	15,623	2,003,5[illegible]	1,423,342		580,196			246,239		1,[illegible]

5	6	7	8	9	10	11	12	13	14	15	16	17	18
ENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	88,589	72,622	82.0	15,967	18.0	17.3	12,564	82.7	60,058	81.5	13,013	18.5	2,954
	50,248	40,183	80.0	10,065	20.0	17.3	6,952	82.7	33,231	68.8	6,925	31.2	3,140
2,526	329,904	254,024	77.0	75,880	23.0	17.3	43,946	82.7	210,078	59.5	45,149	40.5	30,731
535	77,055	57,788	75.0	19,267	25.0	17.3	9,997	82.7	47,791	52.5	10,115	47.5	9,152
5,757	403,315	294,412	73.0	108,903	27.0	17.3	50,933	82.7	243,479	46.9	51,076	53.1	57,827
5,167	361,166	256,475	71.0	104,691	29.0	17.3	44,370	82.7	212,105	42.4	44,389	57.6	60,302
	42,510	28,500	67.0	14,010	33.0	17.3	4,931	82.7	23,569	38.7	5,422	61.3	8,588
1,071	167,566	112,252	67.0	55,314	33.0	17.3	19,420	82.7	92,832	35.6	19,692	64.4	35,622
	135,046	89,136	66.0	45,910	34.0	17.3	15,421	82.7	73,715	32.9	15,104	67.1	30,806
567	188,042	120,336	64.0	67,706	36.0	17.3	20,818	82.7	99,518	30.5	20,650	69.5	47,056
	40,226	24,943	62.0	15,283	38.0	17.3	4,315	82.7	20,628	28.5	4,356	71.5	10,927
	104,645	63,850	61.0	40,795	39.0	17.3	11,046	82.7	52,804	26.8	10,933	73.2	29,862
	7,448	4,392	59.0	3,056	41.0	17.3	760	82.7	3,632	25.2	770	74.8	2,286
						17.3		82.7		23.9		76.1	
	7,778	4,429	56.9	3,349	43.1	17.3	766	82.7	3,663	22.7	760	77.3	2,589
						17.3		82.7		21.5		78.5	
						17.3		82.7		20.5		79.5	
						17.3		82.7		19.6		80.4	
						17.3		82.7		18.8		81.2	
						17.3		82.7		18.0		82.0	
						17.3		82.7		17.3		82.7	
						17.3		82.7		16.7		83.3	
						17.3		82.7		16.1		83.9	
						17.3		82.7		15.5		84.5	
						17.3		82.7		15.0		85.0	
						17.3		82.7		14.4		85.6	
						17.3		82.7		14.0		86.0	
						17.3		82.7		13.6		86.4	
						17.3		82.7		13.2		86.8	
						17.3		82.7		12.8		87.2	
						17.3		82.7		12.4		87.6	
						17.3		82.7		12.1		87.9	
						17.3		82.7		11.8		88.2	
						17.3		82.7		11.4		88.6	
						17.3		82.7		11.2		88.8	
						17.3		82.7		10.9		89.1	
15,623	2,003,508	1,423,342		580,196			246,239		1,177,103		248,354		331,842

TABULATION M

Ex. No.2 to V.S.

NORTHBOUND

1	2	3	4	5	6	8	9	10	11	12	13
				REVENUE AS SETTLED							
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	%	AMOUNT	%
1100	50								16.7		83.3
	100	75	1,636.8		36,227	29,343	81.0	6,884	19.0	16.7	4,900	83.3
	150	258	6,893.6		188,264	146,870	78.	41,394	22.0	16.7	24,527	83.3
	200	73	1,519.9		37,753	28,704	76.0	9,049	24.0	16.7	4,794	83.3
	250	340	5,785.4		170,501	124,591	73.1	45,910	26.9	16.7	20,807	83.3
	300	443	9,272.0		232,490	167,371	72.0	65,119	28.0	16.7	27,951.	83.3
	350	117	2,361.2	622	62,992	45,129	71.6	17,863	28.4	16.7	7,537	83.3
	400	123	3,294.3		87,153	59,252	68.0	27,901	32.0	16.7	9,895	83.3
	450	183	5,337.9	586	140,136	95,226	68.0	44,910	32.0	16.7	15,903	83.3
	500									16.7		83.3
	550									16.7		83.3
	600									16.7		83.3
	650	21	524.2		14,019	8,403	59.9	5,616	40.1	16.7	1,403	83.3
	700									16.7		83.3
	750									16.7		83.3
	800									16.7		83.3
	850									16.7		83.3
	900									16.7		83.3
	950									16.7		83.3
	1000									16.7		83.3
	1050									16.7		83.3
	1100									16.7		83.3
	1150									16.7		83.3
	1200									16.7		83.3
	1250									16.7		83.3
	1300									16.7		83.3
	1350									16.7		83.3
	1400									16.7		83.3
	1450									16.7		83.3
	1500									16.7		83.3
	1550									16.7		83.3
	1600									16.7		83.3
	1650									16.7		83.3
	1700									16.7		83.3
	1750									16.7		83.3
	1800									16.7		83.3
TOTAL		1,633	36,625.3	1,208	969,535	704,889		264,646			117,717	

6			9	10	11	12	13	14	15	16	17	18
UE AS SETTLED		SETTLED			REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH	TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S.	REMAINDER	REMAINDER	%	REMAINDER	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					16.7		83.3		81.5		18.5	
	36,227	29,343	81.0	6,884	19.0	4,900	83.3	24,443	68.8	4,736	31.2	2,148
	188,264	146,870	78.	41,394	22.0	24,527	83.3	122,343	59.5	24,629	40.5	16,765
	37,753	28,704	76.0	9,049	24.0	4,794	83.3	23,910	52.5	4,751	47.5	4,298
	170,501	124,591	73.1	45,910	26.9	20,807	83.3	103,784	46.9	21,532	53.1	24,378
	232,490	167,371	72.0	65,119	28.0	27,951	83.3	139,420	42.4	27,610	57.6	37,509
622	62,992	45,129	71.6	17,863	28.4	7,537	83.3	37,592	38.7	6,913	61.3	10,950
	87,153	59,252	68.0	27,901	32.0	9,895	83.3	49,357	35.6	9,933	64.4	17,968
586	140,136	95,226	68.0	44,910	32.0	15,903	83.3	79,323	32.9	14,775	67.1	30,135
					16.7		83.3		30.5		69.5	
					16.7		83.3		28.5		71.5	
					16.7		83.3		26.8		73.2	
	14,019	8,403	59.9	5,616	40.1	1,403	83.3	7,000	25.2	1,415	74.8	4,201
					16.7		83.3		23.9		76.1	
					16.7		83.3		22.7		77.3	
					16.7		83.3		21.5		78.5	
					16.7		83.3		20.5		79.5	
					16.7		83.3		19.6		80.4	
					16.7		83.3		18.8		81.2	
					16.7		83.3		18.0		82.0	
					16.7		83.3		17.3		82.7	
					16.7		83.3		16.7		83.3	
					16.7		83.3		16.1		83.9	
					16.7		83.3		15.5		84.5	
					16.7		83.3		15.0		85.0	
					16.7		83.3		14.4		85.6	
					16.7		83.3		14.0		86.0	
					16.7		83.3		13.6		86.4	
					16.7		83.3		13.2		86.8	
					16.7		83.3		12.8		87.2	
					16.7		83.3		12.4		87.6	
					16.7		83.3		12.1		87.9	
					16.7		83.3		11.8		88.2	
					16.7		83.3		11.4		88.6	
					16.7		83.3		11.2		88.8	
					16.7		83.3		10.9		89.1	
,208	969,535	704,889		264,646		117,717		587,172		116,294		148,352

TABULATION M

Ex. No. 2 to

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7		SOUT
MILES SOUTH	MILES NORTH	CARS	TOTAL TONS	ARBITRARY	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	L %
1150	50	290	10,998.0		226,154	189,968	84.0	36,186	16.0	16.1	30,585	83.9
	100	81	1,770.3		34,620	28,041	81.0	6,579	19.0	16.1	4,515	83.9
	150	165	4,297.8		95,557	75,449	79.0	20,108	21.0	16.1	12,147	83.9
	200	282	16,358.8		258,713	199,198	77.0	59,515	23.0	16.1	32,071	83.9
	250	357	7,325.0		205,999	150,066	72.8	55,933	27.2	16.1	24,161	83.9
	300	97	1,303.9		38,509	28,114	73.0	10,395	27.0	16.1	4,526	83.9
	350	41	1,523.9		32,008	22,726	71.0	9,282	29.0	16.1	3,659	83.9
	400	277	5,992.6	2,766	124,212	86,016	69.2	38,196	30.8	16.1	13,849	83.9
	450	18	391.6		7,979	5,344	67.0	2,635	33.0	16.1	860	83.9
	500	73	1,279.1		34,405	22,363	65.0	12,042	35.0	16.1	3,600	83.9
	550									16.1		83.9
	600									16.1		83.9
	650									16.1		83.9
	700									16.1		83.9
	750									16.1		83.9
	800									16.1		83.9
	850									16.1		83.9
	900									16.1		83.9
	950									16.1		83.9
	1000									16.1		83.9
	1050									16.1		83.9
	1100									16.1		83.9
	1150									16.1		83.9
	1200									16.1		83.9
	1250									16.1		83.9
	1300									16.1		83.9
	1350									16.1		83.9
	1400									16.1		83.9
	1450									16.1		83.9
	1500									16.1		83.9
	1550									16.1		83.9
	1600									16.1		83.9
	1650									16.1		83.9
	1700									16.1		83.9
	1750									16.1		83.9
	1800									16.1		83.9
TOTAL		1,681	51,241.0	2,766	1,058,156	807,285		250,871			129,973	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
ITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	226,154	189,968	84.0	36,186	16.0	16.1	30,585	83.9	159,383	81.5	29,492	18.5	6,694
	34,620	28,041	81.0	6,579	19.0	16.1	4,515	83.9	23,526	68.8	4,526	31.2	2,053
	95,557	75,449	79.0	20,108	21.0	16.1	12,147	83.9	63,302	59.5	11,964	40.5	8,144
	258,713	199,198	77.0	59,515	23.0	16.1	32,071	83.9	167,127	52.5	31,245	47.5	28,270
	205,999	150,066	72.8	55,933	27.2	16.1	24,161	83.9	125,905	46.9	26,233	53.1	29,700
	38,509	28,114	73.0	10,395	27.0	16.1	4,526	83.9	23,588	42.4	4,407	57.6	5,988
	32,008	22,726	71.0	9,282	29.0	16.1	3,659	83.9	19,067	38.7	3,592	61.3	5,690
2,766	124,212	86,016	69.2	38,196	30.8	16.1	13,849	83.9	72,167	35.6	13,598	64.4	24,598
	7,979	5,344	67.0	2,635	33.0	16.1	860	83.9	4,484	32.9	867	67.1	1,768
	34,405	22,363	65.0	12,042	35.0	16.1	3,600	83.9	18,763	30.5	3,673	69.5	8,369
						16.1		83.9		28.5		71.5	
						16.1		83.9		26.8		73.2	
						16.1		83.9		25.2		74.8	
						16.1		83.9		23.9		76.1	
						16.1		83.9		22.7		77.3	
						16.1		83.9		21.5		78.5	
						16.1		83.9		20.5		79.5	
						16.1		83.9		19.6		80.4	
						16.1		83.9		18.8		81.2	
						16.1		83.9		18.0		82.0	
						16.1		83.9		17.3		82.7	
						16.1		83.9		16.7		83.3	
						16.1		83.9		16.1		83.9	
						16.1		83.9		15.5		84.5	
						16.1		83.9		15.0		85.0	
						16.1		83.9		14.4		85.6	
						16.1		83.9		14.0		86.0	
						16.1		83.9		13.6		86.4	
						16.1		83.9		13.2		86.8	
						16.1		83.9		12.8		87.2	
						16.1		83.9		12.4		87.6	
						16.1		83.9		12.1		87.9	
						16.1		83.9		11.8		88.2	
						16.1		83.9		11.4		88.6	
						16.1		83.9		11.2		88.8	
						16.1		83.9		10.9		89.1	
2,766	1,058,156	807,285		250,871			129,973		677,312		129,597		121,274

TABULATION M

Ex. No. 2 to V.S

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7	SOUTH	
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
1200	50									15.5		84.5
	100	141	4,435.4		121,103	99,321	82.0	21,782	18.0	15.5	15,395	84.5
	150	172	6,358.1		167,673	132,470	79.0	35,203	21.0	15.5	20,533	84.5
	200	58	1,336.9	624	44,938	34,597	77.0	10,341	23.0	15.5	5,363	84.5
	250	197	6,578.0		209,340	156,991	75.0	52,349	25.0	15.5	24,334	84.5
	300	245	4,827.3	1,791	149,511	108,988	72.9	40,523	27.1	15.5	16,893	84.5
	350									15.5		84.5
	400	40	796.0		29,472	20,636	70.0	8,836	30.0	15.5	3,199	84.5
	450									15.5		84.5
	500									15.5		84.5
	550									15.5		84.5
	600									15.5		84.5
	650									15.5		84.5
	700									15.5		84.5
	750									15.5		84.5
	800									15.5		84.5
	850									15.5		84.5
	900									15.5		84.5
	950									15.5		84.5
	1000									15.5		84.5
	1050									15.5		84.5
	1100									15.5		84.5
	1150									15.5		84.5
	1200									15.5		84.5
	1250									15.5		84.5
	1300									15.5		84.5
	1350									15.5		84.5
	1400									15.5		84.5
	1450									15.5		84.5
	15[illegible]0									15.5		84.5
	15[illegible]0									15.5		84.5
	1600									15.5		84.5
	1650									15.5		84.5
	1700									15.5		84.5
	17[illegible]0									15.5		84.5
	1800									15.5		84.5
TOTAL		853	24,331.7	2,415	722,037	553,003		169,034			85,717	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
E	AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
	S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						15.5		84.5		81.5		18.5	
	121,103	99,321	82.0	21,782	18.0	15.5	15,395	84.5	83,926	68.8	14,986	31.2	6,796
	167,673	132,470	79.0	35,203	21.0	15.5	20,533	84.5	111,937	59.5	20,946	40.5	14,257
624	44,938	34,597	77.0	10,341	23.0	15.5	5,363	84.5	29,234	52.5	5,429	47.5	4,912
	209,340	156,991	75.0	52,349	25.0	15.5	24,334	84.5	132,657	46.9	24,552	53.1	27,797
,791	149,511	108,988	72.9	40,523	27.1	15.5	16,893	84.5	92,095	42.4	17,182	57.6	23,341
						15.5		84.5		38.7		61.3	
	29,472	20,636	70.0	8,836	30.0	15.5	3,199	84.5	17,437	35.6	3,146	64.4	5,690
						15.5		84.5		32.9		67.1	
						15.5		84.5		30.5		69.5	
						15.5		84.5		28.5		71.5	
						15.5		84.5		26.8		73.2	
						15.5		84.5		25.2		74.8	
						15.5		84.5		23.9		76.1	
						15.5		84.5		22.7		77.3	
						15.5		84.5		21.5		78.5	
						15.5		84.5		20.5		79.5	
						15.5		84.5		19.6		80.4	
						15.5		84.5		18.8		81.2	
						15.5		84.5		18.0		82.0	
						15.5		84.5		17.3		82.7	
						15.5		84.5		16.7		83.3	
						15.5		84.5		16.1		83.9	
						15.5		84.5		15.5		84.5	
						15.5		84.5		15.0		85.0	
						15.5		84.5		14.4		85.6	
						15.5		84.5		14.0		86.0	
						15.5		84.5		13.6		86.4	
						15.5		84.5		13.2		86.8	
						15.5		84.5		12.8		87.2	
						15.5		84.5		12.4		87.6	
						15.5		84.5		12.1		87.9	
						15.5		84.5		11.8		88.2	
						15.5		84.5		11.4		88.6	
						15.5		84.5		11.2		88.8	
						15.5		84.5		10.9		89.1	
2,415	722,037	553,003		89,034			85,717		467,286		86,241		82,793

TABULATION M

Ex. No. 2 to V

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 - SOUTH		
				TOTAL		SOUTH		NORTH		TERMINAL		LIN
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
1250	50									15.0		85.0
	100									15.0		85.0
	150									15.0		85.0
	200									15.0		85.0
	250									15.0		85.0
	300									15.0		85.0
	350									15.0		85.0
	400									15.0		85.0
	450									15.0		85.0
	500									15.0		85.0
	550									15.0		85.0
	600									15.0		85.0
	650									15.0		85.0
	700									15.0		85.0
	750									15.0		85.0
	800									15.0		85.0
	850									15.0		85.0
	900									15.0		85.0
	950									15.0		85.0
	1000									15.0		85.0
	1050									15.0		85.0
	1100									15.0		85.0
	1150									15.0		85.0
	1200									15.0		85.0
	1250									15.0		85.0
	300									15.0		85.0
	350									15.0		85.0
	400									15.0		85.0
	1450									15.0		85.0
	1500									15.0		85.0
	1550									15.0		85.0
	1600									15.0		85.0
	1650									15.0		85.0
	1700									15.0		85.0
	1750									15.0		85.0
	1800									15.0		85.0
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
	REVENUE AS SETTLED					REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	REVENUE AS SETTLED SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						15.0		85.0		81.5		18.5	
						15.0		85.0		68.8		31.2	
						15.0		85.0		59.5		40.5	
						15.0		85.0		52.5		47.5	
						15.0		85.0		46.9		53.1	
						15.0		85.0		42.4		57.6	
						15.0		[illegible]		[illegible]		61.3	
						15.0		85.0		35.6		64.4	
						15.0		85.0		32.9		67.1	
						15.0		85.0		30.5		69.5	
						15.0		85.0		28.5		71.5	
						15.0		85.0		26.8		73.2	
						15.0		85.0		25.2		74.8	
						15.0		85.0		23.9		76.1	
						15.0		85.0		22.7		77.3	
						15.0		85.0		21.5		78.5	
						15.0		[illegible]		[illegible]		79.5	
						15.0		[illegible]		19.6		80.4	
						[illegible]		85.0		[illegible]		81.2	
						[illegible]		85.0		18.0		82.0	
						15.0		85.0		17.3		82.7	
						15.0		85.0		16.7		83.3	
						15.0		85.0		16.1		83.9	
						15.0		85.0		15.5		84.5	
						15.0		85.0		15.0		85.0	
						15.0		85.0		14.4		85.6	
						15.0		85.0		14.0		86.0	
						15.0		85.0		13.6		86.4	
						15.0		85.0		13.2		86.8	
						15.0		85.0		12.8		87.2	
						15.0		85.0		12.4		87.6	
						15.0		85.0		12.1		87.9	
						15.0		85.0		11.8		88.2	
						15.0		85.0		11.4		88.6	
						15.0		85.0		11.2		88.8	
						15.0		85.0		10.9		89.1	

TABULATION M

Ex. No. 2 to V.S

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
1300	50									14.4		85.6
	100									14.4		85.6
	150									14.4		85.6
	200									14.4		85.6
	250									14.4		85.6
	300									14.4		85.6
	350									14.4		85.6
	400									14.4		85.6
	450									14.4		85.6
	500									14.4		85.6
	550									14.4		85.6
	600									14.4		85.6
	650									14.4		85.6
	700									14.4		85.6
	750									14.4		85.6
	800									14.4		85.6
	850									14.4		85.6
	900									14.4		85.6
	950									14.4		85.6
	1000									14.4		85.6
	1050									14.4		85.6
	1100									14.4		85.6
	1150									14.4		85.6
	1200									14.4		85.6
	1250									14.4		85.6
	1300									14.4		85.6
	1350									14.4		85.6
	1400									14.4		85.6
	1450									14.4		85.6
	1500									14.4		85.6
	1550									14.4		85.6
	1600									14.4		85.6
	1650									14.4		85.6
	1700									14.4		85.6
	1750									14.4		85.6
	1800									14.4		85.6
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						14.0		86.0		81.5		18.5	
						14.0		86.0		68.8		31.2	
						14.0		86.0		59.5		40.5	
						14.0		86.0		52.5		47.5	
						14.0		86.0		46.9		53.1	
						14.0		86.0		42.4		57.6	
						14.0		86.0		38.7		61.3	
						14.0		86.0		35.6		64.4	
						14.0		86.0		32.9		67.1	
						14.0		86.0		30.5		69.5	
						14.0		86.0		28.5		71.5	
						14.0		86.0		26.8		73.2	
						14.0		86.0		25.2		74.8	
						14.0		86.0		23.9		76.1	
						14.0		86.0		22.7		77.3	
						14.0		86.0		21.5		78.5	
						14.0		86.0		20.5		79.5	
						14.0		86.0		19.6		80.4	
						14.0		86.0		18.8		81.2	
						14.0		86.0		18.0		82.0	
						14.0		86.0		17.3		82.7	
						14.0		86.0		16.7		83.3	
						14.0		86.0		16.1		83.9	
						14.0		86.0		15.5		84.5	
						14.0		86.0		15.0		85.0	
						14.0		86.0		14.4		85.6	
						14.0		86.0		14.0		86.0	
						14.0		86.0		13.6		86.4	
						14.0		86.0		13.2		86.8	
						14.0		86.0		12.8		87.2	
						14.0		86.0		12.4		87.6	
						14.0		86.0		12.1		87.9	
						14.0		86.0		11.8		88.2	
						14.0		86.0		11.4		88.6	
						14.0		86.0		11.2		88.8	
						14.0		86.0		10.9		89.1	

TABULATION M

Ex. No. 2 to V.S

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
1400	50									13.6		86.4
	100									13.6		86.4
	150									13.6		86.4
	200									13.6		86.4
	250									13.6		86.4
	300									13.6		86.4
	350									13.6		86.4
	400									13.6		86.4
	450									13.6		86.4
	500									13.6		86.4
	550									13.6		86.4
	600									13.6		86.4
	650									13.6		86.4
	700									13.6		86.4
	750									13.6		86.4
	800									13.6		86.4
	850									13.6		86.4
	900									13.6		86.4
	950									13.6		86.4
	1000									13.6		86.4
	1050									13.6		86.4
	1100									13.6		86.4
	1150									13.6		86.4
	1200									13.6		86.4
	1250									13.6		86.4
	1300									13.6		86.4
	1350									13.6		86.4
	1400									13.6		86.4
	1450									13.6		86.4
	1500									13.6		86.4
	1550									13.6		86.4
	1600									13.6		86.4
	1650									13.6		86.4
	1700									13.6		86.4
	1750									13.6		86.4
	1800									13.6		86.4
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
ENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						13.6		86.4		81.5		18.5	
						13.6		86.4		68.8		31.2	
						13.6		86.4		59.5		40.5	
						13.6		86.4		52.5		47.5	
						13.6		86.4		46.9		53.1	
						13.6		86.4		42.4		57.6	
						13.6		86.4		38.7		61.3	
						13.6		86.4		35.6		64.4	
						13.6		86.4		32.9		67.1	
						13.6		86.4		30.5		69.5	
						13.6		86.4		28.5		71.5	
						13.6		86.4		26.8		73.2	
						13.6		86.4		25.2		74.8	
						13.6		86.4		23.9		76.1	
						13.6		86.4		22.7		77.3	
						13.6		86.4		21.5		78.5	
						13.6		86.4		20.5		79.5	
						13.6		86.4		19.6		80.4	
						13.6		86.4		18.8		81.2	
						13.6		86.4		18.0		82.0	
						13.6		86.4		17.3		82.7	
						13.6		86.4		16.7		83.3	
						13.6		86.4		16.1		83.9	
						13.6		86.4		15.5		84.5	
						13.6		86.4		15.0		85.0	
						13.6		86.4		14.4		85.6	
						13.6		86.4		14.0		86.0	
						13.6		86.4		13.6		86.4	
						13.6		86.4		13.2		86.8	
						13.6		86.4		12.8		87.2	
						13.6		86.4		12.4		87.6	
						13.6		86.4		12.1		87.9	
						13.6		86.4		11.8		88.2	
						13.6		86.4		11.4		88.6	
						13.6		86.4		11.2		88.8	
						13.6		86.4		10.9		89.1	

6	7	8	9	10	11	12	13	14	15	16	17	18
E AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					14.4		85.6		81.5		18.5	
					14.4		85.6		68.8		31.2	
					14.4		85.6		59.5		40.5	
					14.4		85.6		52.5		47.5	
					14.4		85.6		46.9		53.1	
					14.4		85.6		42.4		57.6	
					14.4		85.6		38.7		61.3	
					14.4		85.6		35.6		64.4	
					14.4		85.6		32.9		67.1	
					14.4		85.6		30.5		69.5	
					14.4		85.6		28.5		71.5	
					14.4		85.6		26.8		73.2	
					14.4		85.6		25.2		74.8	
					14.4		85.6		23.9		76.1	
					14.4		85.6		22.7		77.3	
					14.4		85.6		21.5		78.5	
					14.4		85.6		20.5		79.5	
					14.4		85.6		19.6		80.4	
					14.4		85.6		18.8		81.2	
					14.4		85.6		18.0		82.0	
					14.4		85.6		17.3		82.7	
					14.4		85.6		16.7		83.3	
					14.4		85.6		16.1		83.9	
					14.4		85.6		15.5		84.5	
					14.4		85.6		15.0		85.0	
					14.4		85.6		14.4		85.6	
					14.4		85.6		14.0		86.0	
					14.4		85.6		13.6		86.4	
					14.4		85.6		13.2		86.8	
					14.4		85.6		12.8		87.2	
					14.4		85.6		12.4		87.6	
					14.4		85.6		12.1		87.9	
					14.4		85.6		11.8		88.2	
					14.4		85.6		11.4		88.6	
					14.4		85.6		11.2		88.8	
					14.4		85.6		10.9		89.1	

TABULATION M

Ex. No. 2 to V.S.

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
				TOTAL		SOUTH		NORTH		TERMINAL		LINE HA
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
1350	50									14.0		86.0
	100									14.0		86.0
	150									14.0		86.0
	200									14.0		86.0
	250									14.0		86.0
	300									14.0		86.0
	350									14.0		86.0
	400									14.0		86.0
	450									14.0		86.0
	500									14.0		86.0
	550									14.0		86.0
	600									14.0		86.0
	650									14.0		86.0
	700									14.0		86.0
	750									14.0		86.0
	800									14.0		86.0
	850									14.0		86.0
	900									14.0		86.0
	950									14.0		86.0
	1000									14.0		86.0
	1050									14.0		86.0
	1100									14.0		86.0
	1150									14.0		86.0
	1200									14.0		86.0
	1250									14.0		86.0
	1300									14.0		86.0
	1350									14.0		86.0
	1400									14.0		86.0
	1450									14.0		86.0
	1500									14.0		86.0
	1550									14.0		86.0
	1600									14.0		86.0
	1650									14.0		86.0
	1700									14.0		86.0
	1750									14.0		86.0
	1800									14.0		86.0
TOTAL												

TABULATION M

Ex. No. 2 to V.S

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
1450	50									13.2		86.8
	100									13.2		86.8
	150									13.2		86.8
	200									13.2		86.8
	250									13.2		86.8
	300									13.2		86.8
	350									13.2		86.8
	400									13.2		86.8
	450									13.2		86.8
	500									13.2		86.8
	550									13.2		86.8
	600									13.2		86.8
	650									13.2		86.8
	700									13.2		86.8
	750									13.2		86.8
	800									13.2		86.8
	850									13.2		86.8
	900									13.2		86.8
	950									13.2		86.8
	1000									13.2		86.8
	1050									13.2		86.8
	1100									13.2		86.8
	1150									13.2		86.8
	1200									13.2		86.8
	1250									13.2		86.8
	1300									13.2		86.8
	1350									13.2		86.8
	1400									13.2		86.8
	1450									13.2		86.8
	1500									13.2		86.8
	1550									13.2		86.8
	1600									13.2		86.8
	1650									13.2		86.8
	1700									13.2		86.8
	1750									13.2		86.8
	1800									13.2		86.8
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						13.2		86.8		81.5		18.5	
						13.2		86.8		68.8		31.2	
						13.2		86.8		59.5		40.5	
						13.2		86.8		52.5		47.5	
						13.2		86.8		46.9		53.1	
						13.2		86.8		42.4		57.6	
						13.2		86.8		38.7		61.3	
						13.2		86.8		35.6		64.4	
						13.2		86.8		32.9		67.1	
						13.2		86.8		30.5		69.5	
						13.2		86.8		28.5		71.5	
						13.2		86.8		26.8		73.2	
						13.2		86.8		25.2		74.8	
						13.2		86.8		23.9		76.1	
						13.2		86.8		22.7		77.3	
						13.2		86.8		21.5		78.5	
						13.2		86.8		20.5		79.5	
						13.2		86.8		19.6		80.4	
						13.2		86.8		18.8		81.2	
						13.2		86.8		18.0		82.0	
						13.2		86.8		17.3		82.7	
						13.2		86.8		16.7		83.3	
						13.2		86.8		16.1		83.9	
						13.2		86.8		15.5		84.5	
						13.2		86.8		15.0		85.0	
						13.2		86.8		14.4		85.6	
						13.2		86.8		14.0		86.0	
						13.2		86.8		13.6		86.4	
						13.2		86.8		13.2		86.8	
						13.2		86.8		12.8		87.2	
						13.2		86.8		12.4		87.6	
						13.2		86.8		12.1		87.9	
						13.2		86.8		11.8		88.2	
						13.2		86.8		11.4		88.6	
						13.2		86.8		11.2		88.8	
						13.2		86.8		10.9		89.1	

TABULATION M

Ex. No. 2 to V.S

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TOTAL TONS	ARBITS'S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
1500	50									12.8		87.2
	100									12.8		87.2
	150									12.8		87.2
	200									12.8		87.2
	250									12.8		87.2
	300									12.8		87.2
	350									12.8		87.2
	400									12.8		87.2
	450									12.8		87.2
	500									12.8		87.2
	550									12.8		87.2
	600									12.8		87.2
	650									12.8		87.2
	700									12.8		87.2
	750									12.8		87.2
	800									12.8		87.2
	850									12.8		87.2
	900									12.8		87.2
	950									12.8		87.2
	1000									12.8		87.2
	1050									12.8		87.2
	1100									12.8		87.2
	1150									12.8		87.2
	1200									12.8		87.2
	1250									12.8		87.2
	1300									12.8		87.2
	1350									12.8		87.2
	1400									12.8		87.2
	1450									12.8		87.2
	1500									12.8		87.2
	1550									12.8		87.2
	1600									12.8		87.2
	1650									12.8		87.2
	1700									12.8		87.2
	1750									12.8		87.2
	1800									12.8		87.2
TOTAL												

6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED					REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL	REVENUE AS SETTLED SOUTH		REVENUE AS SETTLED NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					12.8		87.2		81.5		18.5	
					12.8		87.2		68.8		31.2	
					12.8		87.2		59.5		40.5	
					12.8		87.2		52.5		47.5	
					12.8		87.2		46.9		53.1	
					12.8		87.2		42.4		57.6	
					12.8		87.2		38.7		61.3	
					12.8		87.2		35.6		64.4	
					12.8		87.2		32.9		67.1	
					12.8		87.2		30.5		69.5	
					12.8		87.2		28.5		71.5	
					12.8		87.2		26.8		73.2	
					12.8		87.2		25.2		74.8	
					12.8		87.2		23.9		76.1	
					12.8		87.2		22.7		77.3	
					12.8		87.2		21.5		78.5	
					12.8		87.2		20.5		79.5	
					12.8		87.2		19.6		80.4	
					12.8		87.2		18.8		81.2	
					12.8		87.2		18.0		82.0	
					12.8		87.2		17.3		82.7	
					12.8		87.2		16.7		83.3	
					12.8		87.2		16.1		83.9	
					12.8		87.2		15.5		84.5	
					12.8		87.2		15.0		85.0	
					12.8		87.2		14.4		85.6	
					12.8		87.2		14.0		86.0	
					12.8		87.2		13.6		86.4	
					12.8		87.2		13.2		86.8	
					12.8		87.2		12.8		87.2	
					12.8		87.2		12.4		87.6	
					12.8		87.2		12.1		87.9	
					12.8		87.2		11.8		88.2	
					12.8		87.2		11.4		88.6	
					12.8		87.2		11.2		88.8	
					12.8		87.2		10.9		89.1	

TABULATION M

Ex. No. 2 to V.S.

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE HA %
1550	50									12.4		87.6
	100									12.4		87.6
	150									12.4		87.6
	200									12.4		87.6
	250									12.4		87.6
	300									12.4		87.6
	350									12.4		87.6
	400									12.4		87.6
	450									12.4		87.6
	500									12.4		87.6
	550									12.4		87.6
	600									12.4		87.6
	650									12.4		87.6
	700									12.4		87.6
	750									12.4		87.6
	800									12.4		87.6
	850									12.4		87.6
	900									12.4		87.6
	950									12.4		87.6
	1000									12.4		87.6
	1050									12.4		87.6
	1100									12.4		87.6
	1150									12.4		87.6
	1200									12.4		87.6
	1250									12.4		87.6
	1300									12.4		87.6
	1350									12.4		87.6
	1400									12.4		87.6
	1450									12.4		87.6
	1500									12.4		87.6
	1550									12.4		87.6
	1600									12.4		87.6
	1650									12.4		87.6
	1700									12.4		87.6
	1750									12.4		87.6
	1800									12.4		87.6
TOTAL												

6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					12.4		87.6		81.5		18.5	
					12.4		87.6		68.8		31.2	
					12.4		87.6		59.5		40.5	
					12.4		87.6		52.5		47.5	
					12.4		87.6		46.9		53.1	
					12.4		87.6		42.4		57.6	
					12.4		87.6		38.7		61.3	
					12.4		87.6		35.6		64.4	
					12.4		87.6		32.9		67.1	
					12.4		87.6		30.5		69.5	
					12.4		87.6		28.5		71.5	
					12.4		87.6		26.8		73.2	
					12.4		87.6		25.2		74.8	
					12.4		87.6		23.9		76.1	
					12.4		87.6		22.7		77.3	
					12.4		87.6		21.5		78.5	
					12.4		87.6		20.5		79.5	
					12.4		87.6		19.6		80.4	
					12.4		87.6		18.8		81.2	
					12.4		87.6		18.0		82.0	
					12.4		87.6		17.3		82.7	
					12.4		87.6		16.7		83.3	
					12.4		87.6		16.1		83.9	
					12.4		87.6		15.5		84.5	
					12.4		87.6		15.0		85.0	
					12.4		87.6		14.4		85.6	
					12.4		87.6		14.0		86.0	
					12.4		87.6		13.6		86.4	
					12.4		87.6		13.2		86.8	
					12.4		87.6		12.8		87.2	
					12.4		87.6		12.4		87.6	
					12.4		87.6		12.1		87.9	
					12.4		87.6		11.8		88.2	
					12.4		87.6		11.4		88.6	
					12.4		87.6		11.2		88.8	
					12.4		87.6		10.9		89.1	

TABULATION M

NORTHBOUND

Ex. No. 2 to V.S.

1	2	3	4	5	6	7	8	9	10	11	12	13
MILES SOUTH	MILES NORTH	CARS	REVENUE AS SETTLED TOTAL TONS	ARBITS S.	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 TERMINAL %	AMOUNT	SOUTH LINE %
1600	50									12.1		87.9
	100									12.1		87.9
	150									12.1		87.9
	200									12.1		87.9
	250									12.1		87.9
	300									12.1		87.9
	350									12.1		87.9
	400									12.1		87.9
	450									12.1		87.9
	500									12.1		87.9
	550									12.1		87.9
	600									12.1		87.9
	650									12.1		87.9
	700									12.1		87.9
	750									12.1		87.9
	800									12.1		87.9
	850									12.1		87.9
	900									12.1		87.9
	950									12.1		87.9
	1000									12.1		87.9
	1050									12.1		87.9
	1100									12.1		87.9
	1150									12.1		87.9
	1200									12.1		87.9
	1250									12.1		87.9
	1300									12.1		87.9
	1350									12.1		87.9
	1400									12.1		87.9
	1450									12.1		87.9
	1500									12.1		87.9
	1550									12.1		87.9
	1600									12.1		87.9
	1650									12.1		87.9
	1700									12.1		87.9
	1750									12.1		87.9
	1800									12.1		87.9
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						12.1		87.9		81.5		18.5	
						12.1		87.9		68.8		31.2	
						12.1		87.9		59.5		40.5	
						12.1		87.9		52.5		47.5	
						12.1		87.9		46.9		53.1	
						12.1		87.9		42.4		57.6	
						12.1		87.9		38.7		61.3	
						12.1		87.9		35.6		64.4	
						12.1		87.9		32.9		67.1	
						12.1		87.9		30.5		69.5	
						12.1		87.9		28.5		71.5	
						12.1		87.9		26.8		73.2	
						12.1		87.9		25.2		74.8	
						12.1		87.9		23.9		76.1	
						12.1		87.9		22.7		77.3	
						12.1		87.9		21.5		78.5	
						12.1		87.9		20.5		79.5	
						12.1		87.9		19.6		80.4	
						12.1		87.9		18.8		81.2	
						12.1		87.9		18.0		82.0	
						12.1		87.9		17.3		82.7	
						12.1		87.9		16.7		83.3	
						12.1		87.9		16.1		83.9	
						12.1		87.9		15.5		84.5	
						12.1		87.9		15.0		85.0	
						12.1		87.9		14.4		85.6	
						12.1		87.9		14.0		86.0	
						12.1		87.9		13.6		86.4	
						12.1		87.9		13.2		86.8	
						12.1		87.9		12.8		87.2	
						12.1		87.9		12.4		87.6	
						12.1		87.9		12.1		87.9	
						12.1		87.9		11.8		88.2	
						12.1		87.9		11.4		88.6	
						12.1		87.9		11.2		88.8	
						12.1		87.9		10.9		89.1	

TABULATION M

Ex. No. 2 to V.S

NORTHBOUND

1		3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
MILES SOUTH	MILES NORTH	CARS	TOTAL TONS	ARBITRARY	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
1650	50									11.8		88.2
	100									11.8		88.2
	150									11.8		88.2
	200									11.8		88.2
	250									11.8		88.2
	300									11.8		88.2
	350									11.8		88.2
	400									11.8		88.2
	450									11.8		88.2
	500									11.8		88.2
	550									11.8		88.2
	600									11.8		88.2
	650									11.8		88.2
	700									11.8		88.2
	750									11.8		88.2
	800									11.8		88.2
	850									11.8		88.2
	900									11.8		88.2
	950									11.8		88.2
	1000									11.8		88.2
	1050									11.8		88.2
	1100									11.8		88.2
	1150									11.8		88.2
	1200									11.8		88.2
	1250									11.8		88.2
	1300									11.8		88.2
	1350									11.8		88.2
	1400									11.8		88.2
	1450									11.8		88.2
	1500									11.8		88.2
	1550									11.8		88.2
	1600									11.8		88.2
	1650									11.8		88.2
	1700									11.8		88.2
	1750									11.8		88.2
	1800									11.8		88.2
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
ENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						11.8		88.2		81.5		18.5	
						11.8		88.2		68.8		31.2	
						11.8		88.2		59.5		40.5	
						11.8		88.2		52.5		47.5	
						11.8		88.2		46.9		53.1	
						11.8		88.2		42.4		57.6	
						11.8		88.2		38.7		61.3	
						11.8		88.2		35.6		64.4	
						11.8		88.2		32.9		67.1	
						11.8		88.2		30.5		69.5	
						11.8		88.2		28.5		71.5	
						11.8		88.2		26.8		73.2	
						11.8		88.2		25.2		74.8	
						11.8		88.2		23.9		76.1	
						11.8		88.2		22.7		77.3	
						11.8		88.2		21.5		78.5	
						11.8		88.2		20.5		79.5	
						11.8		88.2		19.6		80.4	
						11.8		88.2		18.8		81.2	
						11.8		88.2		18.0		82.0	
						11.8		88.2		17.3		82.7	
						11.8		88.2		16.7		83.3	
						11.8		88.2		16.1		83.9	
						11.8		88.2		15.5		84.5	
						11.8		88.2		15.0		85.0	
						11.8		88.2		14.4		85.6	
						11.8		88.2		14.0		86.0	
						11.8		88.2		13.6		86.4	
						11.8		88.2		13.2		86.8	
						11.8		88.2		12.8		87.2	
						11.8		88.2		12.4		87.6	
						11.8		88.2		12.1		87.9	
						11.8		88.2		11.8		88.2	
						11.8		88.2		11.4		88.6	
						11.8		88.2		11.2		88.8	
						11.8		88.2		10.9		89.1	

TABULATION M

NORTHBOUND

Ex. No. 2 to V.S.

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE HS SETTLED		REVENUE HS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE H %
1700	50									11.4		88.6
	100									11.4		88.6
	150									11.4		88.6
	200									11.4		88.6
	250									11.4		88.6
	300									11.4		88.6
	350									11.4		88.6
	400									11.4		88.6
	450									11.4		88.6
	500									11.4		88.6
	550									11.4		88.6
	600									11.4		88.6
	650									11.4		88.6
	700									11.4		88.6
	750									11.4		88.6
	800									11.4		88.6
	850									11.4		88.6
	900									11.4		88.6
	950									11.4		88.6
	1000									11.4		88.6
	1050									11.4		88.6
	1100									11.4		88.6
	1150									11.4		88.6
	1200									11.4		88.6
	1250									11.4		88.6
	1300									11.4		88.6
	1350									11.4		88.6
	1400									11.4		88.6
	1450									11.4		88.6
	1500									11.4		88.6
	1550									11.4		88.6
	1600									11.4		88.6
	1650									11.4		88.6
	1700									11.4		88.6
	1750									11.4		88.6
	1800									11.4		88.6
TOTAL												

6	7	8	9	10	11	12	13	14	15	16	17	18
E AS SETTLED		REVENUE AS SETTLED			REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L		SOUTH		NORTH	TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S.	REMAINDER	REMAINDER	%	REMAINDER	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					11.4		88.6		81.5		18.5	
					11.4		88.6		68.8		31.2	
					11.4		88.6		59.5		40.5	
					11.4		88.6		52.5		47.5	
					11.4		88.6		46.9		53.1	
					11.4		88.6		42.4		57.6	
					11.4		88.6		38.7		61.3	
					11.4		88.6		35.6		64.4	
					11.4		88.6		32.9		67.1	
					11.4		88.6		30.5		69.5	
					11.4		88.6		28.5		71.5	
					11.4		88.6		26.8		73.2	
					11.4		88.6		25.2		74.8	
					11.4		88.6		23.9		76.1	
					11.4		88.6		22.7		77.3	
					11.4		88.6		21.5		78.5	
					11.4		88.6		20.5		79.5	
					11.4		88.6		19.6		80.4	
					11.4		88.6		18.8		81.2	
					11.4		88.6		18.0		82.0	
					11.4		88.6		17.3		82.7	
					11.4		88.6		16.7		83.3	
					11.4		88.6		16.1		83.9	
					11.4		88.6		15.5		84.5	
					11.4		88.6		15.0		85.0	
					11.4		88.6		14.4		85.6	
					11.4		88.6		14.0		86.0	
					11.4		88.6		13.6		86.4	
					11.4		88.6		13.2		86.8	
					11.4		88.6		12.8		87.2	
					11.4		88.6		12.4		87.6	
					11.4		88.6		12.1		87.9	
					11.4		88.6		11.8		88.2	
					11.4		88.6		11.4		88.6	
					11.4		88.6		11.2		88.8	
					11.4		88.6		10.9		89.1	

TABULATION M

Ex. No. 2 to V

NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
MILES SOUTH	MILES NORTH	CARS	REVENUE AS SETTLED TONS	TOTAL ARBITS S.	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 TERMINAL %	AMOUNT	SOUTH LI %
1750	50									11.2		88.8
	100									11.2		88.8
	150									11.2		88.8
	200									11.2		88.8
	250									11.2		88.8
	300									11.2		88.8
	350									11.2		88.8
	400									11.2		88.8
	450									11.2		88.8
	500									11.2		88.8
	550									11.2		88.8
	600									11.2		88.8
	650									11.2		88.8
	700									11.2		88.8
	750									11.2		88.8
	800									11.2		88.8
	850									11.2		88.8
	900									11.2		88.8
	950									11.2		88.8
	1000									11.2		88.8
	1050									11.2		88.8
	1100									11.2		88.8
	1150									11.2		88.8
	1200									11.2		88.8
	1250									11.2		88.8
	1300									11.2		88.8
	1350									11.2		88.8
	1400									11.2		88.8
	450									11.2		88.8
	1500									11.2		88.8
	1550									11.2		88.8
	1600									11.2		88.8
	1650									11.2		88.8
	1700									11.2		88.8
	1750									11.2		88.8
	1800									11.2		88.8
TOTAL												

6	7	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED	REVENUE AS SETTLED			REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL	SOUTH	NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S. REMAINDER	REMAINDER %	REMAINDER %		%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
				11.2		88.8		81.5		18.5	
				11.2		88.8		68.8		31.2	
				11.2		88.8		59.5		40.5	
				11.2		88.8		52.5		47.5	
				11.2		88.8		46.9		53.1	
				11.2		88.8		42.4		57.6	
				11.2		88.8		38.7		61.3	
				11.2		88.8		35.6		64.4	
				11.2		88.8		32.9		67.1	
				11.2		88.8		30.5		69.5	
				11.2		88.8		28.5		71.5	
				11.2		88.8		26.8		73.2	
				11.2		88.8		25.2		74.8	
				11.2		88.8		23.9		76.1	
				11.2		88.8		22.7		77.3	
				11.2		88.8		21.5		78.5	
				11.2		88.8		20.5		79.5	
				11.2		88.8		19.6		80.4	
				11.2		88.8		18.8		81.2	
				11.2		88.8		18.0		82.0	
				11.2		88.8		17.3		82.7	
				11.2		88.8		16.7		83.3	
				11.2		88.8		16.1		83.9	
				11.2		88.8		15.5		84.5	
				11.2		88.8		15.0		85.0	
				11.2		88.8		14.4		85.6	
				11.2		88.8		14.0		86.0	
				11.2		88.8		13.6		86.4	
				11.2		88.8		13.2		86.8	
				11.2		88.8		12.8		87.2	
				11.2		88.8		12.4		87.6	
				11.2		88.8		12.1		87.9	
				11.2		88.8		11.8		88.2	
				11.2		88.8		11.4		88.6	
				11.2		88.8		11.2		88.8	
				11.2		88.8		10.9		89.1	

TABULATION M

Ex. No. 2 to V

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS	%	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LI %
1800	50										10.9		89.1
	100										10.9		89.1
	150										10.9		89.1
	200										10.9		89.1
	250										10.9		89.1
	300										10.9		89.1
	350										10.9		89.1
	400										10.9		89.1
	450										10.9		89.1
	500										10.9		89.1
	550										10.9		89.1
	600										10.9		89.1
	650										10.9		89.1
	700										10.9		89.1
	750										10.9		89.1
	800										10.9		89.1
	850										10.9		89.1
	900										10.9		89.1
	950										10.9		89.1
	1000										10.9		89.1
	1050										10.9		89.1
	1100										10.9		89.1
	1150										10.9		89.1
	1200										10.9		89.1
	1250										10.9		89.1
	1300										10.9		89.1
	1350										10.9		89.1
	1400										10.9		89.1
	1450										10.9		89.1
	1500										10.9		89.1
	1550										10.9		89.1
	1600										10.9		89.1
	1650										10.9		89.1
	1700										10.9		89.1
	1750										10.9		89.1
	1800										10.9		89.1
TOTAL													

6	7	8	9	10	11	12	13	14	15	16	17	18
AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					10.9		89.1		81.5		18.5	
					10.9		89.1		68.8		31.2	
					10.9		89.1		59.5		40.5	
					10.9		89.1		52.5		47.5	
					10.9		89.1		46.9		53.1	
					10.9		89.1		42.4		57.6	
					10.9		89.1		38.7		61.3	
					10.9		89.1		35.6		64.4	
					10.9		89.1		32.9		67.1	
					10.9		89.1		30.5		69.5	
					10.9		89.1		28.5		71.5	
					10.9		89.1		26.8		73.2	
					10.9		89.1		25.2		74.8	
					10.9		89.1		23.9		76.1	
					10.9		89.1		22.7		77.3	
					10.9		89.1		21.5		78.5	
					10.9		89.1		20.5		79.5	
					10.9		89.1		19.6		80.4	
					10.9		89.1		18.8		81.2	
					10.9		89.1		18.0		82.0	
					10.9		89.1		17.3		82.7	
					10.9		89.1		16.7		83.3	
					10.9		89.1		16.1		83.9	
					10.9		89.1		15.5		84.5	
					10.9		89.1		15.0		85.0	
					10.9		89.1		14.4		85.6	
					10.9		89.1		14.0		86.0	
					10.9		89.1		13.6		86.4	
					10.9		89.1		13.2		86.8	
					10.9		89.1		12.8		87.2	
					10.9		89.1		12.4		87.6	
					10.9		89.1		12.1		87.9	
					10.9		89.1		11.8		88.2	
					10.9		89.1		11.4		88.6	
					10.9		89.1		11.2		88.8	
					10.9		89.1		10.9		89.1	

TABULATION M

SOUTHBOUND AND NORTHBOUND

Ex. No. 2 to

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7		SOUT
MILES SOUTH	MILES NORTH	CARS	TOTAL TONS	ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	%
50	50	1,322	65,706.0		208,604	126,956	60.9	81,648	39.1	81.5	103,469	18.5
	100	579	25,757.5		105,392	48,463	46.0	56,929	54.0	81.5	39,497	18.5
	150	1,031	33,389.5		189,561	79,617	42.0	109,944	58.0	81.5	64,888	18.5
	200	540	15,764.0		151,140	59,434	39.3	91,706	60.7	81.5	48,439	18.5
	250	623	29,776.0		337,641	125,232	37.1	212,409	62.9	81.5	102,064	18.5
	300	1,224	38,432.0		359,257	122,736	34.2	236,521	65.8	81.5	100,030	18.5
	350	700	25,728.9		229,525	72,299	31.5	157,226	68.5	81.5	58,924	18.5
	400	281	6,302.4		82,073	24,919	30.4	57,154	69.6	81.5	20,309	18.5
	450	302	7,871.9		104,783	30,685	29.3	74,098	70.7	81.5	25,008	18.5
	500	157	5,446.9		71,220	19,226	27.0	51,994	73.0	81.5	15,669	18.5
	550	411	9,341.9		179,628	50,260	28.0	129,368	72.0	81.5	40,962	18.5
	600	545	16,005.0		284,429	71,144	25.0	213,285	75.0	81.5	57,982	18.5
	650	1,196	39,188.3		691,445	165,540	23.9	525,905	76.1	81.5	134,915	18.5
	700	221	6,549.0		109,911	26,318	23.9	83,593	76.1	81.5	21,449	18.5
	750	143	3,573.9		88,418	19,233	21.8	69,185	78.2	81.5	15,675	18.5
	800	223	6,119.4		114,955	24,159	21.0	90,796	79.0	81.5	19,690	18.5
	850	130	3,162.9		66,385	13,804	20.8	52,581	79.2	81.5	11,250	18.5
	900	475	13,177.6		239,623	46,472	19.4	193,151	80.6	81.5	37,875	18.5
	950	73	1,976.1		50,562	12,363	24.5	38,199	75.5	81.5	10,076	18.5
	1000	325	6,859.3		165,435	29,793	18.0	135,642	82.0	81.5	24,281	18.5
	1050									81.5		18.5
	1100	21	264.1		12,290	2,087	17.0	10,203	83.0	81.5	1,701	18.5
	1150									81.5		18.5
	1200									81.5		18.5
	1250									81.5		18.5
	1300	19	446.0		13,268	1,985	15.0	11,283	85.0	81.5	1,618	18.5
	1350									81.5		18.5
	1400									81.5		18.5
	1450									81.5		18.5
	1500									81.5		18.5
	1550									81.5		18.5
	1600									81.5		18.5
	1650									81.5		18.5
	1700									81.5		18.5
	1750									81.5		18.5
	1800									81.5		18.5
TOTAL		10,541	360,838.6		3,855,545	1,172,725		2,682,820			955,771	

6	7	8	9	10	11	12	13	14	15	16	17	18
AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
208,604	126,956	60.9	81,648	39.1	81.5	103,469	18.5	23,487	81.5	66,543	18.5	15,105
105,392	48,463	46.0	56,929	54.0	81.5	39,497	18.5	8,966	68.8	39,167	31.2	17,762
189,561	79,617	42.0	109,944	58.0	81.5	64,888	18.5	14,729	59.5	65,417	40.5	44,527
151,140	59,434	39.3	91,706	60.7	81.5	48,439	18.5	10,995	52.5	48,146	47.5	43,560
337,641	125,232	37.1	212,409	62.9	81.5	102,064	18.5	23,168	46.9	99,620	53.1	112,789
359,257	122,736	34.2	236,521	65.8	81.5	100,030	18.5	22,706	42.4	100,285	57.6	136,236
229,525	72,299	31.5	157,226	68.5	81.5	58,924	18.5	13,375	38.7	60,846	61.3	96,380
82,073	24,919	30.4	57,154	69.6	81.5	20,309	18.5	4,610	35.6	20,347	64.4	36,807
104,783	30,685	29.3	74,098	70.7	81.5	25,008	18.5	5,677	32.9	24,378	67.1	49,720
71,220	19,226	27.0	51,994	73.0	81.5	15,669	18.5	3,557	30.5	15,858	69.5	36,136
179,628	50,260	28.0	129,368	72.0	81.5	40,962	18.5	9,298	28.5	36,870	71.5	92,498
284,429	71,144	25.0	213,285	75.0	81.5	57,982	18.5	13,162	26.8	57,160	73.2	156,125
691,445	165,540	23.9	525,905	76.1	81.5	134,915	18.5	30,625	25.2	132,528	74.8	393,377
109,911	26,318	23.9	83,593	76.1	81.5	21,449	18.5	4,869	23.9	19,979	76.1	63,614
88,418	19,233	21.8	69,185	78.2	81.5	15,675	18.5	3,558	22.7	15,705	77.3	53,480
114,955	24,159	21.0	90,796	79.0	81.5	19,690	18.5	4,469	21.5	19,521	78.5	71,275
66,385	13,804	20.8	52,581	79.2	81.5	11,250	18.5	2,554	20.5	10,779	79.5	41,802
239,623	46,472	19.4	193,151	80.6	81.5	37,875	18.5	8,597	19.6	37,858	80.4	155,293
50,562	12,363	24.5	38,199	75.5	81.5	10,076	18.5	2,287	18.8	7,181	81.2	31,018
165,435	29,793	18.0	135,642	82.0	81.5	24,281	18.5	5,512	18.0	24,416	82.0	111,226
					81.5		18.5		17.3		82.7	
					81.5		18.5		16.7		83.3	
12,290	2,087	17.0	10,203	83.0	81.5	1,701	18.5	386	16.1	1,704	83.9	8,469
					81.5		18.5		15.5		84.5	
					81.5		18.5		15.0		85.0	
					81.5		18.5		14.4		85.6	
13,268	1,985	15.0	11,283	85.0	81.5	1,618	18.5	367	14.0	1,625	86.0	9,658
					81.5		18.5		13.6		86.4	
					81.5		18.5		13.2		86.8	
					81.5		18.5		12.8		87.2	
					81.5		18.5		12.4		87.6	
					81.5		18.5		12.1		87.9	
					81.5		18.5		11.8		88.2	
					81.5		18.5		11.4		88.6	
					81.5		18.5		11.2		88.8	
					81.5		18.5		10.9		89.1	
3,855,545	1,172,725		2,682,820			955,771		216,954		905,933		1,776,887

TABULATION M

Ex. No. 2 to V

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7		SOUT
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRARY	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	L %
100	50	1,167	45,225.4	687	160,949	87,170	54.2	73,779	45.8	68.8	59,973	31.2
	100	971	38,829.6		182,928	91,474	50.0	91,454	50.0	68.8	62,934	31.2
	150	1,702	50,382.2		341,670	157,149	46.0	184,521	54.0	68.8	108,119	31.2
	200	1,611	57,135.5		508,228	218,703	43.0	289,525	57.0	68.8	150,468	31.2
	250	1,491	53,156.5		463,097	189,999	41.0	273,098	59.0	68.8	130,719	31.2
	300	3,131	89,557.2		1,030,647	393,633	38.2	637,014	61.8	68.8	270,820	31.2
	350	3,014	94,389.7	78	1,041,546	372,566	35.8	668,980	64.2	68.8	256,325	31.2
	400	818	27,749.3		338,189	113,018	33.4	225,171	66.6	68.8	77,756	31.2
	450	1,727	40,939.9	274	560,167	179,797	32.1	380,370	67.9	68.8	123,700	31.2
	500	1,058	38,060.0		425,293	131,749	31.0	293,544	69.0	68.8	90,643	31.2
	550	3,686	123,638.4		2,027,347	578,774	28.5	1,448,573	71.5	68.8	398,197	31.2
	600	2,240	67,438.4		1,115,191	312,052	28.0	803,139	72.0	68.8	214,692	31.2
	650	1,681	53,895.7		936,334	253,344	27.1	682,990	72.9	68.8	174,301	31.2
	700	699	24,226.9		370,918	96,399	26.0	274,419	74.0	68.8	66,323	31.2
	750	995	15,264.1		358,401	89,612	25.0	268,789	75.0	68.8	61,653	31.2
	800	317	7,638.1		171,159	41,105	24.0	130,054	76.0	68.8	28,280	31.2
	850	502	12,799.1		252,183	59,182	23.5	193,001	76.5	68.8	40,717	31.2
	900	293	8,542.6		190,549	41,950	22.0	148,599	78.0	68.8	28,862	31.2
	950	160	4,099.6		78,932	18,543	23.5	60,389	76.5	68.8	12,758	31.2
	1000	571	19,133.9		388,534	81,890	21.1	306,644	78.9	68.8	56,340	31.2
	1050	109	2,891.4		149,426	29,871	20.0	119,555	80.0	68.8	20,551	31.2
	1100	22	280.8		18,252	3,478	19.1	14,774	80.9	68.8	2,393	31.2
	1150	21	390.1		8,501	1,611	19.0	6,890	81.0	68.8	1,108	31.2
	1200	70	2,756.6		54,118	9,743	18.0	44,375	82.0	68.8	6,703	31.2
	1250	79	1,547.5		33,268	6,003	18.0	27,365	82.0	68.8	4,130	31.2
	1300									68.8		31.2
	1350									68.8		31.2
	1400									68.8		31.2
	1450									68.8		31.2
	1500									68.8		31.2
	1550									68.8		31.2
	1600									68.8		31.2
	1650									68.8		31.2
	1700									68.8		31.2
	1750									68.8		31.2
	1800									68.8		31.2
TOTAL		28,135	879,968.5	1,009	11,205,927	3,558,815		7,647,012			2,448,465	

6	7	8	9	10	11	12	13	14	15	16	17	18
AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
160,949	87,170	54.2	73,779	45.8	68.8	59,973	31.2	27,197	81.5	60,130	18.5	13,649
182,928	91,474	50.0	91,454	50.0	68.8	62,934	31.2	28,540	68.8	62,920	31.2	29,534
341,640	157,119	46.0	184,521	54.0	68.8	108,119	31.2	49,030	59.5	109,790	40.5	74,731
508,229	218,703	43.0	289,525	57.0	68.8	150,468	31.2	68,235	52.5	152,001	47.5	137,524
463,097	189,999	41.0	273,098	59.0	68.8	130,719	31.2	59,280	46.9	128,083	53.1	145,015
1,030,647	393,633	38.2	637,014	61.8	68.8	270,820	31.2	122,813	42.4	270,094	57.6	366,920
1,041,546	372,566	35.8	668,980	64.2	68.8	256,325	31.2	116,241	38.7	258,895	61.3	410,085
338,189	113,018	33.4	225,171	66.6	68.8	77,756	31.2	35,262	35.6	80,161	64.4	145,010
560,167	179,797	32.1	380,370	67.9	68.8	123,700	31.2	56,097	32.9	125,142	67.1	255,228
425,293	131,749	31.0	293,544	69.0	68.8	90,643	31.2	41,106	30.5	89,631	69.5	204,013
2,027,347	578,774	28.5	1,448,573	71.5	68.8	398,197	31.2	180,577	28.5	412,843	71.5	1,035,730
1,115,191	312,052	28.0	803,139	72.0	68.8	214,692	31.2	97,360	26.8	215,241	73.2	587,898
936,334	253,344	27.1	682,990	72.9	68.8	174,301	31.2	79,043	25.2	172,113	74.8	510,877
370,918	96,399	26.0	274,419	74.0	68.8	66,323	31.2	30,076	23.9	65,586	76.1	208,833
358,401	89,612	25.0	268,789	75.0	68.8	61,653	31.2	27,959	22.7	61,015	77.3	207,774
171,159	41,105	24.0	130,054	76.0	68.8	28,280	31.2	12,825	21.5	27,962	78.5	102,092
252,183	59,182	23.5	193,001	76.5	68.8	40,717	31.2	18,465	20.5	39,565	79.5	153,436
190,549	41,950	22.0	148,599	78.0	68.8	28,862	31.2	13,088	19.6	29,125	80.4	119,474
78,932	18,543	23.5	60,389	76.5	68.8	12,756	31.2	5,785	18.8	11,353	81.2	49,036
388,534	81,890	21.1	306,644	78.9	68.8	56,340	31.2	25,550	18.0	55,196	82.0	251,448
149,426	29,871	20.0	119,555	80.0	68.8	20,551	31.2	9,320	17.3	20,683	82.7	98,872
18,252	3,478	19.1	14,774	80.9	68.8	2,393	31.2	1,085	16.7	2,467	83.3	12,307
8,501	1,611	19.0	6,890	81.0	68.8	1,108	31.2	503	16.1	1,109	83.9	5,781
54,118	9,743	18.0	44,375	82.0	68.8	6,703	31.2	3,040	15.5	6,878	84.5	37,497
33,368	6,003	18.0	27,365	82.0	68.8	4,130	31.2	1,873	15.0	4,105	85.0	23,260
					68.8		31.2		14.4		85.6	
					68.8		31.2		14.0		86.0	
					68.8		31.2		13.6		86.4	
					68.8		31.2		13.2		86.8	
					68.8		31.2		12.8		87.2	
					68.8		31.2		12.4		87.6	
					68.8		31.2		12.1		87.9	
					68.8		31.2		11.8		88.2	
					68.8		31.2		11.4		88.6	
					68.8		31.2		11.2		88.8	
					68.8		31.2		10.9		89.1	
09	11,205,927	3,558,815	7,647,012			2,448,465		1,110,350		2,461,988		5,130,624

TABULATION M

Ex. No. 2 to V.S

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	TERMINAL AMOUNT	LINE %
150	50	2,678	110,476.5		417,449	242,258	58.0	175,191	42.0	59.5	144,144	40.5
	100	4,910	157,891.6		772,731	419,131	54.2	353,600	45.8	59.5	249,383	40.5
	150	1,459	49,942.7		384,663	190,940	49.6	193,723	50.4	59.5	113,609	40.5
	200	2,911	112,234.0		786,818	372,362	47.3	414,456	52.7	59.5	221,555	40.5
	250	1,599	44,038.1		457,166	201,073	44.0	256,093	56.0	59.5	119,638	40.5
	300	2,317	74,322.9		920,341	386,635	42.0	533,706	58.0	59.5	230,048	40.5
	350	1,673	49,406.9		640,734	247,533	38.6	393,201	61.4	59.5	147,282	40.5
	400	1,128	40,315.6		456,894	169,749	37.2	287,145	62.8	59.5	101,001	40.5
	450	2,524	104,871.7		1,173,813	424,546	36.2	749,267	63.8	59.5	252,605	40.5
	500	1,604	58,035.5		752,898	256,652	34.1	496,246	65.9	59.5	152,708	40.5
	550	1,099	26,092.8		396,365	127,043	32.1	269,322	67.9	59.5	75,591	40.5
	600	1,222	31,245.3		569,730	176,612	31.0	393,118	69.0	59.5	105,084	40.5
	650	1,039	27,534.9	552	486,430	145,702	30.0	340,728	70.0	59.5	86,693	40.5
	700	1,176	26,074.0	220	543,451	157,586	29.0	385,865	71.0	59.5	93,764	40.5
	750	1,106	25,931.3		528,489	148,515	28.1	379,974	71.9	59.5	88,366	40.5
	800	1,220	38,287.9		647,444	174,023	26.9	473,421	73.1	59.5	103,544	40.5
	850	844	19,877.7		429,152	111,775	26.0	317,377	74.0	59.5	66,506	40.5
	900	683	19,572.7		426,663	106,780	25.0	319,883	75.0	59.5	63,534	40.5
	950	557	13,525.3	254	274,793	66,002	24.0	208,791	76.0	59.5	39,271	40.5
	1000	262	7,054.3		112,483	33,166	29.5	79,317	70.5	59.5	19,734	40.5
	1050	284	9,126.5		277,919	64,249	23.1	213,670	76.9	59.5	38,228	40.5
	1100	62	914.7		25,401	5,109	20.1	20,292	79.9	59.5	3,040	40.5
	1150	24	540.0		16,536	3,480	21.0	13,056	79.0	59.5	2,071	40.5
	1200									59.5		40.5
	1250	22	464.2		15,202	3,036	20.0	12,166	80.0	59.5	1,806	40.5
	1300	80	1,898.9		63,801	12,781	20.0	51,020	80.0	59.5	7,605	40.5
	1350									59.5		40.5
	1400									59.5		40.5
	1450									59.5		40.5
	1500									59.5		40.5
	1550									59.5		40.5
	1600									59.5		40.5
	1650									59.5		40.5
	1700									59.5		40.5
	1750									59.5		40.5
	1800									59.5		40.5
TOTAL		32,483	1,049,676.0	1,026	11,577,366	4,246,738		7,330,628			2,526,810	

6	7	8	9	10	11	12	13	14	15	16	17	18
AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
417,449	242,258	58.0	175,191	42.0	59.5	144,144	40.5	98,114	81.5	142,781	18.5	32,410
772,731	419,131	54.2	353,600	45.8	59.5	249,383	40.5	169,748	68.8	243,277	31.2	110,323
384,663	190,940	49.6	193,723	50.4	59.5	113,609	40.5	77,331	59.5	115,265	40.5	78,458
786,818	372,362	47.3	414,456	52.7	59.5	221,555	40.5	150,807	52.5	217,589	47.5	196,867
457,166	201,073	44.0	256,093	56.0	59.5	119,638	40.5	81,435	46.9	120,108	53.1	135,985
920,341	386,635	42.0	533,706	58.0	59.5	230,048	40.5	156,587	42.4	226,291	57.6	307,415
640,734	247,533	38.6	393,201	61.4	59.5	147,282	40.5	100,251	38.7	152,169	61.3	241,032
456,894	169,749	37.2	287,145	62.8	59.5	101,001	40.5	68,748	35.6	102,224	64.4	184,921
1,173,813	424,546	36.2	749,267	63.8	59.5	252,605	40.5	171,941	32.9	246,509	67.1	502,758
752,898	256,652	34.1	496,246	65.9	59.5	152,708	40.5	103,944	30.5	151,355	69.5	344,891
396,365	127,043	32.1	269,322	67.9	59.5	75,591	40.5	51,452	28.5	76,757	71.5	192,565
569,730	176,612	31.0	393,118	69.0	59.5	105,084	40.5	71,528	26.8	105,356	73.2	287,762
552 486,430	145,702	30.0	340,728	70.0	59.5	86,693	40.5	59,009	25.2	85,863	74.8	254,865
220 543,451	157,586	29.0	385,865	71.0	59.5	93,764	40.5	63,822	23.9	92,222	76.1	293,643
528,489	148,515	28.1	379,974	71.9	59.5	88,366	40.5	60,149	22.7	86,254	77.3	293,720
647,444	174,023	26.9	473,421	73.1	59.5	103,544	40.5	70,479	21.5	101,786	78.5	371,635
429,152	111,775	26.0	317,377	74.0	59.5	66,506	40.5	45,269	20.5	65,062	79.5	252,315
426,663	106,780	25.0	319,883	75.0	59.5	63,534	40.5	43,246	19.6	62,697	80.4	257,186
254 274,793	66,002	24.0	208,791	76.0	59.5	39,271	40.5	26,731	18.8	39,253	81.2	169,538
112,483	33,166	29.5	79,317	70.5	59.5	19,734	40.5	13,432	18.0	14,277	82.0	65,040
277,919	64,249	23.1	213,670	76.9	59.5	38,228	40.5	26,021	17.3	36,965	82.7	176,705
25,401	5,109	20.1	20,292	79.9	59.5	3,040	40.5	2,069	16.7	3,389	83.3	16,903
16,536	3,480	21.0	13,056	79.0	59.5	2,071	40.5	1,409	16.1	2,102	83.9	10,954
					59.5		40.5		15.5		84.5	
15,202	3,036	20.0	12,166	80.0	59.5	1,806	40.5	1,230	15.0	1,825	85.0	10,341
63,801	12,781	20.0	51,020	80.0	59.5	7,605	40.5	5,176	14.4	7,347	85.6	43,673
					59.5		40.5		14.0		86.0	
					59.5		40.5		13.6		86.4	
					59.5		40.5		13.2		86.8	
					59.5		40.5		12.8		87.2	
					59.5		40.5		12.4		87.6	
					59.5		40.5		12.1		87.9	
					59.5		40.5		11.8		88.2	
					59.5		40.5		11.4		88.6	
					59.5		40.5		11.2		88.8	
					59.5		40.5		10.9		89.1	
926 11,577,366	4,246,738		7,330,628			2,526,810		1,719,928		2,498,723		4,331,905

TABULATION M

Ex. No. 2 to V.S.

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS $.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
200	50	2,731	101,312.9		863,188	402,800	60.7	260,388	39.3	52.5	211,470	47.5
	100	3,528	153,512.9		768,513	437,841	57.0	330,672	43.0	52.5	229,867	47.5
	150	2,765	127,764.3		795,177	421,533	53.0	373,644	47.0	52.5	221,305	47.5
	200	2,270	79,474.1		614,827	307,432	50.0	307,395	50.0	52.5	161,402	47.5
	250	1,597	47,957.1		511,617	242,021	47.3	269,596	52.7	52.5	127,061	47.5
	300	3,726	137,221.0	449	1,908,097	858,825	45.0	1,049,272	55.0	52.5	450,883	47.5
	350	3,257	98,651.1	179	1,244,647	523,407	42.0	721,540	58.0	52.5	274,631	47.5
	400	2,902	116,318.9	470	1,299,647	521,159	40.1	778,488	59.9	52.5	273,608	47.5
	450	1,908	62,986.5	303	953,890	371,270	38.9	582,620	61.1	52.5	194,917	47.5
	500	2,245	70,803.6		961,333	354,714	36.9	606,619	63.1	52.5	186,225	47.5
	550	2,252	56,580.0	134	1,078,565	378,755	35.1	699,810	64.9	52.5	198,846	47.5
	600	1,410	32,529.6		586,161	199,164	34.0	386,997	66.0	52.5	104,561	47.5
	650	1,001	31,592.1	591	506,120	162,842	32.2	343,278	67.8	52.5	85,492	47.5
	700	978	30,110.4	208	519,601	160,855	31.0	358,746	69.0	52.5	84,449	47.5
	750	680	11,367.1		296,811	90,692	30.6	206,119	69.4	52.5	47,613	47.5
	800	1,471	37,425.3		962,799	278,820	29.0	683,979	71.0	52.5	146,381	47.5
	850	756	15,486.9	374	411,302	116,329	28.3	294,973	71.7	52.5	61,073	47.5
	900	533	13,073.6		335,246	90,824	27.1	244,422	72.9	52.5	47,683	47.5
	950	581	12,473.4	1,045	294,874	76,874	26.1	218,000	73.9	52.5	40,359	47.5
	1000	508	11,082.7		264,100	68,664	26.0	195,436	74.0	52.5	36,049	47.5
	1050	317	7,172.2		192,633	48,155	25.0	144,478	75.0	52.5	25,281	47.5
	1100	824	18,627.3		436,260	104,708	24.0	331,552	76.0	52.5	54,972	47.5
	1150	429	9,126.4		252,187	53,423	21.2	198,764	78.8	52.5	28,047	47.5
	1200	112	2,775.6		77,770	17,869	23.0	59,901	77.0	52.5	9,381	47.5
	1250	625	11,144.1		395,961	88,306	22.3	307,655	77.7	52.5	46,361	47.5
	1300	172	3,728.9		103,732	22,658	21.8	81,074	78.2	52.5	11,895	47.5
	1350	64	1,847.3		62,049	13,041	21.0	49,008	79.0	52.5	6,847	47.5
	1400	24	361.9		16,874	3,549	21.0	13,325	79.0	52.5	1,863	47.5
	1450	45	594.3		29,073	5,822	20.0	23,251	80.0	52.5	3,057	47.5
	1500									52.5		47.5
	1550	22	252.7		14,861	2,830	19.0	12,031	81.0	52.5	1,486	47.5
	1600									52.5		47.5
	1650									52.5		47.5
	1700									52.5		47.5
	1750									52.5		47.5
	1800									52.5		47.5
TOTAL		39,733	1,303,374.2	3,753	16,557,915	6,424,882		10,133,033			3,373,065	3.

6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED					REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
					TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TOTAL	SOUTH		NORTH									
S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	663,188	402,800	60.7	260,388	39.3	52.5	211,470	47.5	191,330	81.5	212,216	18.5	48,172
	768,513	437,841	57.0	330,672	43.0	52.5	229,867	47.5	207,974	68.8	227,502	31.2	103,170
	795,177	421,533	53.0	373,644	47.0	52.5	221,305	47.5	200,228	59.5	222,318	40.5	151,326
	614,827	307,432	50.0	307,395	50.0	52.5	161,402	47.5	146,030	52.5	161,382	47.5	146,013
	511,617	242,021	47.3	269,596	52.7	52.5	127,061	47.5	114,960	46.9	126,441	53.1	143,155
449	1,908,097	858,825	45.0	1,049,272	55.0	52.5	450,883	47.5	407,942	42.4	444,891	57.6	604,381
179	1,244,647	523,107	42.0	721,540	58.0	52.5	274,631	47.5	248,476	38.7	279,236	61.3	442,304
470	1,299,647	521,159	40.1	778,488	59.9	52.5	273,608	47.5	247,351	35.6	277,142	64.4	501,346
303	953,890	371,270	38.9	582,620	61.1	52.5	194,917	47.5	176,353	32.9	191,682	67.1	390,938
	961,333	354,714	36.9	606,619	63.1	52.5	186,225	47.5	168,489	30.5	185,019	69.5	421,600
134	1,078,565	378,755	35.1	699,810	64.9	52.5	198,846	47.5	179,909	28.5	199,446	71.5	500,364
	586,161	199,164	34.0	386,997	66.0	52.5	104,561	47.5	94,603	26.8	103,715	73.2	283,282
591	506,120	162,842	32.2	343,278	67.8	52.5	85,492	47.5	77,350	25.2	86,506	74.8	256,772
208	519,601	160,855	31.0	358,746	69.0	52.5	84,449	47.5	76,406	23.9	85,740	76.1	273,006
	296,811	90,692	30.6	206,119	69.4	52.5	47,613	47.5	43,079	22.7	46,789	77.3	159,330
	962,799	278,820	29.0	683,979	71.0	52.5	146,381	47.5	132,439	21.5	147,055	78.5	536,924
374	411,302	116,329	28.3	294,973	71.7	52.5	61,073	47.5	55,256	20.5	60,469	79.5	234,504
	335,246	90,824	27.1	244,422	72.9	52.5	47,683	47.5	43,141	19.6	47,907	80.4	196,515
1,045	294,874	76,874	26.1	218,000	73.9	52.5	40,359	47.5	36,515	18.8	40,984	81.2	177,016
	264,100	68,664	26.0	195,436	74.0	52.5	36,049	47.5	32,615	18.0	35,178	82.0	160,258
	192,633	48,155	25.0	144,478	75.0	52.5	25,281	47.5	22,874	17.3	24,995	82.7	119,483
	436,260	104,708	24.0	331,552	76.0	52.5	54,972	47.5	49,736	16.7	55,369	83.3	276,183
	252,187	53,423	21.2	198,764	78.8	52.5	28,047	47.5	25,376	16.1	32,001	83.9	166,763
	77,770	17,869	23.0	59,901	77.0	52.5	9,381	47.5	3,488	15.5	9,285	84.5	50,316
	395,961	88,306	22.3	307,655	77.7	52.5	46,361	47.5	41,945	15.0	46,148	85.0	261,507
	103,732	22,658	21.8	81,074	78.2	52.5	11,895	47.5	10,763	14.4	11,675	85.6	69,399
	62,049	13,041	21.0	49,008	79.0	52.5	6,847	47.5	6,194	14.0	6,861	86.0	42,147
	16,874	3,549	21.0	13,325	79.0	52.5	1,863	47.5	1,686	13.6	1,812	86.4	11,513
	29,073	5,822	20.0	23,251	80.0	52.5	3,057	47.5	2,765	13.2	3,069	86.8	20,182
						52.5		47.5		12.8		87.2	
	14,861	2,830	19.0	12,031	81.0	52.5	1,486	47.5	1,344	12.4	1,492	87.6	10,539
						52.5		47.5		12.1		87.9	
						52.5		47.5		11.8		88.2	
						52.5		47.5		11.4		88.6	
						52.5		47.5		11.2		88.8	
						52.5		47.5		10.9		89.1	
3,753	16,557,915	6,424,882		10,133,033			3,373,065		3,051,817		3,374,325		9,758,708

TABULATION M

Ex. No. 2 to V.

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LIN %
250	50	4,045	187,944.0		1,357,580	851,380	62.7	506,200	37.3	46.9	399,297	53.1
	100	3,512	134,177.9		753,920	444,437	59.0	309,483	41.0	46.9	208,441	53.1
	150	1,777	61,436.5		470,094	265,502	56.5	204,592	43.5	46.9	124,520	53.1
	200	2,487	103,528.4		879,386	466,025	53.0	413,361	47.0	46.9	218,566	53.1
	250	1,999	73,807.8		822,136	412,058	50.1	410,078	49.9	46.9	193,255	53.1
	300	3,152	111,478.6		1,340,576	629,754	47.0	710,822	53.0	46.9	295,355	53.1
	350	3,295	140,021.1	582	1,705,684	768,035	45.0	937,649	55.0	46.9	360,208	53.1
	400	1,865	68,528.5		775,160	334,035	43.1	441,125	56.9	46.9	156,662	53.1
	450	1,839	55,509.1	191	959,282	396,034	41.3	563,248	58.7	46.9	185,740	53.1
	500	999	31,218.8	1,663	536,694	208,308	38.8	328,386	61.2	46.9	97,696	53.1
	550	959	23,691.1	648	412,348	157,004	38.1	255,344	61.9	46.9	73,635	53.1
	600	1,246	34,409.0	173	671,412	241,662	36.0	429,750	64.0	46.9	113,339	53.1
	650	873	25,431.8	240	457,480	160,011	35.0	297,469	65.0	46.9	75,045	53.1
	700	1,317	29,564.4		684,239	233,125	34.1	451,114	65.9	46.9	109,336	53.1
	750	1,096	28,367.0		400,393	131,102	32.7	269,291	67.3	46.9	61,487	53.1
	800	645	18,945.4		398,145	123,419	31.0	274,726	69.0	46.9	57,884	53.1
	850	761	23,337.4		588,234	172,689	29.4	415,545	70.6	46.9	80,991	53.1
	900	209	7,172.8		193,773	59,188	30.5	134,585	69.5	46.9	27,759	53.1
	950	562	13,721.2		275,474	80,080	29.1	195,394	70.9	46.9	37,558	53.1
	1000	181	4,558.1		152,490	42,648	28.0	109,842	72.0	46.9	20,002	53.1
	1050	59	813.0		23,274	6,292	27.0	16,982	73.0	46.9	2,951	53.1
	1100	196	3,172.9		73,558	19,117	26.0	54,441	74.0	46.9	8,966	53.1
	1150	60	2,054.0		55,471	14,626	26.4	40,845	73.6	46.9	6,860	53.1
	1200	20	431.8		12,000	3,005	25.0	8,995	75.0	46.9	1,409	53.1
	1250	47	1,189.4	992	35,389	10,524	29.7	24,865	70.3	46.9	4,936	53.1
	1300	19	433.9		13,824	3,322	24.0	10,502	76.0	46.9	1,558	53.1
	1350	19	379.9		12,814	2,948	23.0	9,866	77.0	46.9	1,383	53.1
	1400	42	1,069.8		30,902	6,801	22.0	24,101	78.0	46.9	3,190	53.1
	1450									46.9		53.1
	1500									46.9		53.1
	1550									46.9		53.1
	1600									46.9		53.1
	1650									46.9		53.1
	1700									46.9		53.1
	1750									46.9		53.1
	1800									46.9		53.1
TOTAL		33,281	1,186,393.6	4,489	14,091,732	6,243,131		7,848,601			2,928,029	

6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
1,357,580	851,380	62.7	506,200	37.3	46.9	399,297	53.1	452,083	81.5	412,553	18.5	93,647
753,920	444,437	59.0	309,483	41.0	46.9	208,441	53.1	235,996	68.8	212,924	31.2	96,559
470,094	265,502	56.5	204,592	43.5	46.9	124,520	53.1	140,982	59.5	121,732	40.5	82,860
879,386	466,025	53.0	413,361	47.0	46.9	218,566	53.1	247,459	52.5	217,015	47.5	196,346
822,136	412,058	50.1	410,078	49.9	46.9	193,255	53.1	218,803	46.9	192,327	53.1	217,751
1,340,576	629,754	47.0	710,822	53.0	46.9	295,355	53.1	334,399	42.4	301,389	57.6	409,433
582 1,705,684	768,035	45.0	937,649	55.0	46.9	360,208	53.1	407,827	38.7	362,870	61.3	574,779
775,160	334,035	43.1	441,125	56.9	46.9	156,662	53.1	177,373	35.6	157,041	64.4	284,084
191 959,282	396,034	41.3	563,248	58.7	46.9	185,740	53.1	210,294	32.9	185,309	67.1	377,939
1,663 536,694	208,308	38.8	328,386	61.2	46.9	97,696	53.1	110,612	30.5	100,158	69.5	228,228
648 412,348	157,004	38.1	255,344	61.9	46.9	73,635	53.1	83,369	28.5	72,773	71.5	182,571
173 671,412	241,662	36.0	429,750	64.0	46.9	113,339	53.1	128,323	26.8	115,173	73.2	314,577
240 457,480	160,011	35.0	297,469	65.0	46.9	75,045	53.1	84,966	25.2	74,962	74.8	222,507
684,239	233,125	34.1	451,114	65.9	46.9	109,336	53.1	123,789	23.9	107,816	76.1	343,298
400,393	131,102	32.7	269,291	67.3	46.9	61,487	53.1	69,615	22.7	61,129	77.3	208,162
398,145	123,419	31.0	274,726	69.0	46.9	57,884	53.1	65,535	21.5	59,066	78.5	215,660
588,234	172,689	29.4	415,545	70.6	46.9	80,991	53.1	91,698	20.5	85,187	79.5	330,358
193,773	59,188	30.5	134,585	69.5	46.9	27,759	53.1	31,429	19.6	26,379	80.4	108,206
275,474	80,080	29.1	195,394	70.9	46.9	37,558	53.1	42,522	18.8	36,734	81.2	158,660
152,490	42,648	28.0	109,842	72.0	46.9	20,002	53.1	22,646	18.0	19,772	82.0	90,070
23,274	6,292	27.0	16,982	73.0	46.9	2,951	53.1	3,341	17.3	2,938	82.7	14,044
73,558	19,117	26.0	54,441	74.0	46.9	8,966	53.1	10,151	16.7	9,092	83.3	45,349
55,471	14,626	26.4	40,845	73.6	46.9	6,860	53.1	7,766	16.1	6,576	83.9	34,269
12,000	3,005	25.0	8,995	75.0	46.9	1,409	53.1	1,596	15.5	1,394	84.5	7,601
992 35,389	10,524	29.7	24,865	70.3	46.9	4,936	53.1	5,588	15.0	3,730	85.0	21,135
13,824	3,322	24.0	10,502	76.0	46.9	1,558	53.1	1,764	14.4	1,512	85.6	8,990
12,814	2,948	23.0	9,866	77.0	46.9	1,383	53.1	1,565	14.0	1,381	86.0	8,485
30,902	6,801	22.0	24,101	78.0	46.9	3,190	53.1	3,611	13.6	3,278	86.4	20,823
					46.9		53.1		13.2		86.8	
					46.9		53.1		12.8		87.2	
					46.9		53.1		12.4		87.6	
					46.9		53.1		12.1		87.9	
					46.9		53.1		11.8		88.2	
					46.9		53.1		11.4		88.6	
					46.9		53.1		11.2		88.8	
					46.9		53.1		10.9		89.1	
489 14,091,732	6,243,131		7,848,601			2,928,029		3,315,102		2,952,210		4,896,391

TABULATION M

Ex. No. 2 to V.

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
MILES SOUTH	MILES NORTH	CARS	TONS	REVENUE AS SETTLED TOTAL ARBITS.	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	AMOUNT	LIN %
300	50	2,312	81,169.6		605,208	399,075	65.9	206,133	34.1	42.4	169,208	57.6
	100	2,164	64,872.2		629,976	391,197	62.1	238,779	37.9	42.4	165,868	57.6
	150	4,748	157,563.6		1,596,573	927,003	58.1	669,570	41.9	42.4	393,049	57.6
	200	3,547	117,620.6		1,335,697	734,505	55.0	601,192	45.0	42.4	311,430	57.6
	250	5,927	134,463.2	376	2,218,184	1,177,395	53.1	1,040,789	46.9	42.4	499,215	57.6
	300	8,021	262,480.3	462	3,555,896	1,781,442	50.1	1,774,434	49.9	42.4	755,331	57.6
	350	6,356	183,662.3	358	2,916,542	1,398,344	47.9	1,518,198	52.1	42.4	592,898	57.6
	400	3,142	103,383.2	215	1,541,173	708,866	46.0	832,307	54.0	42.4	300,559	57.6
	450	2,673	66,181.6	105	1,176,602	518,416	44.1	658,186	55.9	42.4	219,808	57.6
	500	3,178	129,466.6		1,940,103	814,306	42.0	1,125,797	58.0	42.4	345,266	57.6
	550	1,999	56,883.3	683	1,049,451	418,034	39.8	631,417	60.2	42.4	177,246	57.6
	600	3,664	94,468.1		1,731,623	671,022	38.8	1,060,601	61.2	42.4	284,513	57.6
	650	1,511	41,535.3	780	758,356	280,695	37.0	477,661	63.0	42.4	119,015	57.6
	700	939	21,983.4		399,491	141,657	35.5	257,834	64.5	42.4	60,063	57.6
	750	1,645	34,684.0		779,995	272,006	34.9	507,989	65.1	42.4	115,331	57.6
	800	648	18,621.9		351,395	117,582	33.5	233,813	66.5	42.4	49,855	57.6
	850	858	27,401.4		516,860	171,868	33.3	344,992	66.7	42.4	72,872	57.6
	900	991	24,151.4	591	606,565	193,973	32.0	412,592	68.0	42.4	82,245	57.6
	950	310	8,933.3		181,660	57,279	31.5	124,381	68.5	42.4	24,286	57.6
	1000	203	6,239.0		130,375	38,665	29.7	91,710	70.3	42.4	16,394	57.6
	1050	520	10,289.5		324,843	92,744	28.6	232,099	71.4	42.4	39,323	57.6
	1100	311	5,490.1		135,141	37,904	28.0	97,237	72.0	42.4	16,071	57.6
	1150	242	8,017.4		171,180	46,489	27.2	124,691	72.8	42.4	19,711	57.6
	1200	59	1,311.6		27,405	7,392	27.0	20,013	73.0	42.4	3,134	57.6
	1250	263	7,064.2		159,672	41,532	26.0	118,140	74.0	42.4	17,610	57.6
	1300	61	1,595.5		45,186	10,712	23.7	34,474	76.3	42.4	4,542	57.6
	1350	55	1,404.8		32,698	9,141	28.0	23,557	72.0	42.4	3,876	57.6
	1400									42.4		57.6
	1450									42.4		57.6
	1500									42.4		57.6
	1550									42.4		57.6
	1600									42.4		57.6
	1650									42.4		57.6
	1700									42.4		57.6
	1750									42.4		57.6
	1800									42.4		57.6
TOTAL		56,347	1,670,937.4	3,570	24,917,830	11,459,244		13,458,586			4,858,719	

6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED		REVENUE AS SETTLED			REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
605,208	399,075	65.9	206,133	34.1	42.4	169,208	57.6	229,867	81.5	167,998	18.5	38,135
629,976	391,197	62.1	238,779	37.9	42.4	165,868	57.6	225,329	68.8	164,280	31.2	74,499
1,596,573	927,003	58.1	669,570	41.9	42.4	393,049	57.6	533,954	59.5	398,394	40.5	271,176
1,335,697	734,505	55.0	601,192	45.0	42.4	311,430	57.6	423,075	52.5	315,626	47.5	285,566
376 2,218,184	1,177,395	53.1	1,040,789	46.9	42.4	499,215	57.6	678,180	46.9	488,130	53.1	552,659
462 3,555,876	1,781,442	50.1	1,774,434	49.9	42.4	755,331	57.6	1,026,111	42.4	752,360	57.6	1,022,074
358 2,916,542	1,398,344	47.9	1,518,198	52.1	42.4	592,898	57.6	805,446	38.7	587,543	61.3	930,655
215 1,541,173	708,866	46.0	832,307	54.0	42.4	300,559	57.6	408,307	35.6	296,301	64.4	536,006
105 1,176,602	518,416	44.1	658,186	55.9	42.4	219,808	57.6	298,608	32.9	216,543	67.1	441,643
1,940,103	814,306	42.0	1,125,797	58.0	42.4	345,266	57.6	469,040	30.5	343,368	69.5	782,429
683 1,049,451	418,034	39.8	631,417	60.2	42.4	177,246	57.6	240,788	28.5	179,954	71.5	451,463
1,731,623	671,022	38.8	1,060,601	61.2	42.4	284,513	57.6	386,309	26.8	284,241	73.2	776,360
780 758,356	280,695	37.0	477,661	63.0	42.4	119,015	57.6	161,680	25.2	120,371	74.8	357,290
399,491	141,657	35.5	257,834	64.5	42.4	60,063	57.6	81,594	23.9	61,622	76.1	196,212
779,995	272,006	34.9	507,989	65.1	42.4	115,331	57.6	156,675	22.7	115,314	77.3	392,675
351,395	117,582	33.5	233,813	66.5	42.4	49,855	57.6	67,727	21.5	50,270	78.5	183,543
516,860	171,868	33.3	344,992	66.7	42.4	72,872	57.6	98,996	20.5	70,723	79.5	274,269
591 606,565	193,973	32.0	412,592	68.0	42.4	82,245	57.6	111,728	19.6	80,868	80.4	331,724
181,660	57,279	31.5	124,381	68.5	42.4	24,286	57.6	32,993	18.8	23,384	81.2	100,997
130,375	38,665	29.7	91,710	70.3	42.4	16,394	57.6	22,271	18.0	16,508	82.0	75,202
324,843	92,744	28.6	232,099	71.4	42.4	39,323	57.6	53,421	17.3	40,153	82.7	191,946
135,141	37,904	28.0	97,237	72.0	42.4	16,071	57.6	21,833	16.7	16,239	83.3	80,998
171,180	46,489	27.2	124,691	72.8	42.4	19,711	57.6	26,778	16.1	20,075	83.9	104,616
27,405	7,392	27.0	20,013	73.0	42.4	3,134	57.6	4,258	15.5	3,102	84.5	16,911
159,672	41,532	26.0	118,140	74.0	42.4	17,610	57.6	23,922	15.0	17,721	85.0	100,419
45,186	10,712	23.7	34,474	76.3	42.4	4,542	57.6	6,170	14.4	4,964	85.6	29,510
32,698	9,141	28.0	23,557	72.0	42.4	3,876	57.6	5,265	14.0	3,298	86.0	20,259
					42.4		57.6		13.6		86.4	
					42.4		57.6		13.2		86.8	
					42.4		57.6		12.8		87.2	
					42.4		57.6		12.4		87.6	
					42.4		57.6		12.1		87.9	
					42.4		57.6		11.8		88.2	
					42.4		57.6		11.4		88.6	
					42.4		57.6		11.2		88.8	
					42.4		57.6		10.9		89.1	
3,570 24,917,830	11,459,244		13,458,586			4,858,719		6,600,525		4,839,350		3,619,236

Ex. No. 2 to V.S.

TABULATION M

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED TOTAL			A REVENUE AS SETTLED SOUTH		NORTH		REVENUE COL. 7 SOUTH TERMINAL		LINE HA
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
350	50	3,559	125,054.8	460	1,113,892	757,188	68.0	356,704	32.0	38.7	293,032	61.3
	100	2,152	56,144.2		650,361	416,244	64.0	234,117	36.0	38.7	161,086	61.3
	150	4,620	148,115.5		1,678,373	1,025,684	61.1	652,689	38.9	38.7	396,940	61.3
	200	3,000	107,744.7	1,131	1,144,890	663,868	58.0	481,022	42.0	38.7	256,917	61.3
	250	4,532	148,292.6	1,379	2,361,804	1,299,884	55.0	1,061,920	45.0	38.7	503,055	61.3
	300	8,676	265,949.2		4,285,361	2,228,214	52.0	2,057,447	48.0	38.7	862,319	61.3
	350	6,348	188,396.6	125	2,908,582	1,450,810	49.9	1,457,772	50.1	38.7	561,463	61.3
	400	6,185	180,882.6		2,999,935	1,447,260	48.2	1,552,675	51.8	38.7	560,090	61.3
	450	3,630	102,176.7		1,946,433	895,942	46.0	1,050,491	54.0	38.7	346,730	61.3
	500	2,684	60,338.7		1,251,987	552,843	44.2	699,144	55.8	38.7	213,950	61.3
	550	3,986	96,653.4	952	2,050,648	866,402	42.3	1,184,246	57.7	38.7	335,298	61.3
	600	2,827	70,544.5		1,486,072	609,396	41.0	876,676	59.0	38.7	235,836	61.3
	650	2,379	67,841.2		1,465,453	571,931	39.0	893,522	61.0	38.7	221,337	61.3
	700	1,152	28,717.5		599,781	227,867	38.0	371,914	62.0	38.7	88,185	61.3
	750	2,197	67,402.1		1,449,672	536,303	37.0	913,369	63.0	38.7	207,549	61.3
	800	751	22,155.3		557,867	201,344	36.1	356,523	63.9	38.7	77,920	61.3
	850	397	6,575.5		212,874	74,487	35.0	138,387	65.0	38.7	28,826	61.3
	900	1,363	30,579.9	70	704,543	239,596	34.0	464,947	66.0	38.7	92,724	61.3
	950	317	7,992.1		201,594	66,528	33.0	135,066	67.0	38.7	25,746	61.3
	1000	1,064	22,014.3		573,517	183,523	32.0	389,994	68.0	38.7	71,023	61.3
	1050	4,271	50,699.1		1,798,160	559,237	31.1	1,238,923	68.9	38.7	216,425	61.3
	1100	1,340	38,504.0	584	938,359	277,434	29.6	660,925	70.4	38.7	107,367	61.3
	1150	449	3,375.8		233,299	67,668	29.0	165,631	71.0	38.7	26,188	61.3
	1200	228	4,554.8		165,601	47,868	28.9	117,733	71.1	38.7	18,525	61.3
	1250	354	9,221.0		214,435	60,314	28.1	154,121	71.9	38.7	23,342	61.3
	1300	84	2,121.0		50,673	13,692	27.0	36,981	73.0	38.7	5,299	61.3
	1350	186	6,129.1		139,140	37,531	27.0	101,609	73.0	38.7	14,524	61.3
	1400	21	525.0		20,055	5,208	26.0	14,847	74.0	38.7	2,015	61.3
	1450	118	3,024.6		77,169	19,287	25.0	57,882	75.0	38.7	7,464	61.3
	1500	62	1,287.9		36,805	9,475	25.7	27,330	74.3	38.7	3,667	61.3
	1550	21	114.5		7,971	1,908	23.9	6,063	76.1	38.7	738	61.3
	1600	21	231.0	1,197	19,278	4,620	24.0	14,658	76.0	38.7	1,788	61.3
	1650									38.7		61.3
	1700									38.7		61.3
	1750									38.7		61.3
	1800									38.7		61.3
TOTAL		68,974	1,923,359.2	5,898	33,344,584	15,419,556		17,925,028			5,967,368	9

5	6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
						TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S.	T O T A L REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
460	1,113,892	757,188	68.0	356,704	32.0	38.7	293,032	61.3	464,156	81.5	290,714	18.5	65,990
	650,361	416,244	64.0	234,117	36.0	38.7	161,086	61.3	255,158	68.8	161,072	31.2	73,045
	1,678,373	1,025,684	61.1	652,689	38.9	38.7	396,940	61.3	628,744	59.5	388,350	40.5	264,339
1,131	1,144,890	663,868	58.0	481,022	42.0	38.7	256,917	61.3	406,951	52.5	252,537	47.5	228,485
1,379	2,361,804	1,299,884	55.0	1,061,920	45.0	38.7	503,055	61.3	796,829	46.9	498,040	53.1	563,880
	4,285,361	2,228,214	52.0	2,057,147	48.0	38.7	862,319	61.3	1,365,895	42.4	872,230	57.6	1,184,917
125	2,908,582	1,450,810	49.9	1,457,772	50.1	38.7	561,463	61.3	889,347	38.7	564,158	61.3	893,614
	2,999,935	1,447,260	48.2	1,552,675	51.8	38.7	560,090	61.3	887,170	35.6	552,752	64.4	999,923
	1,946,433	895,942	46.0	1,050,491	54.0	38.7	346,730	61.3	549,212	32.9	345,612	67.1	704,879
	1,251,987	552,843	44.2	699,144	55.8	38.7	213,950	61.3	338,893	30.5	213,239	69.5	485,905
952	2,050,648	866,402	42.3	1,184,246	57.7	38.7	335,298	61.3	531,104	28.5	337,510	71.5	846,736
	1,486,072	609,396	41.0	876,676	59.0	38.7	235,836	61.3	373,560	26.8	234,949	73.2	641,727
	1,465,453	571,931	39.0	893,522	61.0	38.7	221,337	61.3	350,594	25.2	225,168	74.8	668,354
	599,781	227,867	38.0	371,914	62.0	38.7	88,185	61.3	139,682	23.9	88,887	76.1	283,027
	1,449,672	536,303	37.0	913,369	63.0	38.7	207,549	61.3	328,754	22.7	207,335	77.3	706,034
	557,867	201,344	36.1	356,523	63.9	38.7	77,920	61.3	123,424	21.5	76,652	78.5	279,871
	212,874	74,487	35.0	138,387	65.0	38.7	28,826	61.3	45,661	20.5	28,369	79.5	110,018
70	704,543	239,596	34.0	464,947	66.0	38.7	92,724	61.3	146,872	19.6	91,130	80.4	373,817
	201,594	66,528	33.0	135,066	67.0	38.7	25,746	61.3	40,782	18.8	25,392	81.2	109,674
	573,517	183,523	32.0	389,994	68.0	38.7	71,023	61.3	112,500	18.0	70,199	82.0	319,795
	1,798,160	559,237	31.1	1,238,923	68.9	38.7	216,425	61.3	342,812	17.3	214,334	82.7	1,024,589
	938,359	277,434	29.6	660,925	70.4	38.7	107,367	61.3	170,067	16.7	110,374	83.3	550,551
584	233,299	67,668	29.0	165,631	71.0	38.7	26,188	61.3	41,480	16.1	26,667	83.9	138,964
	165,601	47,868	28.9	117,733	71.1	38.7	18,525	61.3	29,343	15.5	18,249	84.5	99,484
	214,435	60,314	28.1	154,121	71.9	38.7	23,342	61.3	36,972	15.0	23,118	85.0	131,003
	50,673	13,692	27.0	36,981	73.0	38.7	5,299	61.3	8,393	14.4	5,325	85.6	31,656
	139,140	37,531	27.0	101,609	73.0	38.7	14,524	61.3	23,007	14.0	14,225	86.0	87,384
	20,055	5,208	26.0	14,847	74.0	38.7	2,015	61.3	3,193	13.6	2,019	86.4	12,828
	77,169	19,287	25.0	57,882	75.0	38.7	7,464	61.3	11,823	13.2	7,640	86.8	50,242
	36,805	9,475	25.7	27,330	74.3	38.7	3,667	61.3	5,808	12.8	3,498	87.2	23,832
	7,971	1,908	23.9	6,063	76.1	38.7	738	61.3	1,170	12.4	752	87.6	5,311
1,197	19,278	4,620	24.0	14,658	76.0	38.7	1,788	61.3	2,832	12.1	1,774	87.9	12,884
						38.7		61.3		11.8		88.2	
						38.7		61.3		11.4		88.6	
						38.7		61.3		11.2		88.8	
						38.7		61.3		10.9		89.1	
5,898	33,344,584	15,419,556		17,925,028			5,967,368		9,452,188		5,952,270		11,972,758

TABULATION M

Ex. No. 2 to V.S.

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7	SOUTH	
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
400	50	1,687	62,053.0		557,734	390,825	70.1	166,909	29.9	35.6	139,134	64.4
	100	1,542	47,756.8		503,495	332,055	66.0	171,440	34.0	35.6	118,212	64.4
	150	5,225	159,796.0		1,890,599	1,191,108	63.0	699,491	37.0	35.6	424,034	64.4
	200	3,976	139,158.1	1,435	1,707,570	1,024,377	60.0	683,193	40.0	35.6	364,678	64.4
	250	4,916	166,233.4		2,090,218	1,190,715	57.0	899,503	43.0	35.6	423,695	64.4
	300	8,415	248,999.0		4,131,619	2,224,709	53.8	1,906,910	46.2	35.6	791,996	64.4 1
	350	7,025	196,010.1	540	3,494,082	1,822,092	52.1	1,671,990	47.9	35.6	648,665	64.4 1
	400	4,451	133,909.0		2,211,249	1,110,825	50.2	1,100,424	49.8	35.6	395,454	64.4
	450	4,565	131,017.8	247	2,354,609	1,130,752	48.0	1,223,857	52.0	35.6	402,548	64.4
	500	4,148	89,913.5	303	1,760,389	809,409	46.0	950,980	54.0	35.6	288,150	64.4
	550	3,665	94,302.3	378	1,873,263	830,080	44.3	1,043,183	55.7	35.6	295,508	64.4
	600	4,183	116,196.0		2,218,853	954,733	43.0	1,264,120	57.0	35.6	339,885	64.4
	650	2,179	51,018.1		1,217,541	510,743	41.9	706,798	58.1	35.6	181,825	64.4
	700	2,409	70,418.8		1,576,685	630,989	40.0	945,696	60.0	35.6	224,632	64.4
	750	1,679	45,840.3		1,068,372	417,400	39.1	650,972	60.9	35.6	148,594	64.4
	800	526	11,433.4		309,873	117,695	38.0	192,178	62.0	35.6	41,899	64.4
	850	2,229	38,925.6		1,369,220	510,205	37.3	859,015	62.7	35.6	181,633	64.4
	900	808	28,343.5		650,081	233,617	35.9	416,464	64.1	35.6	83,168	64.4
	950	746	18,914.2		488,158	170,966	35.0	317,192	65.0	35.6	60,864	64.4
	1000	1,011	15,622.2		503,685	171,438	34.0	332,247	66.0	35.6	61,032	64.4
	1050	965	8,915.7		434,931	143,515	33.0	291,416	67.0	35.6	51,091	64.4
	1100	301	5,737.3		181,301	58,561	32.3	122,740	67.7	35.6	20,848	64.4
	1150	101	1,183.3		52,158	16,175	31.0	35,983	69.0	35.6	5,758	64.4
	1200	101	2,476.4		71,828	22,047	30.7	49,781	69.3	35.6	7,849	64.4
	1250	49	1,238.9		44,070	13,238	30.0	30,832	70.0	35.6	4,713	64.4
	1300	21	384.8		8,923	2,662	29.8	6,261	70.2	35.6	948	64.4
	1350	21	525.0		12,243	3,549	29.0	8,694	71.0	35.6	1,263	64.4
	1400	22	397.8		11,779	3,293	28.0	8,486	72.0	35.6	1,172	64.4
	1450									35.6		64.4
	1500	21	384.8		10,629	3,411	32.1	7,218	67.9	35.6	1,214	64.4
	1550									35.6		64.4
	1600									35.6		64.4
	1650									35.6		64.4
	1700									35.6		64.4
	1750									35.6		64.4
	1800									35.6		64.4
TOTAL		66,987	1,887,105.1	2,903	32,805,157	16,041,184		16,763,973			5,710,662	10

6	7	8	9	10	11	12	13	14	15	16	17	18
E AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
557,734	390,825	70.1	166,909	29.9	35.6	139,134	64.4	251,691	81.5	136,031	18.5	30,878
503,495	332,055	66.0	171,440	34.0	35.6	118,212	64.4	213,843	68.8	117,951	31.2	53,489
1,890,599	1,191,108	63.0	699,491	37.0	35.6	424,034	64.4	767,074	59.5	416,197	40.5	283,294
,435 1,707,570	1,024,377	60.0	683,193	40.0	35.6	364,678	64.4	659,699	52.5	358,676	47.5	324,517
2,090,218	1,190,715	57.0	899,503	43.0	35.6	423,895	64.4	766,820	46.9	421,867	53.1	477,636
4,131,619	2,224,709	53.8	1,906,910	46.2	35.6	791,996	64.4	1,432,713	42.4	808,530	57.6	1,098,380
540 3,494,082	1,822,092	52.1	1,671,990	47.9	35.6	648,665	64.4	1,173,427	38.7	647,060	61.3	1,024,930
2,211,249	1,110,825	50.2	1,100,424	49.8	35.6	395,454	64.4	715,371	35.6	391,751	64.4	708,673
,247 2,354,609	1,130,752	48.0	1,223,857	52.0	35.6	402,548	64.4	728,204	32.9	402,649	67.1	821,208
303 1,760,389	809,409	46.0	950,980	54.0	35.6	288,150	64.4	521,259	30.5	290,049	69.5	660,931
378 1,873,263	830,080	44.3	1,043,183	55.7	35.6	295,508	64.4	534,572	28.5	297,307	71.5	745,876
2,218,853	954,733	43.0	1,264,120	57.0	35.6	339,885	64.4	614,848	26.8	338,784	73.2	925,336
1,217,541	510,743	41.9	706,798	58.1	35.6	181,825	64.4	328,918	25.2	178,113	74.8	528,685
1,576,685	630,989	40.0	945,696	60.0	35.6	224,632	64.4	406,357	23.9	226,021	76.1	719,675
1,068,372	417,400	39.1	650,972	60.9	35.6	148,594	64.4	268,806	22.7	147,771	77.3	503,201
309,873	117,695	38.0	192,178	62.0	35.6	41,899	64.4	75,796	21.5	41,318	78.5	150,860
1,369,220	510,205	37.3	859,015	62.7	35.6	181,633	64.4	328,572	20.5	176,098	79.5	682,917
650,081	233,617	35.9	416,464	64.1	35.6	83,168	64.4	150,449	19.6	81,627	80.4	334,837
488,158	170,966	35.0	317,192	65.0	35.6	60,864	64.4	110,102	18.8	59,632	81.2	257,560
503,685	171,438	34.0	332,247	66.0	35.6	61,032	64.4	110,406	18.0	59,804	82.0	272,443
434,931	143,515	33.0	291,416	67.0	35.6	51,091	64.4	92,424	17.3	50,415	82.7	241,001
181,301	58,561	32.3	122,740	67.7	35.6	20,848	64.4	37,713	16.7	20,498	83.3	102,242
52,158	16,175	31.0	35,983	69.0	35.6	5,758	64.4	10,417	16.1	5,793	83.9	30,190
71,828	22,047	30.7	49,781	69.3	35.6	7,849	64.4	14,198	15.5	7,716	84.5	42,065
44,070	13,238	30.0	30,832	70.0	35.6	4,713	64.4	8,525	15.0	4,625	85.0	26,207
8,923	2,662	29.8	6,261	70.2	35.6	948	64.4	1,714	14.4	902	85.6	5,359
12,243	3,549	29.0	8,694	71.0	35.6	1,263	64.4	2,286	14.0	1,217	86.0	7,477
11,779	3,293	28.0	8,486	72.0	35.6	1,172	64.4	2,121	13.6	1,154	86.4	7,332
					35.6		64.4		13.2		86.8	
10,629	3,411	32.1	7,218	67.9	35.6	1,214	64.4	2,197	12.8	924	87.2	6,294
					35.6		64.4		12.4		87.6	
					35.6		64.4		12.1		87.9	
					35.6		64.4		11.8		88.2	
					35.6		64.4		11.4		88.6	
					35.6		64.4		11.2		88.8	
					35.6		64.4		10.9		89.1	
,903 32,805,157	16,041,184		16,763,973			5,710,662		10,330,522		5,690,480		11,073,493

TABULATION M

SOUTHBOUND AND NORTHBOUND

Ex. No. 2 to V

1	2	3	4	5	6	7	8	9	10	11	12	13
MILES SOUTH	MILES NORTH	CARS	TONS	REVENUE AS SETTLED TOTAL ARBITRARIES.	REVENUE AS SETTLED TOTAL REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	REVENUE AS SETTLED NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	REVENUE COL. 7 SOUTH TERMINAL AMOUNT	REVENUE COL. 7 SOUTH LI %
450	50	4,306	185,334.6		1,979,495	1,405,258	71.0	574,237	29.0	32.9	462,330	67.1
	100	1,785	59,713.7		633,381	430,872	68.0	202,509	32.0	32.9	141,757	67.1
	150	4,713	160,554.0		1,807,767	1,157,616	64.0	650,151	36.0	32.9	380,856	67.1
	200	3,800	121,432.8	2,972	1,617,723	987,564	61.0	630,159	39.0	32.9	324,909	67.1
	250	4,730	140,422.3		2,121,094	1,254,703	59.2	866,391	40.8	32.9	412,797	67.1
	300	7,862	222,868.8		3,671,198	2,059,339	56.1	1,611,859	43.9	32.9	677,523	67.1
	350	3,704	105,187.8	95	1,807,897	976,975	54.0	830,922	46.0	32.9	321,425	67.1
	400	3,603	109,063.6	71	1,946,132	1,012,537	52.0	933,595	48.0	32.9	333,125	67.1
	450	2,515	84,714.1	180	1,490,970	746,499	50.1	744,471	49.9	32.9	245,598	67.1
	500	1,716	43,123.5	196	853,334	412,734	48.4	440,600	51.6	32.9	135,789	67.1
	550	2,358	58,575.4	265	1,239,543	570,474	46.0	669,069	54.0	32.9	187,686	67.1
	600	1,199	27,929.5		590,783	265,569	45.0	325,214	55.0	32.9	87,372	67.1
	650	1,031	25,899.1		525,451	226,026	43.0	299,425	57.0	32.9	74,363	67.1
	700	778	28,247.7		549,358	231,134	42.1	318,224	57.9	32.9	76,043	67.1
	750	1,738	35,757.4		896,793	368,687	41.1	528,106	58.9	32.9	121,298	67.1
	800	332	8,370.9		200,068	79,752	39.9	120,316	60.1	32.9	26,238	67.1
	850	454	11,196.9		209,833	79,683	38.0	130,150	62.0	32.9	26,216	67.1
	900	552	18,343.8		385,759	142,584	37.0	243,175	63.0	32.9	46,910	67.1
	950	256	5,836.4		141,218	51,150	36.2	90,068	63.8	32.9	16,828	67.1
	1000	173	3,666.7		99,443	34,803	35.0	64,640	65.0	32.9	11,450	67.1
	1050	318	7,375.0		169,457	57,643	34.0	111,814	66.0	32.9	18,965	67.1
	1100	192	3,926.3		103,973	35,259	33.9	68,714	66.1	32.9	11,600	67.1
	1150	73	1,608.1		44,684	14,755	33.0	29,929	67.0	32.9	4,854	67.1
	1200	38	1,326.2		31,041	8,838	28.5	22,203	71.5	32.9	2,908	67.1
	1250	174	4,137.3		108,781	33,416	30.7	75,365	69.3	32.9	10,994	67.1
	1300	65	1,886.5		51,188	13,353	26.1	37,835	73.9	32.9	4,393	67.1
	1350									32.9		67.1
	1400									32.9		67.1
	1450	27	1,076.0		27,761	8,043	29.0	19,718	71.0	32.9	2,646	67.1
	1500									32.9		67.1
	1550									32.9		67.1
	1600									32.9		67.1
	1650									32.9		67.1
	1700									32.9		67.1
	1750									32.9		67.1
	1800									32.9		67.1
TOTAL		48,492	1,477,574.4	3,779	23,304,125	12,665,266		10,638,859			4,166,873	

6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	1,979,495	1,405,258	71.0	574,237	29.0	32.9	462,330	67.1	942,928	81.5	468,003	18.5	106,234
	633,381	430,872	68.0	202,509	32.0	32.9	141,757	67.1	289,115	68.8	139,326	31.2	63,183
	1,807,767	1,157,616	64.0	650,151	36.0	32.9	380,856	67.1	776,760	59.5	386,840	40.5	263,311
2,972	1,617,723	987,564	61.0	630,159	39.0	32.9	324,909	67.1	662,655	52.5	330,833	47.5	299,326
	2,121,094	1,254,703	59.2	866,391	40.8	32.9	412,797	67.1	841,906	46.9	406,387	53.1	460,054
	3,671,198	2,059,339	56.1	1,611,859	43.9	32.9	677,523	67.1	1,381,816	42.4	683,428	57.6	928,431
95	1,807,897	976,975	54.0	830,922	46.0	32.9	321,425	67.1	655,550	38.7	321,567	61.3	509,355
71	1,946,132	1,012,537	52.0	933,595	48.0	32.9	333,125	67.1	679,412	35.6	332,360	64.4	601,235
180	1,490,970	746,499	50.1	744,471	49.9	32.9	245,598	67.1	500,901	32.9	244,931	67.1	499,540
196	853,334	412,734	48.4	440,600	51.6	32.9	135,789	67.1	276,945	30.5	134,383	69.5	306,217
265	1,239,543	570,474	46.0	669,069	54.0	32.9	187,686	67.1	382,788	28.5	190,685	71.5	478,384
	590,783	265,569	45.0	325,214	55.0	32.9	87,372	67.1	178,197	26.8	87,157	73.2	238,057
	525,451	226,026	43.0	299,425	57.0	32.9	74,363	67.1	151,663	25.2	75,455	74.8	223,970
	549,358	231,134	42.1	318,224	57.9	32.9	76,043	67.1	155,091	23.9	76,056	76.1	242,168
	896,793	368,687	41.1	528,106	58.9	32.9	121,298	67.1	247,389	22.7	119,880	77.3	408,226
	200,068	79,752	39.9	120,316	60.1	32.9	26,238	67.1	53,514	21.5	25,868	78.5	94,448
	209,833	79,683	38.0	130,150	62.0	32.9	26,216	67.1	53,467	20.5	26,681	79.5	103,469
	385,759	142,584	37.0	243,175	63.0	32.9	46,910	67.1	95,674	19.6	47,662	80.4	195,513
	141,218	51,150	36.2	90,068	63.8	32.9	16,828	67.1	34,322	18.8	16,933	81.2	73,135
	99,443	34,803	35.0	64,640	65.0	32.9	11,450	67.1	23,353	18.0	11,635	82.0	53,005
	169,457	57,643	34.0	111,814	66.0	32.9	18,965	67.1	38,678	17.3	19,344	82.7	92,470
	103,973	35,259	33.9	68,714	66.1	32.9	11,600	67.1	23,659	16.7	11,475	83.3	57,239
	44,684	14,755	33.0	29,929	67.0	32.9	4,854	67.1	9,901	16.1	4,819	83.9	25,110
	31,041	8,838	28.5	22,203	71.5	32.9	2,908	67.1	5,930	15.5	3,441	84.5	18,762
	108,781	33,416	30.7	75,365	69.3	32.9	10,994	67.1	22,422	15.0	11,305	85.0	64,060
	51,188	13,353	26.1	37,835	73.9	32.9	4,393	67.1	8,960	14.4	5,448	85.6	32,387
						32.9		67.1		14.0		86.0	
						32.9		67.1		13.6		86.4	
	27,761	8,043	29.0	19,718	71.0	32.9	2,646	67.1	5,397	13.2	2,603	86.8	17,115
						32.9		67.1		12.8		87.2	
						32.9		67.1		12.4		87.6	
						32.9		67.1		12.1		87.9	
						32.9		67.1		11.8		88.2	
						32.9		67.1		11.4		88.6	
						32.9		67.1		11.2		88.8	
						32.9		67.1		10.9		89.1	
3,779	23,304,125	12,665,266		10,638,859			4,166,873		8,498,393		4,184,455		6,454,404

TABULATION M

SOUTHBOUND AND NORTHBOUND

Ex. No. 2 to V

1	2	3	4	5	6	7	8	9	10	11	12	13
MILES SOUTH	MILES NORTH	CARS	TONS	REVENUE AS SETTLED TOTAL ARBITS.	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	AMOUNT	LI %
500	50	4,186	91,426.7		1,558,017	1,136,322	72.9	421,695	27.1	30.5	346,578	69.5
	100	1,823	40,545.3		725,282	500,478	69.0	224,804	31.0	30.5	152,646	69.5
	150	6,494	160,443.7		2,854,688	1,879,828	65.9	974,860	34.1	30.5	573,348	69.5
	200	6,591	183,150.1		3,183,546	2,003,072	62.9	1,180,474	37.1	30.5	610,937	69.5
	250	13,062	326,869.2		7,064,478	4,307,449	61.0	2,757,029	39.0	30.5	1,313,772	69.5
	300	25,562	540,824.1	21,084	14,392,991	8,348,522	58.0	6,044,469	42.0	30.5	2,546,299	69.5
	350	13,893	319,831.6	19,788	8,035,941	4,517,605	56.2	3,518,336	43.8	30.5	1,377,870	69.5
	400	5,796	157,980.1	250	2,925,198	1,576,860	53.9	1,348,338	46.1	30.5	480,942	69.5
	450	6,334	190,038.2	211	3,958,033	2,061,519	52.1	1,896,514	47.9	30.5	628,763	69.5
	500	2,360	59,202.4		1,175,299	588,223	50.0	587,076	50.0	30.5	179,408	69.5
	550	3,295	75,088.7		1,756,301	842,194	48.0	914,107	52.0	30.5	256,869	69.5
	600	4,592	133,717.7	866	2,673,482	1,255,675	47.0	1,417,807	53.0	30.5	382,981	69.5
	650	1,985	46,846.4		1,036,586	468,876	45.2	567,710	54.8	30.5	143,007	69.5
	700	943	29,046.9	156	711,361	314,388	44.2	396,973	55.8	30.5	95,888	69.5
	750	1,003	19,455.2		522,258	223,260	42.7	298,998	57.3	30.5	68,094	69.5
	800	729	29,137.3		550,112	229,801	41.8	320,311	58.2	30.5	70,089	69.5
	850	762	22,745.5		480,159	192,182	40.0	287,977	60.0	30.5	58,616	69.5
	900	518	12,092.8		301,660	117,960	39.1	183,700	60.9	30.5	35,978	69.5
	950	138	2,095.9		75,353	28,626	38.0	46,727	62.0	30.5	8,731	69.5
	1000	307	5,340.6	458	138,589	51,448	37.1	87,141	62.9	30.5	15,692	69.5
	1050	415	16,037.2		371,118	134,250	36.2	236,868	63.8	30.5	40,946	69.5
	1100	246	6,587.6		163,896	57,871	35.3	106,025	64.7	30.5	17,651	69.5
	1150	20	395.9		8,683	3,038	35.0	5,645	65.0	30.5	927	69.5
	1200	60	2,551.7		56,358	19,167	34.0	37,191	66.0	30.5	5,846	69.5
	1250	20	519.4		12,367	4,096	33.1	8,271	66.9	30.5	1,249	69.5
	1300	42	1,106.6		27,476	8,798	32.0	18,678	68.0	30.5	2,683	69.5
	1350	140	7,259.2		174,240	56,480	32.4	117,760	67.6	30.5	17,226	69.5
	1400	40	1,673.1		38,471	14,236	37.0	24,235	63.0	30.5	4,342	69.5
	1450									30.5		69.5
	1500									30.5		69.5
	1550	24	446.4		11,592	3,360	29.0	8,232	71.0	30.5	1,025	69.5
	1600									30.5		69.5
	1650									30.5		69.5
	1700									30.5		69.5
	1750									30.5		69.5
	1800									30.5		69.5
TOTAL		101,380	2,482,515.5	42,813	54,983,535	30,945,584		24,037,951			9,438,403	

6	7	8	9	10	11	12	13	14	15	16	17	18
E AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
1,558,017	1,136,322	72.9	421,695	27.1	30.5	346,578	69.5	789,744	81.5	343,681	18.5	78,014
725,282	500,478	69.0	224,804	31.0	30.5	152,646	69.5	347,832	68.8	154,665	31.2	70,139
2,854,688	1,879,828	65.9	974,860	34.1	30.5	573,348	69.5	1,306,480	59.5	580,042	40.5	394,818
3,183,546	2,003,072	62.9	1,180,474	37.1	30.5	610,937	69.5	1,392,135	52.5	619,749	47.5	560,725
7,064,478	4,307,449	61.0	2,757,029	39.0	30.5	1,313,772	69.5	2,993,677	46.9	1,293,047	53.1	1,463,982
084 14,392,991	8,348,522	58.0	6,044,469	42.0	30.5	2,546,299	69.5	5,802,223	42.4	2,562,855	57.6	3,481,614
788 8,035,941	4,517,605	56.2	3,518,336	43.8	30.5	1,377,870	69.5	3,139,735	38.7	1,361,596	61.3	2,156,740
250 2,925,198	1,576,860	53.9	1,348,338	46.1	30.5	480,942	69.5	1,095,918	35.6	480,008	64.4	868,330
211 3,958,033	2,061,519	52.1	1,896,514	47.9	30.5	628,763	69.5	1,432,756	32.9	623,953	67.1	1,272,561
1,175,299	588,223	50.0	587,076	50.0	30.5	179,408	69.5	408,815	30.5	179,058	69.5	408,018
1,756,301	842,194	48.0	914,107	52.0	30.5	256,869	69.5	585,325	28.5	260,520	71.5	653,587
866 2,673,482	1,255,675	47.0	1,417,807	53.0	30.5	382,981	69.5	872,694	26.8	379,972	73.2	1,037,835
1,036,586	468,876	45.2	567,710	54.8	30.5	143,007	69.5	325,869	25.2	143,063	74.8	424,647
156 711,361	314,388	44.2	396,973	55.8	30.5	95,888	69.5	218,500	23.9	94,877	76.1	302,096
522,258	223,260	42.7	298,998	57.3	30.5	68,094	69.5	155,166	22.7	67,873	77.3	231,125
550,112	229,801	41.8	320,311	58.2	30.5	70,089	69.5	159,712	21.5	68,867	78.5	251,444
480,159	192,182	40.0	287,977	60.0	30.5	58,616	69.5	133,566	20.5	59,035	79.5	228,942
301,660	117,960	39.1	183,700	60.9	30.5	35,978	69.5	81,982	19.6	36,005	80.4	147,695
75,353	28,626	38.0	46,727	62.0	30.5	8,731	69.5	19,895	18.8	8,785	81.2	37,942
458 138,589	51,448	37.1	87,141	62.9	30.5	15,692	69.5	35,756	18.0	15,685	82.0	71,456
371,118	134,250	36.2	236,868	63.8	30.5	40,946	69.5	93,304	17.3	40,978	82.7	195,890
163,896	57,871	35.3	106,025	64.7	30.5	17,651	69.5	40,220	16.7	17,706	83.3	88,319
8,683	3,038	35.0	5,645	65.0	30.5	927	69.5	2,111	16.1	909	83.9	4,736
56,358	19,167	34.0	37,191	66.0	30.5	5,846	69.5	13,321	15.5	5,765	84.5	31,426
12,367	4,096	33.1	8,271	66.9	30.5	1,249	69.5	2,847	15.0	1,241	85.0	7,030
27,476	8,798	32.0	18,678	68.0	30.5	2,683	69.5	6,115	14.4	2,690	85.6	15,988
174,240	56,480	32.4	117,760	67.6	30.5	17,226	69.5	39,254	14.0	16,486	86.0	101,274
38,471	14,236	37.0	24,235	63.0	30.5	4,342	69.5	9,894	13.6	3,296	86.4	20,939
					30.5		69.5		13.2		86.8	
					30.5		69.5		12.8		87.2	
11,592	3,360	29.0	8,232	71.0	30.5	1,025	69.5	2,335	12.4	1,021	87.6	7,211
					30.5		69.5		12.1		87.9	
					30.5		69.5		11.8		88.2	
					30.5		69.5		11.4		88.6	
					30.5		69.5		11.2		88.8	
					30.5		69.5		10.9		89.1	
813 54,983,535	30,945,584		24,037,951			9,438,403		21,507,181		9,423,428		14,614,523

TABULATION M

Ex. No. 2 to V.S

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7	SOUTH	
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
550	50	1,152	29,673.5		344,764	254,688	73.9	90,076	26.1	28.5	72,586	71.5
	100	1,760	71,371.7		810,584	574,436	70.9	236,148	29.1	28.5	163,714	71.5
	150	3,909	137,082.9		1,806,989	1,227,972	68.0	579,017	32.0	28.5	349,972	71.5
	200	2,305	71,579.8		1,075,014	695,701	64.7	379,313	35.3	28.5	198,275	71.5
	250	4,325	117,598.4		2,030,422	1,259,094	62.0	771,328	38.0	28.5	358,842	71.5
	300	8,122	182,268.1		3,604,200	2,162,689	60.0	1,441,511	40.0	28.5	616,366	71.5
	350	6,651	139,003.9	1,300	2,878,487	1,669,568	58.0	1,208,919	42.0	28.5	475,827	71.5
	400	5,508	158,505.8		2,922,797	1,628,529	55.7	1,294,268	44.3	28.5	464,131	71.5
	450	3,716	102,087.7	76	2,116,778	1,147,087	54.2	969,691	45.8	28.5	326,920	71.5
	500	4,478	124,436.1		2,420,060	1,256,658	51.9	1,163,402	48.1	28.5	358,148	71.5
	550	4,723	125,164.6	191	2,625,636	1,312,353	50.0	1,313,283	50.0	28.5	374,021	71.5
	600	2,642	79,432.6		1,643,577	789,971	48.1	853,606	51.9	28.5	225,142	71.5
	650	1,942	57,333.3		1,240,797	575,045	46.3	665,752	53.7	28.5	163,888	71.5
	700	801	26,398.8		467,594	215,007	46.0	252,587	54.0	28.5	61,277	71.5
	750	1,538	46,391.5		1,011,171	446,051	44.1	565,120	55.9	28.5	127,125	71.5
	800	509	16,013.1		324,946	139,712	43.0	185,234	57.0	28.5	39,818	71.5
	850	408	11,973.1		264,929	111,263	42.0	153,666	58.0	28.5	31,710	71.5
	900	557	13,439.8		356,606	146,172	41.0	210,434	59.0	28.5	41,659	71.5
	950	227	6,757.6		156,420	63,769	40.8	92,651	59.2	28.5	18,174	71.5
	1000	777	23,155.2		561,772	219,072	39.0	342,700	61.0	28.5	62,436	71.5
	1050	298	7,988.3		246,927	90,633	36.7	156,294	63.3	28.5	25,830	71.5
	1100	1,271	34,296.4		807,098	300,830	37.3	506,268	62.7	28.5	85,737	71.5
	1150	150	3,339.7		87,697	29,490	33.6	58,207	66.4	28.5	8,405	71.5
	1200	537	17,356.2		454,957	158,048	34.7	296,909	65.3	28.5	45,044	71.5
	1250	164	4,275.4		124,933	43,456	34.8	81,477	65.2	28.5	12,385	71.5
	1300	62	1,161.0		44,130	15,005	34.0	29,125	66.0	28.5	4,276	71.5
	1350									28.5		71.5
	1400	61	1,055.4		34,310	11,408	33.2	22,902	66.8	28.5	3,251	71.5
	1450									28.5		71.5
	1500									28.5		71.5
	1550									28.5		71.5
	1600	74	2,275.5		69,875	20,961	30.0	48,914	70.0	28.5	5,974	71.5
	1650									28.5		71.5
	1700									28.5		71.5
	1750									28.5		71.5
	1800									28.5		71.5
TOTAL		58,667	1,611,415.4	1,567	30,533,470	16,564,668		13,968,802			4,720,933	

6	7	8	9	10	11	12	13	14	15	16	17	18
AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
344,764	254,688	73.9	90,076	26.1	28.5	72,586	71.5	182,102	81.5	73,412	18.5	16,664
810,584	574,436	70.9	236,148	29.1	28.5	163,714	71.5	410,722	68.8	162,470	31.2	73,678
1,806,989	1,227,972	68.0	579,017	32.0	28.5	349,972	71.5	878,000	59.5	344,515	40.5	234,502
1,075,014	695,701	64.7	379,313	35.3	28.5	198,275	71.5	497,426	52.5	199,139	47.5	180,174
2,030,422	1,259,094	62.0	771,328	38.0	28.5	358,842	71.5	900,252	46.9	361,753	53.1	409,575
3,604,200	2,162,689	60.0	1,441,511	40.0	28.5	616,366	71.5	1,546,323	42.4	611,201	57.6	830,310
300 2,878,487	1,669,568	58.0	1,208,919	42.0	28.5	475,827	71.5	1,193,741	38.7	467,852	61.3	741,067
2,922,797	1,628,529	55.7	1,294,268	44.3	28.5	464,131	71.5	1,164,398	35.6	460,759	64.4	833,509
76 2,116,778	1,147,087	54.2	969,691	45.8	28.5	326,920	71.5	820,167	32.9	319,028	67.1	650,663
2,420,060	1,256,658	51.9	1,163,402	48.1	28.5	358,148	71.5	898,510	30.5	354,838	69.5	808,564
191 2,625,636	1,312,353	50.0	1,313,283	50.0	28.5	374,021	71.5	938,332	28.5	374,286	71.5	938,997
1,643,577	789,971	48.1	853,606	51.9	28.5	225,142	71.5	564,829	26.8	228,766	73.2	624,840
1,240,797	575,045	46.3	665,752	53.7	28.5	163,888	71.5	411,157	25.2	167,770	74.8	497,982
467,594	215,007	46.0	252,587	54.0	28.5	61,277	71.5	153,730	23.9	60,368	76.1	192,219
1,011,171	446,051	44.1	565,120	55.9	28.5	127,125	71.5	318,926	22.7	128,282	77.3	436,838
324,946	139,712	43.0	185,234	57.0	28.5	39,818	71.5	99,894	21.5	39,825	78.5	145,409
264,929	111,263	42.0	153,666	58.0	28.5	31,710	71.5	79,553	20.5	31,502	79.5	122,164
356,606	146,172	41.0	210,434	59.0	28.5	41,659	71.5	104,513	19.6	41,245	80.4	169,189
156,420	63,769	40.8	92,651	59.2	28.5	18,174	71.5	45,595	18.8	17,418	81.2	75,233
561,772	219,072	39.0	342,700	61.0	28.5	62,436	71.5	156,636	18.0	61,686	82.0	281,014
246,927	90,633	36.7	156,294	63.3	28.5	25,830	71.5	64,803	17.3	27,039	82.7	129,255
807,098	300,830	37.3	506,268	62.7	28.5	85,737	71.5	215,093	16.7	84,547	83.3	421,721
87,697	29,490	33.6	58,207	66.4	28.5	8,405	71.5	21,085	16.1	9,371	83.9	48,836
454,957	158,048	34.7	296,909	65.3	28.5	45,044	71.5	113,004	15.5	46,021	84.5	250,888
124,933	43,456	34.8	81,477	65.2	28.5	12,385	71.5	31,071	15.0	12,222	85.0	69,255
44,130	15,005	34.0	29,125	66.0	28.5	4,276	71.5	10,729	14.4	4,194	85.6	24,931
					28.5		71.5		14.0		86.0	
34,310	11,408	33.2	22,902	66.8	28.5	3,251	71.5	8,157	13.6	3,115	86.4	19,787
					28.5		71.5		13.2		86.8	
					28.5		71.5		12.8		87.2	
					28.5		71.5		12.4		87.6	
69,875	20,961	30.0	48,914	70.0	28.5	5,974	71.5	14,987	12.1	5,919	87.9	42,995
					28.5		71.5		11.8		88.2	
					28.5		71.5		11.4		88.6	
					28.5		71.5		11.2		88.8	
					28.5		71.5		10.9		89.1	
567 30,533,470	16,564,668		13,968,802			4,720,933		11,843,735		4,698,543		9,270,259

TABULATION M

Ex. No. 2 to V.S

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
				TOTAL		SOUTH		NORTH		TERMINAL		LINE
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
600	50	2,833	86,814.5		1,186,841	890,493	75.0	296,348	25.0	26.8	238,652	73.2
	100	1,341	37,581.6	299	619,509	446,083	72.0	173,426	28.0	26.8	119,550	73.2
	150	3,328	95,524.1		1,397,258	963,816	69.0	433,442	31.0	26.8	258,303	73.2
	200	3,583	106,464.5		1,549,033	1,019,098	65.8	529,935	34.2	26.8	273,118	73,2
	250	5,636	174,783.2		2,907,540	1,862,459	64.1	1,045,081	35.9	26.8	499,139	73.2
	300	11,404	296,575.9	709	5,671,232	3,463,799	61.1	2,207,433	38.9	26.8	928,298	73.2
	350	6,456	179,467.2	828	3,346,430	1,977,726	59.1	1,368,704	40.9	26.8	530,031	73.2
	400	5,845	204,461.2		3,557,857	2,029,254	57.0	1,528,603	43.0	26.8	543,840	73.2
	450	3,626	115,281.6	469	2,220,690	1,229,082	55.3	991,608	44.7	26.8	329,394	73.2
	500	3,155	104,390.2		1,859,672	985,834	53.0	873,838	47.0	26.8	264,204	73.2
	550	2,769	87,927.2		1,810,059	946,637	52.3	863,422	47.7	26.8	253,699	73.2
	600	3,149	98,492.3		1,890,207	944,178	50.0	946,029	50.0	26.8	253,040	73.2
	650	1,120	41,697.4		758,182	371,989	49.1	386,193	50.9	26.8	99,693	73.2
	700	2,623	107,085.5		1,937,032	940,616	48.6	996,416	51.4	26.8	252,085	73.2
	750	1,796	84,124.0	4,080	1,448,058	665,317	45.9	782,741	54.1	26.8	178,305	73.2
	800	322	8,778.7		219,999	98,698	44.9	121,301	55.1	26.8	26,451	73.2
	850	347	6,860.6		198,001	85,150	43.0	112,851	57.0	26.8	22,820	73.2
	900	395	9,041.2		264,590	114,205	43.2	150,385	56.8	26.8	30,607	73.2
	950	216	5,142.0		149,501	61,044	40.8	88,457	59.2	26.8	16,360	73.2
	1000	312	7,347.2		221,085	88,656	40.1	132,429	59.9	26.8	23,760	73.2
	1050	626	17,908.8		412,709	162,888	39.5	249,821	60.5	26.8	43,654	73.2
	1100	178	4,482.6		142,580	54,139	38.0	88,441	62.0	26.8	14,509	73.2
	1150	99	2,041.1		50,110	19,050	38.0	31,060	62.0	26.8	5,103	73.2
	1200	486	11,115.4		290,744	105,480	36.3	185,264	63.7	26.8	28,269	73.2
	1250	161	3,621.1		103,881	37,744	36.3	66,137	63.7	26.8	10,115	73.2
	1300	46	708.4		11,391	3,985	35.0	7,406	65.0	26.8	1,068	73.2
	1350	21	443.1		14,056	4,770	33.9	9,286	66.1	26.8	1,278	73.2
	1400	42	1,000.6		31,779	10,007	31.5	21,772	68.5	26.8	2,682	73.2
	1450									26.8		73.2
	1500									26.8		73.2
	1550									26.8		73.2
	1600	38	766.3		28,930	7,662	26.5	21,268	73.5	26.8	2,053	73.2
	1650									26.8		73.2
	1700									26.8		73.2
	1750									26.8		73.2
	1800									26.8		73.2
TOTAL		61,953	1,899,927.5	6,385	34,298,956	19,589,859		14,709,097			5,250,082	

6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED		REVENUE AS SETTLED			REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
1,186,841	890,493	75.0	296,348	25.0	26.8	238,652	73.2	651,841	81.5	241,524	18.5	54,824
299 619,509	446,083	72.0	173,426	28.0	26.8	119,550	73.2	326,533	68.8	119,317	31.2	54,109
1,397,258	963,816	69.0	433,442	31.0	26.8	258,303	73.2	705,513	59.5	257,898	40.5	175,544
1,549,033	1,019,098	65.8	529,935	34.2	26.8	273,118	73.2	745,980	52.5	278,216	47.5	251,719
2,907,540	1,862,459	64.1	1,045,081	35.9	26.8	499,139	73.2	1,363,320	46.9	490,143	53.1	554,938
709 5,671,232	3,463,799	61.1	2,207,433	38.9	26.8	928,298	73.2	2,535,501	42.4	935,952	57.6	1,271,481
828 3,346,430	1,977,726	59.1	1,368,704	40.9	26.8	530,031	73.2	1,447,695	38.7	529,688	61.3	839,016
3,557,857	2,029,254	57.0	1,528,603	43.0	26.8	543,840	73.2	1,485,414	35.6	544,183	64.4	984,420
469 2,220,690	1,229,082	55.3	991,608	44.7	26.8	329,394	73.2	899,688	32.9	326,239	67.1	665,369
1,859,672	985,834	53.0	873,838	47.0	26.8	264,204	73.2	721,630	30.5	266,521	69.5	607,317
1,810,059	946,637	52.3	863,422	47.7	26.8	253,699	73.2	692,938	28.5	246,075	71.5	617,347
1,890,207	944,178	50.0	946,029	50.0	26.8	253,040	73.2	691,138	26.8	253,536	73.2	692,493
758,182	371,989	49.1	386,193	50.9	26.8	99,693	73.2	272,296	25.2	97,321	74.8	288,872
1,937,032	940,616	48.6	996,416	51.4	26.8	252,085	73.2	688,531	23.9	238,143	76.1	758,273
4,080 1,448,058	665,317	45.9	782,741	54.1	26.8	178,305	73.2	487,012	22.7	177,682	77.3	605,059
219,999	98,698	44.9	121,301	55.1	26.8	26,451	73.2	72,247	21.5	26,080	78.5	95,221
198,001	85,150	43.0	112,851	57.0	26.8	22,820	73.2	62,330	20.5	23,134	79.5	89,717
264,590	114,205	43.2	150,385	56.8	26.8	30,607	73.2	83,598	19.6	29,475	80.4	120,910
149,501	61,044	40.8	88,457	59.2	26.8	16,360	73.2	44,684	18.8	16,630	81.2	71,827
221,085	88,656	40.1	132,429	59.9	26.8	23,760	73.2	64,896	18.0	23,837	82.0	108,592
412,709	162,888	39.5	249,821	60.5	26.8	43,654	73.2	119,234	17.3	43,219	82.7	206,602
142,580	54,139	38.0	88,441	62.0	26.8	14,509	73.2	39,630	16.7	14,770	83.3	73,671
50,110	19,050	38.0	31,060	62.0	26.8	5,105	73.2	13,945	16.1	5,001	83.9	26,059
290,744	105,480	36.3	185,264	63.7	26.8	28,269	73.2	77,211	15.5	28,716	84.5	156,548
103,881	37,744	36.3	66,137	63.7	26.8	10,115	73.2	27,629	15.0	9,921	85.0	56,216
11,391	3,985	35.0	7,406	65.0	26.8	1,068	73.2	2,917	14.4	1,066	85.6	6,340
14,056	4,770	33.9	9,286	66.1	26.8	1,278	73.2	3,492	14.0	1,300	86.0	7,986
31,779	10,007	31.5	21,772	68.5	26.8	2,682	73.2	7,325	13.6	2,961	86.4	18,811
					26.8		73.2		13.2		86.8	
					26.8		73.2		12.8		87.2	
					26.8		73.2		12.4		87.6	
28,930	7,662	26.5	21,268	73.5	26.8	2,053	73.2	5,609	12.1	2,573	87.9	18,695
					26.8		73.2		11.8		88.2	
					26.8		73.2		11.4		88.6	
					26.8		73.2		11.2		88.8	
					26.8		73.2		10.9		89.1	
6,385 34,298,956	19,589,859		14,709,097			5,250,082		14,339,777		5,231,121		9,477,976

TABULATION M,

Ex. No. 2 to V.S.

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS. S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
650	50	1,526	50,377.6		779,924	592,041	75.9	187,883	24.1	25.2	149,194	74.8
	100	2,354	61,937.7		1,039,140	757,261	72.9	281,879	27.1	25.2	190,830	74.8
	150	5,851	149,144.5		2,839,601	1,981,408	69.8	858,193	30.2	25.2	499,315	74.8
	200	4,885	187,206.8		2,363,076	1,606,876	68.0	756,200	32.0	25.2	404,933	74.8
	250	10,841	257,699.7		4,409,234	2,867,497	65.0	1,541,737	35.0	25.2	722,609	74.8
	300	6,331	181,547.2		3,456,536	2,174,544	62.9	1,281,992	37.1	25.2	547,985	74.8
	350	9,464	199,687.2	92	4,524,647	2,760,027	61.0	1,764,620	39.0	25.2	695,527	74.8
	400	3,886	104,684.2		2,176,708	1,263,268	58.0	913,440	42.0	25.2	318,344	74.8
	450	4,823	115,219.3		2,731,374	1,557,258	57.0	1,174,116	43.0	25.2	392,429	74.8
	500	3,362	106,500.2		2,110,242	1,158,322	54.9	951,920	45.1	25.2	291,897	74.8
	550	2,856	71,162.0	314	1,564,360	832,561	53.2	731,799	46.8	25.2	209,805	74.8
	600	2,585	79,120.8		1,693,637	864,690	51.1	828,947	48.9	25.2	217,902	74.8
	650	1,528	44,976.1		934,666	467,386	50.0	467,280	50.0	25.2	117,781	74.8
	700	1,109	40,464.2		801,998	392,598	49.0	409,400	51.0	25.2	98,935	74.8
	750	573	12,762.5		323,737	154,044	47.6	169,693	52.4	25.2	38,819	74.8
	800	369	11,523.5		205,210	93,493	45.6	111,717	54.4	25.2	23,560	74.8
	850	580	14,314.5		352,221	158,820	45.1	193,401	54.9	25.2	40,023	74.8
	900	551	13,685.8		288,041	126,653	44.0	161,388	56.0	25.2	31,917	74.8
	950	270	7,374.9		163,722	69,211	42.3	94,511	57.7	25.2	17,441	74.8
	1000	2,432	135,054.0		1,380,284	578,733	41.9	801,551	58.1	25.2	145,841	74.8
	1050	1,049	33,004.9		778,957	316,907	40.7	462,050	59.3	25.2	79,861	74.8
	1100	105	2,554.1		68,540	27,258	39.8	41,282	60.2	25.2	6,869	74.8
	1150	363	9,257.8		234,500	96,183	41.0	138,317	59.0	25.2	24,238	74.8
	1200	384	7,194.2		213,405	81,522	38.2	131,883	61.8	25.2	20,544	74.8
	1250	63	1,245.0		35,980	13,306	37.0	22,674	63.0	25.2	3,353	74.8
	1300									25.2		74.8
	1350	296	12,927.4		300,031	108,010	36.0	192,021	64.0	25.2	27,219	74.8
	1400	19	557.8		16,965	6,446	38.0	10,519	62.0	25.2	1,624	74.8
	1450									25.2		74.8
	1500									25.2		74.8
	1550									25.2		74.8
	1600	19	415.0		15,073	4,825	32.0	10,248	68.0	25.2	1,216	74.8
	1650									25.2		74.8
	1700									25.2		74.8
	1750									25.2		74.8
	1800									25.2		74.8
TOTAL		68,474	1,911,598.9	406	35,801,809	21,111,148		14,690,661			5,320,011	

6	7	8	9	10	11	12	13	14	15	16	17	18
E AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
779,924	592,041	75.9	187,883	24.1	25.2	149,194	74.8	442,847	81.5	153,125	18.5	34,758
1,039,140	757,261	72.9	281,879	27.1	25.2	190,830	74.8	566,431	68.8	193,933	31.2	87,946
2,839,601	1,981,408	69.8	858,193	30.2	25.2	499,315	74.8	1,482,093	59.5	510,625	40.5	347,568
2,363,076	1,606,876	68.0	756,200	32.0	25.2	404,933	74.8	1,201,943	52.5	397,005	47.5	359,195
4,409,234	2,867,497	65.0	1,541,737	35.0	25.2	722,609	74.8	2,144,888	46.9	723,075	53.1	818,662
3,456,536	2,174,544	62.9	1,281,992	37.1	25.2	547,985	74.8	1,626,559	42.4	543,565	57.6	738,427
92 4,524,647	2,760,027	61.0	1,764,620	39.0	25.2	695,527	74.8	2,064,500	38.7	682,908	61.3	1,081,712
2,176,708	1,263,268	58.0	913,440	42.0	25.2	318,344	74.8	944,924	35.6	325,185	64.4	588,255
2,731,374	1,557,258	57.0	1,174,116	43.0	25.2	392,429	74.8	1,164,829	32.9	386,284	67.1	787,832
2,110,242	1,158,322	54.9	951,920	45.1	25.2	291,897	74.8	866,425	30.5	290,336	69.5	661,584
314 1,564,360	832,561	53.2	731,799	46.8	25.2	209,805	74.8	622,756	28.5	208,563	71.5	523,236
1,693,637	864,690	51.1	828,947	48.9	25.2	217,902	74.8	646,788	26.8	222,158	73.2	606,789
934,666	467,386	50.0	467,280	50.0	25.2	117,781	74.8	349,605	25.2	117,755	74.8	349,525
801,998	392,598	49.0	409,400	51.0	25.2	98,935	74.8	293,663	23.9	97,847	76.1	311,553
323,737	154,044	47.6	169,693	52.4	25.2	38,819	74.8	115,225	22.7	38,520	77.3	131,173
205,210	93,493	45.6	111,717	54.4	25.2	23,560	74.8	69,933	21.5	24,019	78.5	87,698
352,221	158,820	45.1	193,401	54.9	25.2	40,023	74.8	118,797	20.5	39,647	79.5	153,754
288,041	126,653	44.0	161,388	56.0	25.2	31,917	74.8	94,736	19.6	31,632	80.4	129,756
163,722	69,211	42.3	94,511	57.7	25.2	17,441	74.8	51,770	18.8	17,768	81.2	76,743
1,380,284	578,733	41.9	801,551	58.1	25.2	145,841	74.8	432,892	18.0	144,279	82.0	657,272
778,957	316,907	40.7	462,050	59.3	25.2	79,861	74.8	237,046	17.3	79,935	82.7	382,115
68,540	27,258	39.8	41,282	60.2	25.2	6,869	74.8	20,389	16.7	6,894	83.3	34,388
234,500	96,183	41.0	138,317	59.0	25.2	24,238	74.8	71,945	16.1	22,269	83.9	116,048
213,405	81,522	38.2	131,883	61.8	25.2	20,544	74.8	60,978	15.5	20,442	84.5	111,441
35,980	13,306	37.0	22,674	63.0	25.2	3,353	74.8	9,953	15.0	3,401	85.0	19,273
					25.2		74.8		14.4		85.6	
300,031	108,010	36.0	192,021	64.0	25.2	27,219	74.8	80,791	14.0	26,883	86.0	165,138
16,965	6,446	38.0	10,519	62.0	25.2	1,624	74.8	4,822	13.6	1,431	86.4	9,088
					25.2		74.8		13.2		86.8	
					25.2		74.8		12.8		87.2	
					25.2		74.8		12.4		87.6	
15,073	4,825	32.0	10,248	68.0	25.2	1,216	74.8	3,609	12.1	1,240	87.9	9,008
					25.2		74.8		11.8		88.2	
					25.2		74.8		11.4		88.6	
					25.2		74.8		11.2		88.8	
					25.2		74.8		10.9		89.1	
406 35,801,809	21,111,148		14,690,661			5,320,011		15,791,137		5,310,724		9,379,937

TABULATION M

Ex. No. 2 to V.S

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7	SOUTH	
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
700	50	1,806	46,445.5		695,971	531,081	76.3	164,890	23.7	23.9	126,928	76.1
	100	913	25,592.6		441,283	326,709	74.0	114,574	26.0	23.9	78,083	76.1
	150	4,304	127,353.1		1,780,124	1,269,962	71.3	510,162	28.7	23.9	303,521	76.1
	200	2,412	83,543.7		1,292,718	888,506	68.7	404,212	31.3	23.9	212,353	76.1
	250	3,488	104,117.6		1,904,041	1,254,942	65.9	649,099	34.1	23.9	299,931	76.1
	300	8,730	246,851.2	6,795	4,583,504	2,936,338	64.1	1,647,166	35.9	23.9	701,785	76.1
	350	4,596	115,799.5	1,137	2,289,398	1,419,610	62.0	869,788	38.0	23.9	339,287	76.1
	400	4,401	119,651.6	2,725	2,517,912	1,508,924	59.9	1,008,988	40.1	23.9	360,633	76.1
	450	2,414	66,582.3	3,767	1,439,401	833,990	57.9	605,411	42.1	23.9	199,324	76.1
	500	2,960	91,331.9	2,697	1,805,596	1,010,126	55.9	795,470	44.1	23.9	241,420	76.1
	550	2,946	65,326.7	4,816	1,677,930	905,598	54.0	772,332	46.0	23.9	216,438	76.1
	600	3,014	93,269.4	4,886	1,926,719	1,021,713	53.0	905,006	47.0	23.9	244,189	76.1
	650	1,297	41,778.0	5,425	916,199	461,384	50.4	454,815	49.6	23.9	110,271	76.1
	700	750	17,774.6	1,639	451,009	226,457	50.2	224,552	49.8	23.9	54,123	76.1
	750	621	22,668.9	931	499,620	247,986	49.6	251,634	50.4	23.9	59,269	76.1
	800	211	5,386.9	318	164,397	77,051	46.9	87,346	53.1	23.9	18,415	76.1
	850	453	13,160.9	528	291,044	132,016	45.4	159,028	54.6	23.9	31,552	76.1
	900	518	14,205.1		456,579	205,429	45.0	251,150	55.0	23.9	49,098	76.1
	950	642	23,739.6		456,373	196,827	43.1	259,546	56.9	23.9	47,042	76.1
	1000	575	18,464.7		477,510	205,594	43.1	271,916	56.9	23.9	49,137	76.1
	1050	1,673	41,782.9		1,066,007	448,927	42.1	617,080	57.9	23.9	107,294	76.1
	1100	152	2,231.7		87,162	35,752	41.0	51,410	59.0	23.9	8,545	76.1
	1150	883	28,173.3		651,805	260,694	40.0	391,111	60.0	23.9	62,306	76.1
	1200	238	5,629.6		139,613	55,077	39.4	84,536	60.6	23.9	13,163	76.1
	1250	21	376.5		11,440	4,451	38.9	6,989	61.1	23.9	1,064	76.1
	1300	42	1,304.8		32,578	12,395	38.0	20,183	62.0	23.9	2,962	76.1
	1350									23.9		76.1
	1400									23.9		76.1
	1450									23.9		76.1
	1500									23.9		76.1
	1550									23.9		76.1
	1600									23.9		76.1
	1650									23.9		76.1
	1700									23.9		76.1
	1750									23.9		76.1
	1800									23.9		76.1
TOTAL		50,060	1,422,542.6	35,664	28,055,933	16,477,539		11,578,394			3,938,133	

	6	7	8	9	10	11	12	13	14	15	16	17	18
E AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	695,971	531,081	76.3	164,890	23.7	23.9	126,928	76.1	404,153	81.5	134,385	18.5	30,505
	441,283	326,709	74.0	114,574	26.0	23.9	78,083	76.1	248,626	68.8	78,827	31.2	35,747
	1,780,124	1,269,962	71.3	510,162	28.7	23.9	303,521	76.1	966,441	59.5	303,546	40.5	206,616
	1,292,718	888,506	68.7	404,212	31.3	23.9	212,353	76.1	676,153	52.5	212,211	47.5	192,001
	1,904,041	1,254,942	65.9	649,099	34.1	23.9	299,931	76.1	955,011	46.9	304,427	53.1	344,672
795	4,583,504	2,936,338	64.1	1,647,166	35.9	23.9	701,785	76.1	2,234,553	42.4	698,398	57.6	948,768
137	2,289,398	1,419,610	62.0	869,788	38.0	23.9	339,287	76.1	1,080,323	38.7	336,608	61.3	533,180
725	2,517,912	1,508,924	59.9	1,008,988	40.1	23.9	360,633	76.1	1,148,291	35.6	359,200	64.4	649,788
767	1,439,401	833,990	57.9	605,411	42.1	23.9	199,324	76.1	634,666	32.9	199,180	67.1	406,231
697	1,805,596	1,010,126	55.9	795,470	44.1	23.9	241,420	76.1	768,706	30.5	242,618	69.5	552,852
816	1,677,930	905,598	54.0	772,332	46.0	23.9	216,438	76.1	689,160	28.5	220,115	71.5	552,217
886	1,926,719	1,021,713	53.0	905,006	47.0	23.9	244,189	76.1	777,524	26.8	242,542	73.2	662,464
425	916,199	461,384	50.4	454,815	49.6	23.9	110,271	76.1	351,113	25.2	114,613	74.8	340,202
639	451,009	226,457	50.2	224,552	49.8	23.9	54,123	76.1	172,334	23.9	53,668	76.1	170,884
931	499,620	247,986	49.6	251,634	50.4	23.9	59,269	76.1	188,717	22.7	57,121	77.3	194,513
318	164,397	77,051	46.9	87,346	53.1	23.9	18,415	76.1	58,636	21.5	18,779	78.5	68,567
528	291,044	132,016	45.4	159,028	54.6	23.9	31,552	76.1	100,464	20.5	32,601	79.5	126,427
	456,579	205,429	45.0	251,150	55.0	23.9	49,098	76.1	156,331	19.6	49,225	80.4	201,925
	456,373	196,827	43.1	259,546	56.9	23.9	47,042	76.1	149,785	18.8	48,795	81.2	210,751
	477,510	205,594	43.1	271,916	56.9	23.9	49,137	76.1	156,457	18.0	48,945	82.0	222,971
	1,066,007	448,927	42.1	617,080	57.9	23.9	107,294	76.1	341,633	17.3	106,755	82.7	510,325
	87,162	35,752	41.0	51,410	59.0	23.9	8,545	76.1	27,207	16.7	8,585	83.3	42,825
	651,805	260,694	40.0	391,111	60.0	23.9	62,306	76.1	198,388	16.1	62,969	83.9	328,142
	139,613	55,077	39.4	84,536	60.6	23.9	13,163	76.1	41,914	15.5	13,103	84.5	71,433
	11,440	4,451	38.9	6,989	61.1	23.9	1,064	76.1	3,387	15.0	1,048	85.0	5,941
	32,578	12,395	38.0	20,183	62.0	23.9	2,962	76.1	9,433	14.4	2,906	85.6	17,277
						23.9		76.1		14.0		86.0	
						23.9		76.1		13.6		86.4	
						23.9		76.1		13.2		86.8	
						23.9		76.1		12.8		87.2	
						23.9		76.1		12.4		87.6	
						23.9		76.1		12.1		87.9	
						23.9		76.1		11.8		88.2	
						23.9		76.1		11.4		88.6	
						23.9		76.1		11.2		88.8	
						23.9		76.1		10.9		89.1	
664	28,055,933	16,477,539		11,578,394			3,938,133		12,539,406		3,951,170		7,627,224

TABULATION M

Ex. No. 2 to V.S.

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
750	50	2,436	69,885.0		1,126,095	878,186	78.0	247,909	22.0	22.7	199,348	77.3
	100	1,671	52,454.2	315	884,299	663,223	75.0	221,076	25.0	22.7	150,552	77.3
	150	4,084	113,992.1		1,903,532	1,369,301	71.9	534,231	28.1	22.7	310,831	77.3 1
	200	2,785	84,605.1	3,936	1,570,294	1,098,962	70.0	471,332	30.0	22.7	249,464	77.3
	250	6,114	170,320.1	291	3,357,686	2,252,553	67.1	1,105,133	32.9	22.7	511,330	77.3 1
	300	8,339	248,723.6	9,425	4,488,397	2,915,305	65.0	1,573,092	35.0	22.7	661,774	77.3 2
	350	6,369	250,375.3	7,193	2,972,856	1,874,463	63.1	1,098,393	36.9	22.7	425,503	77.3 1
	400	4,623	137,535.0	2,596	2,756,243	1,680,644	61.0	1,075,599	39.0	22.7	381,506	77.3 1
	450	3,103	79,127.6	3,905	1,875,540	1,106,785	59.0	768,755	41.0	22.7	251,240	77.3
	500	1,310	35,970.5	4,217	837,039	475,116	56.8	361,923	43.2	22.7	107,851	77.3
	550	1,362	38,119.6	4,283	960,286	539,873	56.2	420,413	43.8	22.7	122,551	77.3
	600	2,155	60,933.3	9,139	1,285,654	693,469	53.9	592,185	46.1	22.7	157,417	77.3
	650	1,022	28,152.8	3,493	694,311	368,122	53.0	326,189	47.0	22.7	83,564	77.3
	700	664	15,759.1	1,889	460,256	235,173	51.1	225,083	48.9	22.7	53,384	77.3
	750	1,323	37,196.7		904,749	452,220	50.0	452,529	50.0	22.7	102,654	77.3
	800	466	10,895.9		329,908	161,621	49.0	168,287	51.0	22.7	36,688	77.3
	850	886	14,244.9	962	486,573	231,581	47.6	254,992	52.4	22.7	52,569	77.3
	900	421	9,947.9		286,000	131,563	46.0	154,437	54.0	22.7	29,865	77.3
	950	144	2,135.2		122,044	54,936	45.0	67,108	55.0	22.7	12,470	77.3
	1000	149	3,420.0		89,640	40,776	45.5	48,864	54.5	22.7	9,256	77.3
	1050	546	14,414.5		377,012	162,123	43.0	214,889	57.0	22.7	36,802	77.3
	1100	21	529.2		14,259	5,985	42.0	8,274	58.0	22.7	1,359	77.3
	1150	205	6,213.2		151,954	63,954	42.1	88,000	57.9	22.7	14,518	77.3
	1200	63	1,530.9		42,105	17,304	41.1	24,801	58.9	22.7	3,928	77.3
	1250									22.7		77.3
	1300									22.7		77.3
	1350	63	1,108.8		35,238	13,398	38.0	21,840	62.0	22.7	3,041	77.3
	1400									22.7		77.3
	1450									22.7		77.3
	1500									22.7		77.3
	1550									22.7		77.3
	1600									22.7		77.3
	1650									22.7		77.3
	1700									22.7		77.3
	1750									22.7		77.3
	1800									22.7		77.3
TOTAL		50,324	1,487,590.5	51,644	28,011,970	17,486,636		10,525,334			3,969,465	13

6	7	8	9	10	11	12	13	14	15	16	17	18
AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
					TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
O T A L REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
1,126,095	878,186	78.0	247,909	22.0	22.7	199,348	77.3	678,838	81.5	202,046	18.5	45,863
884,299	663,223	75.0	221,076	25.0	22.7	150,552	77.3	512,671	68.8	152,100	31.2	68,976
1,903,532	1,369,301	71.9	534,231	28.1	22.7	310,831	77.3	1,058,470	59.5	317,867	40.5	216,364
1,570,294	1,098,962	70.0	471,332	30.0	22.7	249,464	77.3	849,498	52.5	247,449	47.5	223,883
3,357,686	2,252,553	67.1	1,105,133	32.9	22.7	511,330	77.3	1,741,223	46.9	518,307	53.1	586,826
4,488,397	2,915,305	65.0	1,573,092	35.0	22.7	661,774	77.3	2,253,531	42.4	666,991	57.6	906,101
2,972,856	1,874,463	63.1	1,098,393	36.9	22.7	425,503	77.3	1,448,960	38.7	425,078	61.3	673,315
2,756,243	1,680,644	61.0	1,075,599	39.0	22.7	381,506	77.3	1,299,138	35.6	382,913	64.4	692,686
1,875,540	1,106,785	59.0	768,755	41.0	22.7	251,240	77.3	855,545	32.9	252,920	67.1	515,835
837,039	475,116	56.8	361,923	43.2	22.7	107,851	77.3	367,265	30.5	110,387	69.5	251,536
960,286	539,873	56.2	420,413	43.8	22.7	122,551	77.3	417,322	28.5	119,818	71.5	300,595
1,285,654	693,469	53.9	592,185	46.1	22.7	157,417	77.3	536,052	26.8	158,706	73.2	433,479
694,311	368,122	53.0	326,189	47.0	22.7	83,564	77.3	284,558	25.2	82,200	74.8	243,989
460,256	235,173	51.1	225,083	48.9	22.7	53,384	77.3	181,789	23.9	53,795	76.1	171,288
904,749	452,220	50.0	452,529	50.0	22.7	102,654	77.3	349,566	22.7	102,724	77.3	349,805
329,908	161,621	49.0	168,287	51.0	22.7	36,688	77.3	124,933	21.5	36,182	78.5	132,105
486,573	231,581	47.6	254,992	52.4	22.7	52,569	77.3	179,012	20.5	52,273	79.5	202,719
286,000	131,563	46.0	154,437	54.0	22.7	29,865	77.3	101,698	19.6	30,270	80.4	124,167
122,044	54,936	45.0	67,108	55.0	22.7	12,470	77.3	42,466	18.8	12,616	81.2	54,492
89,640	40,776	45.5	48,864	54.5	22.7	9,256	77.3	31,520	18.0	8,796	82.0	40,068
377,012	162,123	43.0	214,889	57.0	22.7	36,802	77.3	125,321	17.3	37,176	82.7	177,713
14,259	5,985	42.0	8,274	58.0	22.7	1,359	77.3	4,626	16.7	1,382	83.3	6,892
151,954	63,954	42.1	88,000	57.9	22.7	14,518	77.3	49,436	16.1	14,168	83.9	73,832
42,105	17,304	41.1	24,801	58.9	22.7	3,928	77.3	13,376	15.5	3,844	84.5	20,957
					22.7		77.3		15.0		85.0	
					22.7		77.3		14.4		85.6	
35,238	13,398	38.0	21,840	62.0	22.7	3,041	77.3	10,357	14.0	3,058	86.0	18,782
					22.7		77.3		13.6		86.4	
					22.7		77.3		13.2		86.8	
					22.7		77.3		12.8		87.2	
					22.7		77.3		12.4		87.6	
					22.7		77.3		12.1		87.9	
					22.7		77.3		11.8		88.2	
					22.7		77.3		11.4		88.6	
					22.7		77.3		11.2		88.8	
					22.7		77.3		10.9		89.1	
28,011,970	17,486,636		10,525,334			3,969,465		13,517,171		3,993,066		6,532,268

TABULATION M

Ex. No. 2 to V.S

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRALS	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
800	50	508	13,575.6		253,069	199,811	79.0	53,258	21.0	21.5	42,959	78.5
	100	700	20,945.3	2,454	360,049	273,950	76.1	86,099	23.9	21.5	58,899	78.5
	150	2,248	63,980.8	955	1,120,562	817,530	73.0	303,032	27.0	21.5	175,769	78.5
	200	4,014	168,407.9	16,361	2,308,185	1,638,502	71.0	669,683	29.0	21.5	352,278	78.5
	250	3,594	84,893.8	3,179	1,827,008	1,260,398	69.0	566,610	31.0	21.5	270,986	78.5
	300	6,723	193,520.0	21,630	3,761,757	2,472,909	65.7	1,288,848	34.3	21.5	531,675	78.5
	350	6,016	154,851.7	49,859	3,185,949	2,034,791	63.9	1,151,158	36.1	21.5	437,480	78.5
	400	3,936	128,444.5	13,852	2,556,212	1,592,205	62.3	964,007	37.7	21.5	342,324	78.5
	450	3,430	113,219.2	27,426	2,112,345	1,264,782	59.9	847,563	40.1	21.5	271,928	78.5
	500	2,391	57,158.3	19,504	1,275,848	752,413	59.0	523,435	41.0	21.5	161,769	78.5
	550	1,737	46,734.5	14,678	1,132,443	650,412	57.4	482,031	42.6	21.5	139,839	78.5
	600	3,048	94,040.6	24,731	1,784,181	979,732	54.9	804,449	45.1	21.5	210,642	78.5
	650	1,013	44,111.0	7,821	731,547	395,092	54.0	336,455	46.0	21.5	84,945	78.5
	700	2,255	109,360.9	8,958	1,378,958	730,688	53.0	648,270	47.0	21.5	157,098	78.5
	750	751	26,914.6	2,862	487,158	248,265	51.0	238,893	49.0	21.5	53,377	78.5
	800	126	2,258.1		75,773	37,847	49.9	37,926	50.1	21.5	8,137	78.5
	850	894	48,033.5	968	643,504	310,230	48.2	333,274	51.8	21.5	66,699	78.5
	900	262	6,075.3		158,803	76,265	48.0	82,538	52.0	21.5	16,397	78.5
	950	216	4,749.4	389	123,053	57,846	47.0	65,207	53.0	21.5	12,437	78.5
	1000	37	1,306.8		27,838	12,807	46.0	15,031	54.0	21.5	2,754	78.5
	1050									21.5		78.5
	1100									21.5		78.5
	1150									21.5		78.5
	1200									21.5		78.5
	1250									21.5		78.5
	1300									21.5		78.5
	1350									21.5		78.5
	1400									21.5		78.5
	1450									21.5		78.5
	1500									21,5		78.5
	1550									21.5		78.5
	1600									21.5		78.5
	1650									21.5		78.5
	1700									21.5		78.5
	1750									21.5		78.5
	1800									21.5		78.5
TOTAL		43,899	1,382,581.8	215,627	25,304,242	15,806,475		9,497,767			3,398,392	1

5	6	7	8	9	10	11	12	13	14	15	– 16	17	18
UE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	253,069	199,811	79.0	53,258	21.0	21.5	42,999	78.5	156,852	81.5	43,405	18.5	9,853
2,454	360,049	273,950	76.1	86,099	23.9	21.5	58,899	78.5	215,051	68.8	59,236	31.2	26,863
955	1,120,562	817,530	73.0	303,032	27.0	21.5	175,769	78.5	641,761	59.5	180,304	40.5	122,728
6,361	2,308,185	1,638,502	71.0	669,683	29.0	21.5	352,278	78.5	1,286,224	52.5	351,584	47.5	318,099
3,179	1,827,008	1,260,398	69.0	566,610	31.0	21.5	270,986	78.5	989,412	46.9	265,740	53.1	300,870
1,630	3,761,757	2,472,909	65.7	1,288,848	34.3	21.5	531,675	78.5	1,941,234	42.4	546,472	57.6	742,376
9,859	3,185,949	2,034,791	63.9	1,151,158	36.1	21.5	437,480	78.5	1,597,311	38.7	445,498	61.3	705,660
3,852	2,556,212	1,592,205	62.3	964,007	37.7	21.5	342,324	78.5	1,249,881	35.6	343,186	64.4	620,821
7,426	2,112,345	1,264,782	59.9	847,563	40.1	21.5	271,928	78.5	992,854	32.9	278,848	67.1	568,715
9,504	1,275,848	752,413	59.0	523,435	41.0	21.5	161,769	78.5	590,644	30.5	159,648	69.5	363,787
4,678	1,132,443	650,412	57.4	482,031	42.6	21.5	139,839	78.5	510,573	28.5	137,379	71.5	344,652
4,731	1,784,181	979,732	54.9	804,449	45.1	21.5	210,642	78.5	769,090	26.8	215,592	73.2	588,857
7,821	731,547	395,092	54.0	336,455	46.0	21.5	84,945	78.5	310,147	25.2	84,787	74.8	251,668
8,958	1,378,958	730,688	53.0	648,270	47.0	21.5	157,098	78.5	573,590	23.9	154,937	76.1	493,333
2,862	487,158	248,265	51.0	238,893	49.0	21.5	53,377	78.5	194,888	22.7	54,229	77.3	184,664
	75,773	37,847	49.9	37,926	50.1	21.5	8,137	78.5	29,710	21.5	8,154	78.5	29,772
968	643,504	310,230	48.2	333,274	51.8	21.5	66,699	78.5	243,531	20.5	68,321	79.5	264,953
	158,803	76,265	48.0	82,538	52.0	21.5	16,397	78.5	59,868	19.6	16,177	80.4	66,361
389	123,053	57,846	47.0	65,207	53.0	21.5	12,437	78.5	45,409	18.8	12,259	81.2	52,948
	27,838	12,807	46.0	15,031	54.0	21.5	2,754	78.5	10,053	18.0	2,706	82.0	12,325
						21.5		78.5		17.3		82.7	
						21.5		78.5		16.7		83.3	
						21.5		78.5		16.1		83.9	
						21.5		78.5		15.5		84.5	
						21.5		78.5		15.0		85.0	
						21.5		78.5		14.4		85.6	
						21.5		78.5		14.0		86.0	
						21.5		78.5		13.6		86.4	
						21.5		78.5		13.2		86.8	
						21.5		78.5		12.8		87.2	
						21.5		78.5		12.4		87.6	
						21.5		78.5		12.1		87.9	
						21.5		78.5		11.8		88.2	
						21.5		78.5		11.4		88.6	
						21.5		78.5		11.2		88.8	
						21.5		78.5		10.9		89.1	
5,627	25,304,242	15,806,475		9,497,767			3,398,392		12,408,083		3,428,462		6,069,305

TABULATION M

SOUTHBOUND AND NORTHBOUND

Ex. No. 2 to V.

1	2	3	4	5	6	7	8	9	10	11	12	13
MILES SOUTH	MILES NORTH	CARS	REVENUE AS SETTLED TOTAL TONS	ARBITS	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 SOUTH TERMINAL %	AMOUNT	LINE %
850	50	1,518	33,969.0	2,778	761,321	609,441	80.1	151,880	19.9	20.5	124,935	79.5
	100	519	12,966.5		229,145	176,022	76.8	53,123	23.2	20.5	36,085	79.5
	150	3,263	101,311.4	9,729	1,817,053	1,344,555	74.0	472,498	26.0	20.5	275,634	79.5
	200	3,351	120,332.7	13,666	2,128,315	1,532,464	72.0	595,851	28.0	20.5	314,155	79.5
	250	5,109	161,698.8	1,993	2,867,074	2,005,459	69.9	861,615	30.1	20.5	411,119	79.5
	300	7,828	254,915.2	17,590	4,729,333	3,166,760	67.0	1,562,573	33.0	20.5	649,186	79.5
	350	9,485	237,288.9	81,237	5,215,173	3,390,641	65.0	1,824,532	35.0	20.5	695,081	79.5
	400	2,600	108,626.5	10,222	1,693,299	1,072,226	63.3	621,073	36.7	20.5	219,806	79.5
	450	3,361	97,696.6	38,675	2,300,740	1,426,956	62.0	873,784	38.0	20.5	292,526	79.5
	500	1,984	80,029.7	7,642	1,468,974	880,681	60.0	588,293	40.0	20.5	180,540	79.5
	550	4,440	213,958.9	11,224	3,150,980	1,827,929	58.0	1,323,051	42.0	20.5	374,725	79.5
	600	3,657	139,800.9	26,757	2,262,831	1,290,664	57.0	972,167	43.0	20.5	264,586	79.5
	650	637	25,409.8	3,493	401,166	220,743	55.0	180,423	45.0	20.5	45,252	79.5
	700	1,158	50,011.1	2,331	755,688	407,841	54.0	347,847	46.0	20.5	83,607	79.5
	750	1,053	34,138.3	353	636,317	329,977	51.9	306,340	48.1	20.5	67,645	79.5
	800	751	45,865.3		559,234	285,029	51.0	274,205	49.0	20.5	58,431	79.5
	850	257	4,214.6	183	139,196	69,609	50.0	69,587	50.0	20.5	14,270	79.5
	900	243	7,175.8		168,198	82,380	49.0	85,818	51.0	20.5	16,888	79.5
	950	43	1,514.4		30,547	14,669	48.0	15,878	52.0	20.5	3,007	79.5
	1000	20	405.7		18,208	8,565	47.0	9,643	53.0	20.5	1,756	79.5
	1050									20.5		79.5
	1100									20.5		79.5
	1150									20.5		79.5
	1200									20.5		79.5
	1250									20.5		79.5
	1300									20.5		79.5
	1350									20.5		79.5
	1400									20.5		79.5
	1450									20.5		79.5
	1500									20.5		79.5
	1550									20.5		79.5
	1600									20.5		79.5
	1650									20.5		79.5
	1700									20.5		79.5
	1750									20.5		79.5
	1800									20.5		79.5
TOTAL		51,277	1,731,330.1	227,873	31,332,792	20,142,611		11,190,181			4,129,234	

6	7	8	9	10	11	12	13	14	15	16	17	18
AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
5. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
778 761,321	609,441	80.1	151,880	19.9	20.5	124,935	79.5	484,506	81.5	123,782	18.5	28,098
229,145	176,022	76.8	53,123	23.2	20.5	36,085	79.5	139,937	68.8	36,549	31.2	16,574
729 1,817,053	1,344,555	74.0	472,498	26.0	20.5	275,634	79.5	1,068,921	59.5	281,136	40.5	191,362
666 2,128,315	1,532,464	72.0	595,851	28.0	20.5	314,155	79.5	1,218,309	52.5	312,822	47.5	283,029
993 2,867,074	2,005,459	69.9	861,615	30.1	20.5	411,119	79.5	1,594,340	46.9	404,097	53.1	457,518
590 4,729,333	3,166,760	67.0	1,562,573	33.0	20.5	649,186	79.5	2,517,574	42.4	662,531	57.6	900,042
237 5,215,173	3,390,641	65.0	1,824,532	35.0	20.5	695,081	79.5	2,695,560	38.7	706,094	61.3	1,118,438
222 1,693,299	1,072,226	63.3	621,073	36.7	20.5	219,806	79.5	852,420	35.6	221,102	64.4	399,971
575 2,300,740	1,426,956	62.0	873,784	38.0	20.5	292,526	79.5	1,134,430	32.9	287,475	67.1	586,309
642 1,468,974	880,681	60.0	588,293	40.0	20.5	180,540	79.5	700,141	30.5	179,429	69.5	408,864
224 3,150,980	1,827,929	58.0	1,323,051	42.0	20.5	374,725	79.5	1,453,204	28.5	377,070	71.5	945,981
757 2,262,831	1,290,664	57.0	972,167	43.0	20.5	264,586	79.5	1,026,078	26.8	260,541	73.2	711,626
993 401,166	220,743	55.0	180,423	45.0	20.5	45,252	79.5	175,491	25.2	45,467	74.8	134,956
331 755,688	407,841	54.0	347,847	46.0	20.5	83,607	79.5	324,234	23.9	83,135	76.1	264,712
953 636,317	329,977	51.9	306,340	48.1	20.5	67,645	79.5	262,332	22.7	69,539	77.3	236,801
559,234	285,029	51.0	274,205	49.0	20.5	58,431	79.5	226,598	21.5	58,954	78.5	215,251
83 139,196	69,609	50.0	69,587	50.0	20.5	14,270	79.5	55,339	20.5	14,265	79.5	55,322
168,198	82,380	49.0	85,818	51.0	20.5	16,888	79.5	65,492	19.6	16,820	80.4	68,998
30,547	14,669	48.0	15,878	52.0	20.5	3,007	79.5	11,662	18.8	2,985	81.2	12,893
18,208	8,565	47.0	9,643	53.0	20.5	1,756	79.5	6,809	18.0	1,736	82.0	7,907
					20.5		79.5		17.3		82.7	
					20.5		79.5		16.7		83.3	
					20.5		79.5		16.1		83.9	
					20.5		79.5		15.5		84.5	
					20.5		79.5		15.0		85.0	
					20.5		79.5		14.4		85.6	
					20.5		79.5		14.0		86.0	
					20.5		79.5		13.6		86.4	
					20.5		79.5		13.2		86.8	
					20.5		79.5		12.8		87.2	
					20.5		79.5		12.4		87.6	
					20.5		79.5		12.1		87.9	
					20.5		79.5		11.8		88.2	
					20.5		79.5		11.4		88.6	
					20,5		79.5		11.2		88.8	
					20.5		79.5		10.9		89.1	
673 31,332,792	20,142,611		11,190,181			4,129,234		16,013,377		4,145,529		7,044,652

TABULATION M

SOUTHBOUND AND NORTHBOUND

Ex. No. 2 to V.

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
900	50	217	9,225.9	329	177,201	143,543	81.0	33,658	19.0	19.6	28,134	80.4
	100	541	17,990.5		239,305	186,280	77.8	53,025	22.2	19.6	36,511	80.4
	150	1,167	50,742.7	2,544	676,750	508,135	75.1	168,615	24.9	19.6	99,594	80.4
	200	759	33,315.8		423,004	308,783	73.0	114,221	27.0	19.6	60,521	80.4
	250	1,334	62,865.9	4,968	808,611	564,352	69.8	244,259	30.2	19.6	110,613	80.4
	300	1,846	65,605.2	6,770	982,260	666,163	67.8	316,097	32.2	19.6	130,568	80.4
	350	2,541	65,339.0	11,622	1,253,406	828,320	66.1	425,086	33.9	19.6	162,351	80.4
	400	1,377	50,736.5	11,252	808,306	521,523	64.5	286,783	35.5	19.6	102,219	80.4
	450	1,471	38,214.8	15,066	946,795	601,471	63.5	345,324	36.5	19.6	117,888	80.4
	500	425	13,675.8	1,341	309,624	189,041	61.1	120,583	38.9	19.6	37,052	80.4
	550	408	16,954.7	739	418,146	246,720	59.0	171,426	41.0	19.6	48,357	80.4
	600	442	10,072.3	2,779	279,967	162,383	58.0	117,584	42.0	19.6	31,827	80.4
	650	236	5,242.2	4,183	143,030	80,225	56.1	62,805	43.9	19.6	15,724	80.4
	700	62	1,246.0		39,697	21,662	54.6	18,035	45.4	19.6	4,246	80.4
	750	21	374.4		10,712	5,782	54.0	4,930	46.0	19.6	1,133	80.4
	800	76	2,138.6		54,842	28,506	52.0	26,336	48.0	19.6	5,587	80.4
	850	21	580.9		13,334	6,720	50.4	6,614	49.6	19.6	1,317	80.4
	900									19.6		80.4
	950	19	787.6		22,213	10,883	49.0	11,330	51.0	19.6	2,133	80.4
	1000									19.6		80.4
	1050									19.6		80.4
	1100									19.6		80.4
	1150									19.6		80.4
	1200									19.6		80.4
	1250									19.6		80.4
	1300									19.6		80.4
	1350									19.6		80.4
	1400									19.6		80.4
	1450									19.6		80.4
	1500									19.6		80.4
	1550									19.6		80.4
	1600									19.6		80.4
	1650									19.6		80.4
	1700									19.6		80.4
	1750									19.6		80.4
	1800									19.6		80.4
TOTAL		12,963	445,108.8	61,593	7,607,203	5,080,492		2,526,711			995,775	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
329	177,201	143,543	81.0	33,658	19.0	19.6	28,134	80.4	115,409	81.5	27,431	18.5	6,227
	239,305	186,280	77.8	53,025	22.2	19.6	36,511	80.4	149,769	68.8	36,481	31.2	16,544
,544	676,750	508,135	75.1	168,615	24.9	19.6	99,594	80.4	408,541	59.5	100,326	40.5	68,289
	423,004	308,783	73.0	114,221	27.0	19.6	60,521	80.4	248,262	52.5	59,966	47.5	54,255
,968	808,611	564,352	69.8	244,259	30.2	19.6	110,613	80.4	453,739	46.9	114,557	53.1	129,702
,770	982,260	666,163	67.8	316,097	32.2	19.6	130,568	80.4	535,595	42.4	134,025	57.6	182,072
,622	1,253,406	828,320	66.1	425,086	33.9	19.6	162,351	80.4	665,969	38.7	164,508	61.3	260,578
,252	808,306	521,523	64.5	286,783	35.5	19.6	102,219	80.4	419,304	35.6	102,095	64.4	184,688
,066	946,795	601,471	63.5	345,324	36.5	19.6	117,888	80.4	483,583	32.9	113,612	67.1	231,712
,341	309,624	189,041	61.1	120,583	38.9	19.6	37,052	80.4	151,989	30.5	36,778	69.5	83,805
739	418,146	246,720	59.0	171,426	41.0	19.6	48,357	80.4	198,363	28.5	48,856	71.5	122,570
,779	279,967	162,383	58.0	117,584	42.0	19.6	31,827	80.4	130,556	26.8	31,513	73.2	86,071
,183	143,030	80,225	56.1	62,805	43.9	19.6	15,724	80.4	64,501	25.2	15,827	74.8	46,978
	39,697	21,662	54.6	18,035	45.4	19.6	4,246	80.4	17,416	23.9	4,310	76.1	13,725
	10,712	5,782	54.0	4,930	46.0	19.6	1,133	80.4	4,649	22.7	1,119	77.3	3,811
	54,842	28,506	52.0	26,336	48.0	19.6	5,587	80.4	22,919	21.5	5,662	78.5	20,674
	13,334	6,720	50.4	6,614	49.6	19.6	1,317	80.4	5,403	20.5	1,356	79.5	5,258
						19.6		80.4		19.6		80.4	
	22,213	10,883	49.0	11,330	51.0	19.6	2,133	80.4	8,750	18.8	2,130	81.2	9,200
						19.6		80.4		18.0		82.0	
						19.6		80.4		17.3		82.7	
						19.6		80.4		16.7		83.3	
						19.6		80.4		16.1		83.9	
						19.6		80.4		15.5		84.5	
						19.6		80.4		15.0		85.0	
						19.6		80.4		14.4		85.6	
						19.6		80.4		14.0		86.0	
						19.6		80.4		13.6		86.4	
						19.6		80.4		13.2		86.8	
						19.6		80.4		12.8		87.2	
						19.6		80.4		12.4		87.6	
						19.6		80.4		12.1		87.9	
						19.6		80.4		11.8		88.2	
						19.6		80.4		11.4		88.6	
						19.6		80.4		11.2		88.8	
						19.6		80.4		10.9		89.1	
,593	7,607,203	5,080,492		2,526,711			995,775		4,084,717		1,000,552		1,526,159

TABULATION M

Ex. No. 2 to V.S.

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE H %
950	50	997	55,077.1		606,266	490,938	81.0	115,328	19.0	18.8	92,296	81.2
	100	265	10,530.5		304,955	239,189	78.4	65,766	21.6	18.8	44,968	81.2
	150	2,021	67,920.3	3,233	1,125,806	854,505	75.9	271,301	24.1	18.8	160,647	81.2
	200	1,639	54,733.1	4,557	934,566	691,080	73.9	243,486	26.1	18.8	129,923	81.2
	250	3,422	85,473.1	7,642	1,818,318	1,295,355	71.2	522,963	28.8	18.8	243,527	81.2
	300	5,026	150,766.4	39,157	2,901,484	2,000,427	68.9	901,057	31.1	18.8	376,080	81.2
	350	2,939	73,709.3	9,416	1,483,818	993,513	67.0	490,305	33.0	18.8	186,780	81.2
	400	1,221	35,846.7	18,086	705,679	458,651	65.0	247,028	35.0	18.8	86,226	81.2
	450	2,361	67,488.4	12,517	1,343,510	859,712	64.0	483,798	36.0	18.8	161,626	81.2
	500	1,071	18,496.2	6,299	582,396	360,738	61.9	221,658	38.1	18.8	67,819	81.2
	550	888	21,773.2	2,228	541,313	325,413	60.1	215,900	39.9	18.8	61,178	81.2
	600	1,354	24,454.4	9,253	683,461	403,975	59.1	279,486	40.9	18.8	75,947	81.2
	650	135	2,347.5	2,084	82,592	47,177	57.1	35,415	42.9	18.8	8,869	81.2
	700	96	1,970.3	2,567	35,851	20,087	56.0	15,764	44.0	18.8	3,776	81.2
	750	108	1,835.1		56,863	31,277	55.0	25,586	45.0	18.8	5,880	81.2
	800	56	795.0		31,797	16,845	53.0	14,952	47.0	18.8	3,167	81.2
	850	18	307.4		7,667	3,989	52.0	3,678	48.0	18.8	750	81.2
	900	20	455.1		16,173	8,254	51.0	7,919	49.0	18.8	1,552	81.2
	950	40	1,112.6		38,646	19,314	50.0	19,332	50.0	18.8	3,631	81.2
	1000									18.8		81.2
	1050									18.8		81.2
	1100									18.8		81.2
	1150									18.8		81.2
	1200									18.8		81.2
	1250									18.8		81.2
	1300									18.8		81.2
	1350									18.8		81.2
	1400									18.8		81.2
	1450									18.8		81.2
	1500									18.8		81.2
	1550									18.8		81.2
	1600									18.8		81.2
	1650									18.8		81.2
	1700									18.8		81.2
	1750									18.8		81.2
	1800									18.8		81.2
TOTAL		23,677	675,091.7	117,039	13,301,161	9,120,439		4,180,722			1,714,642	7

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
						TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	TOTAL REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	606,266	490,938	81.0	115,328	19.0	18.8	92,296	81.2	398,642	81.5	93,992	18.5	21,336
	304,955	239,189	78.4	65,766	21.6	18.8	44,968	81.2	194,221	68.8	45,247	31.2	20,519
3,233	1,125,806	854,505	75.9	271,301	24.1	18.8	160,647	81.2	693,858	59.5	161,424	40.5	109,877
4,557	934,566	691,080	73.9	243,486	26.1	18.8	129,923	81.2	561,157	52.5	127,830	47.5	115,656
7,642	1,818,318	1,295,355	71.2	522,963	28.8	18.8	243,527	81.2	1,051,828	46.9	245,270	53.1	277,693
9,157	2,901,484	2,000,427	68.9	901,057	31.1	18.8	376,080	81.2	1,624,347	42.4	382,048	57.6	519,009
9,416	1,483,818	993,513	67.0	490,305	33.0	18.8	186,780	81.2	806,733	38.7	189,748	61.3	300,557
8,086	705,679	458,651	65.0	247,028	35.0	18.8	86,226	81.2	372,425	35.6	87,942	64.4	159,086
2,517	1,343,510	859,712	64.0	483,798	36.0	18.8	161,626	81.2	698,086	32.9	159,170	67.1	324,628
6,299	582,396	360,738	61.9	221,658	38.1	18.8	67,819	81.2	292,919	30.5	67,606	69.5	154,052
2,228	541,313	325,413	60.1	215,900	39.9	18.8	61,178	81.2	264,235	28.5	61,532	71.5	154,368
9,253	683,461	403,975	59.1	279,486	40.9	18.8	75,947	81.2	328,028	26.8	74,902	73.2	204,584
2,084	82,592	47,177	57.1	35,415	42.9	18.8	8,869	81.2	38,308	25.2	8,925	74.8	26,490
2,567	35,851	20,087	56.0	15,764	44.0	18.8	3,776	81.2	16,311	23.9	3,768	76.1	11,996
	56,863	31,277	55.0	25,586	45.0	18.8	5,880	81.2	25,397	22.7	5,808	77.3	19,778
	31,797	16,845	53.0	14,952	47.0	18.8	3,167	81.2	13,678	21.5	3,215	78.5	11,737
	7,667	3,989	52.0	3,678	48.0	18.8	750	81.2	3,239	20.5	754	79.5	2,924
	16,173	8,254	51.0	7,919	49.0	18.8	1,552	81.2	6,702	19.6	1,552	80.4	6,367
	38,646	19,314	50.0	19,332	50.0	18.8	3,631	81.2	15,683	18.8	3,634	81.2	15,698
						18.8		81.2		18.0		82.0	
						18.8		81.2		17.3		82.7	
						18.8		81.2		16.7		83.3	
						18.8		81.2		16.1		83.9	
						18.8		81.2		15.5		84.5	
						18.8		81.2		15.0		85.0	
						18.8		81.2		14.4		85.6	
						18.8		81.2		14.0		86.0	
						18.8		81.2		13.6		86.4	
						18.8		81.2		13.2		86.8	
						18.8		81.2		12.8		87.2	
						18.8		81.2		12.4		87.6	
						18.8		81.2		12.1		87.9	
						18.8		81.2		11.8		88.2	
						18.8		81.2		11.4		88.6	
						18.8		81.2		11.2		88.8	
						18.8		81.2		10.9		89.1	
7,039	13,301,161	9,120,439		4,180,722			1,714,642		7,405,797		1,724,367		2,456,355

TABULATION M

SOUTHBOUND AND NORTHBOUND

Ex. No. 2 to

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LI %
1000	50	619	12,843.7		339,150	278,042	82.0	61,108	18.0	18.0	50,048	82.0
	100	621	27,865.8	338	377,398	298,316	79.0	79,082	21.0	18.0	53,697	82.0
	150	2,802	109,156.0	10,803	1,631,391	1,256,223	77.0	375,168	23.0	18.0	226,120	82.0
	200	1,546	43,240.2	20,441	1,052,816	776,184	73.7	276,632	26.3	18.0	139,713	82.0
	250	5,699	143,514.6	29,573	2,998,878	2,157,922	72.0	840,956	28.0	18.0	388,426	82.0
	300	5,176	142,229.8	69,300	2,995,361	2,098,834	70.1	896,527	29.9	18.0	377,790	82.0
	350	9,631	133,808.0	145,302	4,515,980	3,066,245	67.9	1,449,735	32.1	18.0	551,924	82.0
	400	1,111	23,527.5	10,658	617,204	408,426	66.2	208,778	33.8	18.0	73,517	82.0
	450	1,881	34,611.1	12,142	1,020,668	663,893	65.0	356,775	35.0	18.0	119,501	82.0
	500	1,449	38,164.9	18,522	1,011,060	637,631	63.1	373,429	36.9	18.0	114,774	82.0
	550	1,031	18,050.7	4,146	640,056	390,919	61.1	249,137	38.9	18.0	70,365	82.0
	600	1,469	29,186.2	13,576	869,199	523,632	60.2	345,567	39.8	18.0	94,254	82.0
	650	486	9,622.0	6,320	266,181	155,117	58.3	111,064	41.7	18.0	27,921	82.0
	700	391	9,085.2	4,676	246,701	139,622	56.6	107,079	43.4	18.0	25,132	82.0
	750	121	2,085.7	458	82,436	46,169	56.0	36,267	44.0	18.0	8,310	82.0
	800	137	2,149.5		81,647	44,099	54.0	37,548	46.0	18.0	7,938	82.0
	850	161	2,640.6	816	115,996	61,586	53.1	54,410	46.9	18.0	11,085	82.0
	900	96	1,465.2		48,973	24,219	49.5	24,754	50.5	18.0	4,359	82.0
	950	20	384.2		10,290	5,253	51.0	5,037	49.0	18.0	946	82.0
	1000									18.0		82.0
	1050	18	791.7		24,224	11,866	49.0	12,358	51.0	18.0	2,136	82.0
	1100									18.0		82.0
	1150									18.0		82.0
	1200									18.0		82.0
	1250									18.0		82.0
	1300									18.0		82.0
	1350									18.0		82.0
	1400									18.0		82.0
	1450									18.0		82.0
	1500									18.0		82.0
	1550									18.0		82.0
	1600									18.0		82.0
	1650									18.0		82.0
	1700									18.0		82.0
	1750									18.0		82.0
	1800									18.0		82.0
TOTAL		34,465	784,422.6	347,071	18,945,609	13,044,198		5,901,411			2,347,956	

	6	7	8	9	10	11	12	13	14	15	16	17	18
	AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
						TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
E	TOTAL	SOUTH		NORTH									
	S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	339,150	278,042	82.0	61,108	18.0	18.0	50,048	82.0	227,994	81.5	49,803	18.5	11,305
	377,398	298,316	79.0	79,082	21.0	18.0	53,697	82.0	244,619	68.8	54,408	31.2	24,674
338													
803	1,631,391	1,256,223	77.0	375,168	23.0	18.0	226,120	82.0	1,030,103	59.5	223,225	40.5	151,943
441	1,052,816	776,184	73.7	276,632	26.3	18.0	139,713	82.0	636,471	52.5	145,232	47.5	131,400
573	2,998,878	2,157,922	72.0	840,956	28.0	18.0	388,426	82.0	1,769,496	46.9	394,408	53.1	446,548
300	2,995,361	2,098,834	70.1	896,527	29.9	18.0	377,790	82.0	1,721,044	42.4	380,127	57.6	516,400
302	4,515,980	3,066,245	67.9	1,449,735	32.1	18.0	551,924	82.0	2,514,321	38.7	561,047	61.3	888,688
658	617,204	408,426	66.2	208,778	33.8	18.0	73,517	82.0	334,909	35.6	74,325	64.4	134,453
142	1,020,668	663,893	65.0	356,775	35.0	18.0	119,501	82.0	544,392	32.9	117,379	67.1	239,396
522	1,011,060	637,631	63.1	373,429	36.9	18.0	114,774	82.0	522,857	30.5	113,896	69.5	259,533
146	640,056	390,919	61.1	249,137	38.9	18.0	70,365	82.0	320,554	28.5	71,004	71.5	178,133
576	869,199	523,632	60.2	345,567	39.8	18.0	94,254	82.0	429,378	26.8	92,612	73.2	252,955
320	266,181	155,117	58.3	111,064	41.7	18.0	27,921	82.0	127,196	25.2	27,988	74.8	83,076
676	246,701	139,622	56.6	107,079	43.4	18.0	25,132	82.0	114,490	23.9	25,592	76.1	81,487
458	82,436	46,169	56.0	36,267	44.0	18.0	8,310	82.0	37,859	22.7	8,233	77.3	28,034
	81,647	44,099	54.0	37,548	46.0	18.0	7,938	82.0	36,161	21.5	8,073	78.5	29,475
816	115,996	61,586	53.1	54,410	46.9	18.0	11,085	82.0	50,501	20.5	11,154	79.5	43,256
	48,973	24,219	49.5	24,754	50.5	18.0	4,359	82.0	19,860	19.6	4,852	80.4	19,902
	10,290	5,253	51.0	5,037	49.0	18.0	946	82.0	4,307	18.8	947	81.2	4,090
						18.0		82.0		18.0		82.0	
	24,224	11,866	49.0	12,358	51.0	18.0	2,136	82.0	9,730	17.3	2,138	82.7	10,220
						18.0		82.0		16.7		83.3	
						18.0		82.0		16.1		83.9	
						18.0		82.0		15.5		84.5	
						18.0		82.0		15.0		85.0	
						18.0		82.0		14.4		85.6	
						18.0		82.0		14.0		86.0	
						18.0		82.0		13.6		86.4	
						18.0		82.0		13.2		86.8	
						18.0		82.0		12.8		87.2	
						18.0		82.0		12.4		87.6	
						18.0		82.0		12.1		87.9	
						18.0		82.0		11.8		88.2	
						18.0		82.0		11.4		88.6	
						18.0		82.0		11.2		88.8	
						18.0		82.0		10.9		89.1	
071	18,945,609	13,044,198		5,901,411			2,347,956		10,696,242		2,366,443		3,534,968

TABULATION M

Ex. No. 2 to V

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRARYS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LIN %
1050	50	219	3,637.6		88,589	72,622	82.0	15,967	18.0	17.3	12,564	82.7
	100	172	4,469.5		99,933	79,931	80.0	20,002	20.0	17.3	13,828	82.7
	150	614	13,602.8	3,203	351,645	270,766	77.0	80,879	23.0	17.3	46,843	82.7
	200	226	5,513.4	1,860	156,169	116,918	74.9	39,251	25.1	17.3	20,227	82.7
	250	1,271	24,751.3	7,097	705,366	514,888	73.0	190,478	27.0	17.3	89,076	82.7
	300	1,016	19,064.7	6,560	484,569	343,395	70.9	141,174	29.1	17.3	59,407	82.7
	350	838	9,681.3	3,337	395,500	271,196	68.6	124,304	31.4	17.3	46,917	82.7
	400	1,047	22,124.4	10,336	522,290	347,862	66.6	174,428	33.4	17.3	60,180	82.7
	450	610	13,923.3	10,803	379,463	250,326	66.0	129,137	34.0	17.3	43,306	82.7
	500	561	7,595.7	1,240	295,986	189,405	64.0	106,581	36.0	17.3	32,767	82.7
	550	398	6,196.3	762	229,431	142,312	62.0	87,119	38.0	17.3	24,620	82.7
	600	386	5,546.9		185,762	113,312	61.0	72,450	39.0	17.3	19,603	82.7
	650	194	2,880.2		160,829	94,764	58.9	66,065	41.1	17.3	16,394	82.7
	700									17.3		82.7
	750	18	336.7		7,778	4,429	56.9	3,349	43.1	17.3	766	82.7
	800									17.3		82.7
	850									17.3		82.7
	900									17.3		82.7
	950									17.3		82.7
	1000									17.3		82.7
	1050									17.3		82.7
	1100									17.3		82.7
	1150									17.3		82.7
	1200									17.3		82.7
	1250									17.3		82.7
	1300									17.3		82.7
	1350									17.3		82.7
	1400									17.3		82.7
	1450									17.3		82.7
	1500									17.3		82.7
	1550									17.3		82.7
	1600									17.3		82.7
	1650									17.3		82.7
	1700									17.3		82.7
	1750									17.3		82.7
	1800									17.3		82.7
TOTAL		7,570	139,324.1	45,198	4,063,310	2,812,126		1,251,184			486,498	

6	7	8	9	10	11	12	13	14	15	16	17	18
AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
88,589	72,622	82.0	15,967	18.0	17.3	12,564	82.7	60,058	81.5	13,013	18.5	2,954
99,933	79,931	80.0	20,002	20.0	17.3	13,828	82.7	66,103	68.8	13,761	31.2	6,241
351,645	270,766	77.0	80,879	23.0	17.3	46,843	82.7	223,923	59.5	48,123	40.5	32,756
156,169	116,918	74.9	39,251	25.1	17.3	20,227	82.7	96,691	52.5	20,607	47.5	18,644
705,366	514,888	73.0	190,478	27.0	17.3	89,076	82.7	425,812	46.9	89,334	53.1	101,144
484,569	343,395	70.9	141,174	29.1	17.3	59,407	82.7	283,988	42.4	59,858	57.6	81,316
395,500	271,196	68.6	124,304	31.4	17.3	46,917	82.7	224,279	38.7	48,106	61.3	76,198
522,290	347,862	66.6	174,428	33.4	17.3	60,180	82.7	287,682	35.6	62,096	64.4	112,332
379,463	250,326	66.0	129,137	34.0	17.3	43,306	82.7	207,020	32.9	42,486	67.1	86,651
295,986	189,405	64.0	106,581	36.0	17.3	32,767	82.7	156,638	30.5	32,507	69.5	74,074
229,431	142,312	62.0	87,119	38.0	17.3	24,620	82.7	117,692	28.5	24,829	71.5	62,290
185,762	113,312	61.0	72,450	39.0	17.3	19,603	82.7	93,709	26.8	19,417	73.2	53,033
160,829	94,764	58.9	66,065	41.1	17.3	16,394	82.7	78,370	25.2	16,648	74.8	49,417
					17.3		82.7		23.9		76.1	
7,778	4,429	56.9	3,349	43.1	17.3	766	82.7	3,663	22.7	760	77.3	2,589
					17.3		82.7		21.5		78.5	
					17.3		82.7		20.5		79.5	
					17.3		82.7		19.6		80.4	
					17.3		82.7		18.8		81.2	
					17.3		82.7		18.0		82.0	
					17.3		82.7		17.3		82.7	
					17.3		82.7		16.7		83.3	
					17.3		82.7		16.1		83.9	
					17.3		82.7		15.5		84.5	
					17.3		82.7		15.0		85.0	
					17.3		82.7		14.4		85.6	
					17.3		82.7		14.0		86.0	
					17.3		82.7		13.6		86.4	
					17.3		82.7		13.2		86.8	
					17.3		82.7		12.8		87.2	
					17.3		82.7		12.4		87.6	
					17.3		82.7		12.1		87.9	
					17.3		82.7		11.8		88.2	
					17.3		82.7		11.4		88.6	
					17.3		82.7		11.2		88.8	
					17.3		82.7		10.9		89.1	
4,063,310	2,812,126		1,251,184			486,498		2,325,628		491,545		759,639

TABULATION M

Ex. No. 2 to

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
MILES SOUTH	MILES NORTH	CARS	REVENUE AS SETTLED TOTAL TONS	ARBITS S.	REMAINDER	REVENUE AS SETTLED SOUTH REMAINDER	%	NORTH REMAINDER	%	REVENUE COL. 7 TERMINAL %	AMOUNT	SOUT L %
1100	50	20	398.0		8,757	7,264	83.0	1,493	17.0	16.7	1,213	83.3
	100	228	4,695.9	1,831	123,215	99,795	81.0	23,420	19.0	16.7	16,666	83.3
	150	598	13,136.1	6,208	358,250	279,235	77.9	79,015	22.1	16.7	46,632	83.3
	200	520	13,087.0	5,807	319,073	243,545	76.3	75,528	23.7	16.7	40,672	83.3
	250	574	10,604.5	2,650	288,962	211,092	73.1	77,870	26.9	16.7	35,252	83.3
	300	688	15,273.9	2,047	428,666	308,690	72.0	119,976	28.0	16.7	51,551	83.3
	350	491	11,920.3	15,117	456,331	319,366	70.0	136,965	30.0	16.7	53,334	83.3
	400	403	11,923.3	10,615	313,661	214,260	68.3	99,401	31.7	16.7	35,781	83.3
	450	411	10,868.9	986	282,214	189,295	67.1	92,919	32.9	16.7	31,612	83.3
	500	91	762.6	1,383	40,204	26,135	65.0	14,069	35.0	16.7	4,365	83.3
	550	40	1,094.5	1,672	13,731	8,656	63.0	5,075	37.0	16.7	1,446	83.3
	600	111	2,449.2	1,110	74,113	45,921	62.0	28,192	38.0	16.7	7,669	83.3
	650	105	1,840.7		59,441	35,658	60.0	23,783	40.0	16.7	5,955	83.3
	700									16.7		83.3
	750									16.7		83.3
	800									16.7		83.3
	850									16.7		83.3
	900									16.7		83.3
	950									16.7		83.3
	1000									16.7		83.3
	1050									16.7		83.3
	1100									16.7		83.3
	1150									16.7		83.3
	1200									16.7		83.3
	1250									16.7		83.3
	1300									16.7		83.3
	1350									16.7		83.3
	1400									16.7		83.3
	1450									16.7		83.3
	1500									16.7		83.3
	1550									16.7		83.3
	1600									16.7		83.3
	1650									16.7		83.3
	1700									16.7		83.3
	1750									16.7		83.3
	1800									16.7		83.3
TOTAL		4,280	98,054.9	49,426	2,766,618	1,988,912		777,706			332,148	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
	8,757	7,264	83.0	1,493	17.0	16.7	1,213	83.3	6,051	81.5	1,217	18.5	276
1,831	123,215	99,795	81.0	23,420	19.0	16.7	16,666	83.3	83,129	68.8	16,113	31.2	7,307
6,208	358,250	279,235	77.9	79,015	22.1	16.7	46,632	83.3	232,603	59.5	47,014	40.5	32,001
5,807	319,073	243,545	76.3	75,528	23.7	16.7	40,672	83.3	202,873	52.5	39,652	47.5	35,876
2,650	288,962	211,092	73.1	77,870	26.9	16.7	35,252	83.3	175,840	46.9	36,521	53.1	41,349
2,047	428,666	308,690	72.0	119,976	28.0	16.7	51,551	83.3	257,139	42.4	50,870	57.6	69,106
5,117	456,331	319,366	70.0	136,965	30.0	16.7	53,334	83.3	266,032	38.7	53,005	61.3	83,960
0,615	313,661	214,260	68.3	99,401	31.7	16.7	35,781	83.3	178,479	35.6	35,387	64.4	64,014
986	282,214	189,295	67.1	92,919	32.9	16.7	31,612	83.3	157,683	32.9	30,570	67.1	62,349
1,383	40,204	26,135	65.0	14,069	35.0	16.7	4,365	83.3	21,770	30.5	4,291	69.5	9,778
1,672	13,731	8,656	63.0	5,075	37.0	16.7	1,446	83.3	7,210	28.5	1,446	71.5	3,629
1,110	74,113	45,921	62.0	28,192	38.0	16.7	7,669	83.3	38,252	26.8	7,555	73.2	20,637
	59,441	35,658	60.0	23,783	40.0	16.7	5,955	83.3	29,703	25.2	5,993	74.8	17,790
						16.7		83.3		23.9		76.1	
						16.7		83.3		22.7		77.3	
						16.7		83.3		21.5		78.5	
						16.7		83.3		20.5		79.5	
						16.7		83.3		19.6		80.4	
						16.7		83.3		18.8		81.2	
						16.7		83.3		18.0		82.0	
						16.7		83.3		17.3		82.7	
						16.7		83.3		16.7		83.3	
						16.7		83.3		16.1		83.9	
						16.7		83.3		15.5		84.5	
						16.7		83.3		15.0		85.0	
						16.7		83.3		14.4		85.6	
						16.7		83.3		14.0		86.0	
						16.7		83.3		13.6		86.4	
						16.7		83.3		13.2		86.8	
						16.7		83.3		12.8		87.2	
						16.7		83.3		12.4		87.6	
						16.7		83.3		12.1		87.9	
						16.7		83.3		11.8		88.2	
						16.7		83.3		11.4		88.6	
						16.7		83.3		11.2		88.8	
						16.7		83.3		10,9		89.1	
,426	2,766,618	1,988,912		777,706			332,148		1,656,764		329,634		448,072

TABULATION M

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
			TOTAL			SOUTH		NORTH		TERMINAL		LINE HA
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
1150	50	497	16,132.4	1,174	356,064	299,096	84.0	56,968	16.0	16.1	48,154	83.9
	100	164	3,071.5		92,984	75,339	81.0	17,645	19.0	16.1	12,130	83.9
	150	594	12,937.2	1,353	375,194	296,359	79.0	78,835	21.0	16.1	47,714	83.9
	200	534	23,309.3	3,305	402,135	311,427	77.4	90,708	22.6	16.1	50,140	83.9
	250	1,770	22,754.2	6,082	787,672	580,519	73.7	207,153	26.3	16.1	93,464	83.9
	300	1,088	19,776.0	22,093	641,427	468,689	73.1	172,738	26.9	16.1	75,459	83.9
	350	540	8,435.4	3,368	407,270	291,730	71.6	115,540	28.4	16.1	46,969	83.9
	400	981	23,455.3	23,932	613,713	424,547	69.2	189,166	30.8	16.1	68,352	83.9
	450	360	8,507.1	10,653	252,741	170,309	67.4	82,432	32.6	16.1	27,420	83.9
	500	1,057	10,425.5		519,142	337,445	65.0	181,697	35.0	16.1	54,329	83.9
	550	60	1,034.0		41,569	26,586	64.0	14,983	36.0	16.1	4,280	83.9
	600									16.1		83.9
	650	62	955.2		34,296	20,902	60.9	13,394	39.1	16.1	3,365	83.9
	700									16.1		83.9
	750	44	795.6		25,172	14,851	59.0	10,321	41.0	16.1	2,391	83.9
	800									16.1		83.9
	850									16.1		83.9
	900									16.1		83.9
	950	20	413.9	1,274	15,880	8,577	54.0	7,303	46.0	16.1	1,381	83.9
	1000									16.1		83.9
	1050									16.1		83.9
	1100									16.1		83.9
	1150									16.1		83.9
	1200									16.1		83.9
	1250									16.1		83.9
	1300									16.1		83.9
	1350									16.1		83.9
	1400									16.1		83.9
	1450									16.1		83.9
	1500									16.1		83.9
	1550									16.1		83.9
	1600									16.1		83.9
	1650									16.1		83.9
	1700									16.1		83.9
	1750									16.1		83.9
	1800									16.1		83.9
TOTAL		7,771	152,002.6	73,234	4,565,259	3,326,376		1,238,883			535,548	2

6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
,174 356,064	299,096	84.0	56,968	16.0	16.1	48,154	83.9	250,942	81.5	46,429	18.5	10,539
92,984	75,339	81.0	17,645	19.0	16.1	12,130	83.9	63,209	68.8	12,140	31.2	5,505
,353 375,194	296,359	79.0	78,835	21.0	16.1	47,714	83.9	248,645	59.5	46,907	40.5	31,928
,305 402,135	311,427	77.4	90,708	22.6	16.1	50,140	83.9	261,287	52.5	47,622	47.5	43,086
,082 787,672	580,519	73.7	207,153	26.3	16.1	93,464	83.9	487,055	46.9	97,155	53.1	109,998
,093 641,427	468,689	73.1	172,738	26.9	16.1	75,459	83.9	393,230	42.4	73,241	57.6	99,497
,368 407,270	291,730	71.6	115,540	28.4	16.1	46,969	83.9	244,761	38.7	44,714	61.3	70,826
,932 613,713	424,547	69.2	189,166	30.8	16.1	68,352	83.9	356,195	35.6	67,343	64.4	121,823
,653 252,741	170,309	67.4	82,432	32.6	16.1	27,420	83.9	142,889	32.9	27,120	67.1	55,312
519,142	337,445	65.0	181,697	35.0	16.1	54,329	83.9	283,116	30.5	55,418	69.5	126,279
41,569	26,586	64.0	14,983	36.0	16.1	4,280	83.9	22,306	28.5	4,270	71.5	10,713
					16.1		83.9		26.8		73.2	
34,296	20,902	60.9	13,394	39.1	16.1	3,365	83.9	17,537	25.2	3,375	74.8	10,019
					16.1		83.9		23.9		76.1	
25,172	14,851	59.0	10,321	41.0	16.1	2,391	83.9	12,460	22.7	2,343	77.3	7,978
					16.1		83.9		21.5		78.5	
					16.1		83.9		20.5		79.5	
					16.1		83.9		19.6		80.4	
,274 15,880	8,577	54.0	7,303	46.0	16.1	1,381	83.9	7,196	18.8	1,373	81.2	5,930
					16.1		83.9		18.0		82.0	
					16.1		83.9		17.3		82.7	
					16.1		83.9		16.7		83.3	
					16.1		83.9		16.1		83.9	
					16.1		83.9		15.5		84.5	
					16.1		83.9		15.0		85.0	
					16.1		83.9		14.4		85.6	
					16.1		83.9		14.0		86.0	
					16.1		83.9		13.6		86.4	
					16.1		83.9		13.2		86.8	
					16.1		83.9		12.8		87.2	
					16.1		83.9		12.4		87.6	
					16.1		83.9		12.1		87.9	
					16.1		83.9		11.8		88.2	
					16.1		83.9		11.4		88.6	
					16.1		83.9		11.2		88.8	
					16.1		83.9		10.9		89.1	
,234 4,565,259	3,326,376		1,238,883			535,548		2,790,828		529,450		709,433

TABULATION M

Ex. No. 2 to V.S

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
				TOTAL		SOUTH		NORTH		TERMINAL		LINE
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITRS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
1200	50	378	4,863.7	1,037	198,954	167,132	84.0	31,822	16.0	15.5	23,905	84.5
	100	279	6,211.4		203,234	166,672	82.0	36,562	18.0	15.5	25,334	84.5
	150	405	10,241.6	5,551	326,655	257,333	78.8	69,322	21.2	15.5	39,587	84.5
	200	567	13,508.3	13,154	275,503	211,957	76.9	63,546	23.1	15.5	32,693	84.5
	250	1,774	22,410.5	4,735	942,666	706,971	75.0	235,695	25.0	15.5	109,58	84.5
	300	2,185	29,332.6	37,013	1,289,831	935,077	72.5	354,754	27.5	15.5	144,937	84.5
	350	74	1,533.9	582	47,450	33,694	71.0	13,756	29.0	15.5	5,223	84.5
	400	116	3,705.0	1,019	168,421	117,914	70.0	50,507	30.0	15.5	18,277	84.5
	450	43	1,209.7	647	36,399	24,767	68.0	11,632	32.0	15.5	3,839	84.5
	500									15.5		84.5
	550									15.5		84.5
	600									15.5		84.5
	650									15.5		84.5
	700									15.5		84.5
	750									15.5		84.5
	800									15.5		84.5
	850									15.5		84.5
	900									15.5		84.5
	950									15.5		84.5
	1000									15.5		84.5
	1050									15.5		84.5
	1100									15.5		84.5
	1150									15.5		84.5
	1200									15.5		84.5
	1250									15.5		84.5
	1300									15.5		84.5
	1350									15.5		84.5
	1400									15.5		84.5
	1450									15.5		84.5
	1500									15.5		84.5
	1550									15.5		84.5
	1600									15.5		84.5
	1650									15.5		84.5
	1700									15.5		84.5
	1750									15.5		84.5
	1800									15.5		84.5
TOTAL		5,821	92,986.7	63,738	3,489,113	2,621,517		867,596			406,336	

5	6	7	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS %	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
1,037	198,954	167,132	84.0	31,822	16.0	15.5	25,905	84.5	141,227	81.5	25,935	18.5	5,887
	203,234	166,672	82.0	36,562	18.0	15.5	25,334	84.5	140,838	68.8	25,155	31.2	11,407
5,551	326,655	257,333	78.8	69,322	21.2	15.5	39,587	84.5	217,446	59.5	41,247	40.5	28,075
3,154	275,503	211,957	76.9	63,546	23.1	15.5	32,693	84.5	179,104	52.5	33,362	47.5	30,184
4,735	942,666	706,971	75.0	235,695	25.0	15.5	109,58	84.5	597,390	46.9	110,541	53.1	125,154
7,013	1,289,831	935,077	72.5	354,754	27.5	15.5	144,937	84.5	790,140	42.4	150,416	57.6	204,338
582	47,450	33,694	71.0	13,756	29.0	15.5	5,223	84.5	28,471	38.7	5,324	61.3	8,432
1,019	168,421	117,914	70.0	50,507	30.0	15.5	18,277	84.5	99,637	35.6	17,980	64.4	32,527
647	36,399	24,767	68.0	11,632	32.0	15.5	3,839	84.5	20,928	32.9	3,827	67.1	7,805
						15.5		84.5		30.5		69.5	
						15.5		84.5		28.5		71.5	
						15.5		84.5		26.8		73.2	
						15.5		84.5		25.2		74.8	
						15.5		84.5		23.9		76.1	
						15.5		84.5		22.7		77.3	
						15.5		84.5		21.5		78.5	
						15.5		84.5		20.5		79.5	
						15.5		84.5		19.6		80.4	
						15.5		84.5		18.8		81.2	
						15.5		84.5		18.0		82.0	
						15.5		84.5		17.3		82.7	
						15.5		84.5		16.7		83.3	
						15.5		84.5		16.1		83.9	
						15.5		84.5		15.5		84.5	
						15.5		84.5		15.0		85.0	
						15.5		84.5		14.4		85.6	
						15.5		84.5		14.0		86.0	
						15.5		84.5		13.6		86.4	
						15.5		84.5		13.2		86.8	
						15.5		84.5		12.8		87.2	
						15.5		84.5		12.4		87.6	
						15.5		84.5		12.1		87.9	
						15.5		84.5		11.8		88.2	
						15.5		84.5		11.4		88.6	
						15.5		84.5		11.2		88.8	
						15.5		84.5		10.9		89.1	
3,738	3,489,113	2,621,517		867,596			406,336		2,215,181		413,787		453,809

TABULATION #

Ex. No. 2 to

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
			TOTAL			SOUTH		NORTH		TERMINAL		
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
1250	50									15.0		85.0
	100									15.0		85.0
	150									15.0		85.0
	200									15.0		85.0
	250									15.0		85.0
	300									15.0		85.0
	350									15.0		85.0
	400									15.0		85.0
	450									15.0		85.0
	500									15.0		85.0
	550									15.0		85.0
	600									15.0		85.0
	650									15.0		85.0
	700									15.0		85.0
	750									15.0		85.0
	800									15.0		85.0
	850									15.0		85.0
	900									15.0		85.0
	950									15.0		85.0
	1000									15.0		85.0
	1050									15.0		85.0
	1100									15.0		85.0
	1150									15.0		85.0
	1200									15.0		85.0
	1250									15.0		85.0
	1300									15.0		85.0
	1350									15.0		85.0
	1400									15.0		85.0
	1450									15.0		85.0
	1500									15.0		85.0
	1550									15.0		85.0
	1600									15.0		85.0
	1650									15.0		85.0
	1700									15.0		85.0
	1750									15.0		85.0
	1800									15.0		85.0
TOTAL												

6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					15.0		85.0		81.5		18.5	
					15.0		85.0		68.8		31.2	
					15.0		85.0		59.5		40.5	
					15.0		85.0		52.5		47.5	
					15.0		85.0		46.9		53.1	
					15.0		85.0		42.4		57.6	
					15.0		85.0		38.7		61.3	
					15.0		85.0		35.6		64.4	
					15.0		85.0		32.9		67.1	
					15.0		85.0		30.5		69.5	
					15.0		85.0		28.5		71.5	
					15.0		85.0		26.8		73.2	
					15.0		85.0		25.2		74.8	
					15.0		85.0		23.9		76.1	
					15.0		85.0		22.7		77.3	
					15.0		85.0		21.5		78.5	
					15.0		85.0		20.5		79.5	
					15.0		85.0		19.6		80.4	
					15.0		85.0		18.8		81.2	
					15.0		85.0		18.0		82.0	
					15.0		85.0		17.3		82.7	
					15.0		85.0		16.7		83.3	
					15.0		85.0		16.1		83.9	
					15.0		85.0		15.5		84.5	
					15.0		85.0		15.0		85.0	
					15.0		85.0		14.4		85.6	
					15.0		85.0		14.0		86.0	
					15.0		85.0		13.6		86.4	
					15.0		85.0		13.2		86.8	
					15.0		85.0		12.8		87.2	
					15.0		85.0		12.4		87.6	
					15.0		85.0		12.1		87.9	
					15.0		85.0		11.8		88.2	
					15.0		85.0		11.4		88.6	
					15.0		85.0		11.2		88.8	
					15.0		85.0		10.9		89.1	

TABULATION M

Ex. No. 2 to

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUT		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	% L
1300	50									14.4		85.6
	100									14.4		85.6
	150									14.4		85.6
	200									14.4		85.6
	250									14.4		85.6
	300									14.4		85.6
	350									14.4		85.6
	400									14.4		85.6
	450									14.4		85.6
	500									14.4		85.6
	550									14.4		85.6
	600									14.4		85.6
	650									14.4		85.6
	700									14.4		85.6
	750									14.4		85.6
	800									14.4		85.6
	850									14.4		85.6
	900									14.4		85.6
	950									14.4		85.6
	1000									14.4		85.6
	1050									14.4		85.6
	1100									14.4		85.6
	1150									14.4		85.6
	1200									14.4		85.6
	1250									14.4		85.6
	1300									14.4		85.6
	1350									14.4		85.6
	1400									14.4		85.6
	1450									14.4		85.6
	1500									14.4		85.6
	1550									14.4		85.6
	1600									14.4		85.6
	1650									14.4		85.6
	1700									14.4		85.6
	1750									14.4		85.6
	1800									14.4		85.6
TOTAL												

6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					14.4		85.6		81.5		18.5	
					14.4		85.6		68.8		31.2	
					14.4		85.6		59.5		40.5	
					14.4		85.6		52.5		47.5	
					14.4		85.6		46.9		53.1	
					14.4		85.6		42.4		57.6	
					14.4		85.6		38.7		61.3	
					14.4		85.6		35.6		64.4	
					14.4		85.6		32.9		67.1	
					14.4		85.6		30.5		69.5	
					14.4		85.6		28.5		71.5	
					14.4		85.6		26.8		73.2	
					14.4		85.6		25.2		74.8	
					14.4		85.6		23.9		76.1	
					14.4		85.6		22.7		77.3	
					14.4		85.6		21.5		78.5	
					14.4		85.6		20.5		79.5	
					14.4		85.6		19.6		80.4	
					14.4		85.6		18.8		81.2	
					14.4		85.6		18.0		82.0	
					14.4		85.6		17.3		82.7	
					14.4		85.6		16.7		83.3	
					14.4		85.6		16.1		83.9	
					14.4		85.6		15.5		84.5	
					14.4		85.6		15.0		85.0	
					14.4		85.6		14.4		85.6	
					14.4		85.6		14.0		86.0	
					14.4		85.6		13.6		86.4	
					14.4		85.6		13.2		86.8	
					14.4		85.6		12.8		87.2	
					14.4		85.6		12.4		87.6	
					14.4		85.6		12.1		87.9	
					14.4		85.6		11.8		88.2	
					14.4		85.6		11.4		88.6	
					14.4		85.6		11.2		88.8	
					14.4		85.6		10.9		89.1	

TABULATION M

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
				TOTAL		SOUTH		NORTH		TERMINAL		LI
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
1350	50									14.0		86.0
	100									14.0		86.0
	150									14.0		86.0
	200									14.0		86.0
	250									14.0		86.0
	300									14.0		86.0
	350									14.0		86.0
	400									14.0		86.0
	450									14.0		86.0
	500									14.0		86.0
	550									14.0		86.0
	600									14.0		86.0
	650									14.0		86.0
	700									14.0		86.0
	750									14.0		86.0
	800									14.0		86.0
	850									14.0		86.0
	900									14.0		86.0
	950									14.0		86.0
	1000									14.0		86.0
	1050									14.0		86.0
	1100									14.0		86.0
	1150									14.0		86.0
	1200									14.0		86.0
	1250									14.0		86.0
	1300									14.0		86.0
	1350									14.0		86.0
	1400									14.0		86.0
	1450									14.0		86.0
	1500									14.0		86.0
	1550									14.0		86.0
	1600									14.0		86.0
	1650									14.0		86.0
	1700									14.0		86.0
	1750									14.0		86.0
	1800									14.0		86.0
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9, NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						14.0		86.0		81.5		18.5	
						14.0		86.0		68.8		31.2	
						14.0		86.0		59.5		40.5	
						14.0		86.0		52.5		47.5	
						14.0		86.0		46.9		53.1	
						14.0		86.0		42.4		57.6	
						14.0		86.0		38.7		61.3	
						14.0		86.0		35.6		64.4	
						14.0		86.0		32.9		67.1	
						14.0		86.0		30.5		69.5	
						14.0		86.0		28.5		71.5	
						14.0		86.0		26.8		73.2	
						14.0		86.0		25.2		74.8	
						14.0		86.0		23.9		76.1	
						14.0		86.0		22.7		77.3	
						14.0		86.0		21.5		78.5	
						14.0		86.0		20.5		79.5	
						14.0		86.0		19.6		80.4	
						14.0		86.0		18.8		81.2	
						14.0		86.0		18.0		82.0	
						14.0		86.0		17.3		82.7	
						14.0		86.0		16.7		83.3	
						14.0		86.0		16.1		83.9	
						14.0		86.0		15.5		84.5	
						14.0		86.0		15.0		85.0	
						14.0		86.0		14.4		85.6	
						14.0		86.0		14.0		86.0	
						14.0		86.0		13.6		86.4	
						14.0		86.0		13.2		86.8	
						14.0		86.0		12.8		87.2	
						14.0		86.0		12.4		87.6	
						14.0		86.0		12.1		87.9	
						14.0		86.0		11.8		88.2	
						14.0		86.0		11.4		88.6	
						14.0		86.0		11.2		88.8	
						14.0		86.0		10.9		89.1	

TABULATION M

Ex. No. 2 to

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUT		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	L %
1400	50									13.6		86.4
	100									13.6		86.4
	150									13.6		86.4
	200									13.6		86.4
	250									13.6		86.4
	300									13.6		86.4
	350									13.6		86.4
	400									13.6		86.4
	450									13.6		86.4
	500									13.6		86.4
	550									13.6		86.4
	600									13.6		86.4
	650									13.6		86.4
	700									13.6		86.4
	750									13.6		86.4
	800									13.6		86.4
	850									13.6		86.4
	900									13.6		86.4
	950									13.6		86.4
	1000									13.6		86.4
	1050									13.6		86.4
	1100									13.6		86.4
	1150									13.6		86.4
	1200									13.6		86.4
	1250									13.6		86.4
	1300									13.6		86.4
	1350									13.6		86.4
	1400									13.6		86.4
	1450									13.6		86.4
	1500									13.6		86.4
	1550									13.6		86.4
	1600									13.6		86.4
	1650									13.6		86.4
	1700									13.6		86.4
	1750									13.6		86.4
	1800									13.6		86.4
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						13.6		86.4		81.5		18.5	
						13.6		86.4		68.8		31.2	
						13.6		86.4		59.5		40.5	
						13.6		86.4		52.5		47.5	
						13.6		86.4		46.9		53.1	
						13.6		86.4		42.4		57.6	
						13.6		86.4		38.7		61.3	
						13.6		86.4		35.6		64.4	
						13.6		86.4		32.9		67.1	
						13.6		86.4		30.5		69.5	
						13.6		86.4		28.5		71.5	
						13.6		86.4		26.8		73.2	
						13.6		86.4		25.2		74.8	
						13.6		86.4		23.9		76.1	
						13.6		86.4		22.7		77.3	
						13.6		86.4		21.5		78.5	
						13.6		86.4		20.5		79.5	
						13.6		86.4		19.6		80.4	
						13.6		86.4		18.8		81.2	
						13.6		86.4		18.0		82.0	
						13.6		86.4		17.3		82.7	
						13.6		86.4		16.7		83.3	
						13.6		86.4		16.1		83.9	
						13.6		86.4		15.5		84.5	
						13.6		86.4		15.0		85.0	
						13.6		86.4		14.4		85.6	
						13.6		86.4		14.0		86.0	
						13.6		86.4		13.6		86.4	
						13.6		86.4		13.2		86.8	
						13.6		86.4		12.8		87.2	
						13.6		86.4		12.4		87.6	
						13.6		86.4		12.1		87.9	
						13.6		86.4		11.8		88.2	
						13.6		86.4		11.4		88.6	
						13.6		86.4		11.2		88.8	
						13.6		86.4		10.9		89.1	

TABULATION M

Ex. No. 2 to V.S.

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE HA %
1450	50									13.2		86.8
	100									13.2		86.8
	150									13.2		86.8
	200									13.2		86.8
	250									13.2		86.8
	300									13.2		86.8
	350									13.2		86.8
	400									13.2		86.8
	450									13.2		86.8
	500									13.2		86.8
	550									13.2		86.8
	600									13.2		86.8
	650									13.2		86.8
	700									13.2		86.8
	750									13.2		86.8
	800									13.2		86.8
	850									13.2		86.8
	900									13.2		86.8
	950									13.2		86.8
	1000									13.2		86.8
	1050									13.2		86.8
	1100									13.2		86.8
	1150									13.2		86.8
	1200									13.2		86.8
	1250									13.2		86.8
	1300									13.2		86.8
	1350									13.2		86.8
	1400									13.2		86.8
	1450									13.2		86.8
	1500									13.2		86.8
	1550									13.2		86.8
	1600									13.2		86.8
	1650									13.2		86.8
	1700									13.2		86.8
	1750									13.2		86.8
	1800									13.2		86.8
TOTAL												

6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED		REVENUE AS SETTLED			REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH	TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S.	REMAINDER	REMAINDER	%	REMAINDER	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					13.2		86.8		81.5		18.5	
					13.2		86.8		68.8		31.2	
					13.2		86.8		59.5		40.5	
					13.2		86.8		52.5		47.5	
					13.2		86.8		46.9		53.1	
					13.2		86.8		42.4		57.6	
					13.2		86.8		38.7		61.3	
					13.2		86.8		35.6		64.4	
					13.2		86.8		32.9		67.1	
					13.2		86.8		30.5		69.5	
					13.2		86.8		28.5		71.5	
					13.2		86.8		26.8		73.2	
					13.2		86.8		25.2		74.8	
					13.2		86.8		23.9		76.1	
					13.2		86.8		22.7		77.3	
					13.2		86.8		21.5		78.5	
					13.2		86.8		20.5		79.5	
					13.2		86.8		19.6		80.4	
					13.2		86.8		18.8		81.2	
					13.2		86.8		18.0		82.0	
					13.2		86.8		17.3		82.7	
					13.2		86.8		16.7		83.3	
					13.2		86.8		16.1		83.9	
					13.2		86.8		15.5		84.5	
					13.2		86.8		15.0		85.0	
					13.2		86.8		14.4		85.6	
					13.2		86.8		14.0		86.0	
					13.2		86.8		13.6		86.4	
					13.2		86.8		13.2		86.8	
					13.2		86.8		12.8		87.2	
					13.2		86.8		12.4		87.6	
					13.2		86.8		12.1		87.9	
					13.2		86.8		11.8		88.2	
					13.2		86.8		11.4		88.6	
					13.2		86.8		11.2		88.8	
					13.2		86.8		10.9		89.1	

TABULATION M

Ex. No. 2 to V.S

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUTH		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LINE %
1500	50									12.8		87.2
	100									12.8		87.2
	150									12.8		87.2
	200									12.8		87.2
	250									12.8		87.2
	300									12.8		87.2
	350									12.8		87.2
	400									12.8		87.2
	450									12.8		87.2
	500									12.8		87.2
	550									12.8		87.2
	600									12.8		87.2
	650									12.8		87.2
	700									12.8		87.2
	750									12.8		87.2
	800									12.8		87.2
	850									12.8		87.2
	900									12.8		87.2
	950									12.8		87.2
	1000									12.8		87.2
	1050									12.8		87.2
	1100									12.8		87.2
	1150									12.8		87.2
	1200									12.8		87.2
	1250									12.8		87.2
	1300									12.8		87.2
	1350									12.8		87.2
	1400									12.8		87.2
	1450									12.8		87.2
	1500									12.8		87.2
	1550									12.8		87.2
	1600									12.8		87.2
	1650									12.8		87.2
	1700									12.8		87.2
	1750									12.8		87.2
	1800									12.8		87.2
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
ENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						12.8		87.2		81.5		18.5	
						12.8		87.2		68.8		31.2	
						12.8		87.2		59.5		40.5	
						12.8		87.2		52.5		47.5	
						12.8		87.2		46.9		53.1	
						12.8		87.2		42.4		57.6	
						12.8		87.2		38.7		61.3	
						12.8		87.2		35.6		64.4	
						12.8		87.2		32.9		67.1	
						12.8		87.2		30.5		69.5	
						12.8		87.2		28.5		71.5	
						12.8		87.2		26.8		73.2	
						12.8		87.2		25.2		74.8	
						12.8		87.2		23.9		76.1	
						12.8		87.2		22.7		77.3	
						12.8		87.2		21.5		78.5	
						12.8		87.2		20.5		79.5	
						12.8		87.2		19.6		80.4	
						12.8		87.2		18.8		81.2	
						12.8		87.2		18.0		82.0	
						12.8		87.2		17.3		82.7	
						12.8		87.2		16.7		83.3	
						12.8		87.2		16.1		83.9	
						12.8		87.2		15.5		84.5	
						12.8		87.2		15.0		85.0	
						12.8		87.2		14.4		85.6	
						12.8		87.2		14.0		86.0	
						12.8		87.2		13.6		86.4	
						12.8		87.2		13.2		86.8	
						12.8		87.2		12.8		87.2	
						12.8		87.2		12.4		87.6	
						12.8		87.2		12.1		87.9	
						12.8		87.2		11.8		88.2	
						12.8		87.2		11.4		88.6	
						12.8		87.2		11.2		88.8	
						12.8		87.2		10.9		89.1	

TABULATION M

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOUT		
			TOTAL			SOUTH		NORTH		TERMINAL		L
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
1550	50									12.4		87.6
	100									12.4		87.6
	150									12.4		87.6
	200									12.4		87.6
	250									12.4		87.6
	300									12.4		87.6
	350									12.4		87.6
	400									12.4		87.6
	450									12.4		87.6
	500									12.4		87.6
	550									12.4		87.6
	600									12.4		87.6
	650									12.4		87.6
	700									12.4		87.6
	750									12.4		87.6
	800									12.4		87.6
	850									12.4		87.6
	900									12.4		87.6
	950									12.4		87.6
	1000									12.4		87.6
	1050									12.4		87.6
	1100									12.4		87.6
	1150									12.4		87.6
	1200									12.4		87.6
	1250									12.4		87.6
	1300									12.4		87.6
	1350									12.4		87.6
	1400									12.4		87.6
	1450									12.4		87.6
	1500									12.4		87.6
	1550									12.4		87.6
	1600									12.4		87.6
	1650									12.4		87.6
	1700									12.4		87.6
	1750									12.4		87.6
	1800									12.4		87.6
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
ENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						12.4		87.6		81.5		18.5	
						12.4		87.6		68.8		31.2	
						12.4		87.6		59.5		40.5	
						12.4		87.6		52.5		47.5	
						12.4		87.6		46.9		53.1	
						12.4		87.6		42.4		57.6	
						12.4		87.6		38.7		61.3	
						12.4		87.6		35.6		64.4	
						12.4		87.6		32.9		67.1	
						12.4		87.6		30.5		69.5	
						12.4		87.6		28.5		71.5	
						12.4		87.6		26.8		73.2	
						12.4		87.6		25.2		74.8	
						12.4		87.6		23.9		76.1	
						12.4		87.6		22.7		77.3	
						12.4		87.6		21.5		78.5	
						12.4		87.6		20.5		79.5	
						12.4		87.6		19.6		80.4	
						12.4		87.6		18.8		81.2	
						12.4		87.6		18.0		82.0	
						12.4		87.6		17.3		82.7	
						12.4		87.6		16.7		83.3	
						12.4		87.6		16.1		83.9	
						12.4		87.6		15.5		84.5	
						12.4		87.6		15.0		85.0	
						12.4		87.6		14.4		85.6	
						12.4		87.6		14.0		86.0	
						12.4		87.6		13.6		86.4	
						12.4		87.6		13.2		86.8	
						12.4		87.6		12.8		87.2	
						12.4		87.6		12.4		87.6	
						12.4		87.6		12.1		87.9	
						12.4		87.6		11.8		88.2	
						12.4		87.6		11.4		88.6	
						12.4		87.6		11.2		88.8	
						12.4		87.6		10.9		89.1	

TABULATION M

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUT		
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITRS.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	%
1600	50									12.1		87.9
	100									12.1		87.9
	150									12.1		87.9
	200									12.1		87.9
	250									12.1		87.9
	300									12.1		87.9
	350									12.1		87.9
	400									12.1		87.9
	450									12.1		87.9
	500									12.1		87.9
	550									12.1		87.9
	600									12.1		87.9
	650									12.1		87.9
	700									12.1		87.9
	750									12.1		87.9
	800									12.1		87.9
	850									12.1		87.9
	900									12.1		87.9
	950									12.1		87.9
	1000									12.1		87.9
	1050									12.1		87.9
	1100									12.1		87.9
	1150									12.1		87.9
	1200									12.1		87.9
	1250									12.1		87.9
	1300									12.1		87.9
	1350									12.1		87.9
	1400									12.1		87.9
	1450									12.1		87.9
	1500									12.1		87.9
	1550									12.1		87.9
	1600									12.1		87.9
	1650									12.1		87.9
	1700									12.1		87.9
	1750									12.1		87.9
	1800									12.1		87.9
TOTAL												

5	6	8	9	10	11	12	13	14	15	16	17	18
REVENUE AS SETTLED		REVENUE AS SETTLED			REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
	TOTAL	SOUTH		NORTH	TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
ITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					12.1		87.9		81.5		18.5	
					12.1		87.9		68.8		31.2	
					12.1		87.9		59.5		40.5	
					12.1		87.9		52.5		47.5	
					12.1		87.9		46.9		53.1	
					12.1		87.9		42.4		57.6	
					12.1		87.9		38.7		61.3	
					12.1		87.9		35.6		64.4	
					12.1		87.9		32.9		67.1	
					12.1		87.9		30.5		69.5	
					12.1		87.9		28.5		71.5	
					12.1		87.9		26.8		73.2	
					12.1		87.9		25.2		74.8	
					12.1		87.9		23.9		76.1	
					12.1		87.9		22.7		77.3	
					12.1		87.9		21.5		78.5	
					12.1		87.9		20.5		79.5	
					12.1		87.9		19.6		80.4	
					12.1		87.9		18.8		81.2	
					12.1		87.9		18.0		82.0	
					12.1		87.9		17.3		82.7	
					12.1		87.9		16.7		83.3	
					12.1		87.9		16.1		83.9	
					12.1		87.9		15.5		84.5	
					12.1		87.9		15.0		85.0	
					12.1		87.9		14.4		85.6	
					12.1		87.9		14.0		86.0	
					12.1		87.9		13.6		86.4	
					12.1		87.9		13.2		86.8	
					12.1		87.9		12.8		87.2	
					12.1		87.9		12.4		87.6	
					12.1		87.9		12.1		87.9	
					12.1		87.9		11.8		88.2	
					12.1		87.9		11.4		88.6	
					12.1		87.9		11.2		88.8	
					12.1		87.9		10.9		89.1	

TABULATION M

Ex. No. 2 to

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7		SOUT
MILES SOUTH	MILES NORTH	CARS	TOTAL TONS	ARBITS S.	REMAINDER	SOUTH REMAINDER*	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	L %
1650	50									11.8		88.2
	100									11.8		88.2
	150									11.8		88.2
	200									11.8		88.2
	250									11.8		88.2
	300									11.8		88.2
	350									11.8		88.2
	400									11.8		88.2
	450									11.8		88.2
	500									11.8		88.2
	550									11.8		88.2
	600									11.8		88.2
	650									11.8		88.2
	700									11.8		88.2
	750									11.8		88.2
	800									11.8		88.2
	850									11.8		88.2
	900									11.8		88.2
	950									11.8		88.2
	1000									11.8		88.2
	1050									11.8		88.2
	1100									11.8		88.2
	1150									11.8		88.2
	1200									11.8		88.2
	1250									11.8		88.2
	1300									11.8		88.2
	1350									11.8		88.2
	1400									11.8		88.2
	1450									11.8		88.2
	1500									11.8		88.2
	1550									11.8		88.2
	1600									11.8		88.2
	1650									11.8		88.2
	1700									11.8		88.2
	1750									11.8		88.2
	1800									11.8		88.2
TOTAL												

6	7	8	9	10	11	12	13	14	15	16	17	18
E AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
T O T A L	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					11.8		88.2		81.5		18.5	
					11.8		88.2		68.8		31.2	
					11.8		88.2		59.5		40.5	
					11.8		88.2		52.5		47.5	
					11.8		88.2		46.9		53.1	
					11.8		88.2		42.4		57.6	
					11.8		88.2		38.7		61.3	
					11.8		88.2		35.6		64.4	
					11.8		88.2		32.9		67.1	
					11.8		88.2		30.5		69.5	
					11.8		88.2		28.5		71.5	
					11.8		88.2		26.8		73.2	
					11.8		88.2		25.2		74.8	
					11.8		88.2		23.9		76.1	
					11.8		88.2		22.7		77.3	
					11.8		88.2		21.5		78.5	
					11.8		88.2		20.5		79.5	
					11.8		88.2		19.6		80.4	
					11.8		88.2		18.8		81.2	
					11.8		88.2		18.0		82.0	
					11.8		88.2		17.3		82.7	
					11.8		88.2		16.7		83.3	
					11.8		88.2		16.1		83.9	
					11.8		88.2		15.5		84.5	
					11.8		88.2		15.0		85.0	
					11.8		88.2		14.4		85.6	
					11.8		88.2		14.0		86.0	
					11.8		88.2		13.6		86.4	
					11.8		88.2		13.2		86.8	
					11.8		88.2		12.8		87.2	
					11.8		88.2		12.4		87.6	
					11.8		88.2		12.1		87.9	
					11.8		88.2		11.8		88.2	
					11.8		88.2		11.4		88.6	
					11.8		88.2		11.2		88.8	
					11.8		88.2		10.9		89.1	

TABULATION M

Ex. No. 2 to V

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7		SOUTH
MILES SOUTH	MILES NORTH	CARS	TONS	TOTAL ARBITS S.	REMAINDER	SOUTH REMAINDER	%	NORTH REMAINDER	%	TERMINAL %	AMOUNT	LI %
1700	50									11.4		88.6
	100									11.4		88.6
	150									11.4		88.6
	200									11.4		88.6
	250									11.4		88.6
	300									11.4		88.6
	350									11.4		88.6
	400									11.4		88.6
	450									11.4		88.6
	500									11.4		88.6
	550									11.4		88.6
	600									11.4		88.6
	650									11.4		88.6
	700									11.4		88.6
	750									11.4		88.6
	800									11.4		88.6
	850									11.4		88.6
	900									11.4		88.6
	950									11.4		88.6
	1000									11.4		88.6
	1050									11.4		88.6
	1100									11.4		88.6
	1150									11.4		88.6
	1200									11.4		88.6
	1250									11.4		88.6
	1300									11.4		88.6
	1350									11.4		88.6
	1400									11.4		88.6
	1450									11.4		88.6
	1500									11.4		88.6
	1550									11.4		88.6
	1600									11.4		88.6
	1650									11.4		88.6
	1700									11.4		88.6
	1750									11.4		88.6
	1800									11.4		88.6
TOTAL												

6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					11.4		88.6		81.5		18.5	
					11.4		88.6		68.8		31.2	
					11.4		88.6		59.5		40.5	
					11.4		88.6		52.5		47.5	
					11.4		88.6		46.9		53.1	
					11.4		88.6		42.4		57.6	
					11.4		88.6		38.7		61.3	
					11.4		88.6		35.6		64.4	
					11.4		88.6		32.9		67.1	
					11.4		88.6		30.5		69.5	
					11.4		88.6		28.5		71.5	
					11.4		88.6		26.8		73.2	
					11.4		88.6		25.2		74.8	
					11.4		88.6		23.9		76.1	
					11.4		88.6		22.7		77.3	
					11.4		88.6		21.5		78.5	
					11.4		88.6		20.5		79.5	
					11.4		88.6		19.6		80.4	
					11.4		88.6		18.8		81.2	
					11.4		88.6		18.0		82.0	
					11.4		88.6		17.3		82.7	
					11.4		88.6		16.7		83.3	
					11.4		88.6		16.1		83.9	
					11.4		88.6		15.5		84.5	
					11.4		88.6		15.0		85.0	
					11.4		88.6		14.4		85.6	
					11.4		88.6		14.0		86.0	
					11.4		88.6		13.6		86.4	
					11.4		88.6		13.2		86.8	
					11.4		88.6		12.8		87.2	
					11.4		88.6		12.4		87.6	
					11.4		88.6		12.1		87.9	
					11.4		88.6		11.8		88.2	
					11.4		88.6		11.4		88.6	
					11.4		88.6		11.2		88.8	
					11.4		88.6		10.9		89.1	

TABULATION M

Ex. No. 2 to

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
			REVENUE AS SETTLED			REVENUE AS SETTLED				REVENUE COL. 7 SOU		
			TOTAL			SOUTH		NORTH		TERMINAL		
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
1750	50									11.2		88.8
	100									11.2		88.8
	150									11.2		88.8
	200									11.2		88.8
	250									11.2		88.8
	300									11.2		88.8
	350									11.2		88.8
	400									11.2		88.8
	450									11.2		88.8
	500									11.2		88.8
	550									11.2		88.8
	600									11.2		88.8
	650									11.2		88.8
	700									11.2		88.8
	750									11.2		88.8
	800									11.2		88.8
	850									11.2		88.8
	900									11.2		88.8
	950									11.2		88.8
	1000									11.2		88.8
	1050									11.2		88.8
	1100									11.2		88.8
	1150									11.2		88.8
	1200									11.2		88.8
	1250									11.2		88.8
	1300									11.2		88.8
	1350									11.2		88.8
	1400									11.2		88.8
	1450									11.2		88.8
	1500									11.2		88.8
	1550									11.2		88.8
	1600									11.2		88.8
	1650									11.2		88.8
	1700									11.2		88.8
	1750									11.2		88.8
	1800									11.2		88.8
TOTAL												

TABULATION M-FINAL PAGE- COMPOSITE OF INDIVIDUAL MILEAGE BLOCK FIGURES FROM PAGES 73 TO 108 -I E SOUTHBOUND AND NORTHBOUND COMBINED- OF
MILEAGE BLOCK NORTH. COLUMN NUMBERS USED CORRESPOND TO COLUMN NUMBERS ON PAGES 73 TO 108 AND COLUMN NUMBERS SK
13, 15, AND 17- WERE NOT NECESSARY FOR THIS PAGE.

1 MILES SOUTH	2 MILES NORTH	3 CARS	4 TONS	5 REVENUE AS SETTLED TOTAL ARBITR S.	6 REMAINDER	7 REVENUE AS SETTLED SOUTH REMAINDER	9 NORTH REMAINDER	12 REVENUS TERMINA AMOU
	50	42,719	1,498,622.6	6,435	15,545,082	11,213,610	4,331,472	3,541,5
	100	34,494	1,136,886.4	5,237	11,551,012	7,875,398	3,675,614	2,531,0
	150	69,722	2,175,503.6	43,579	29,519,975	19,993,080	9,526,895	5,641,4
	200	59,859	2,046,089.9	88,625	27,779,726	17,977,345	9,802,381	5,147,9
	250	95,427	2,608,501.9	69,965	46,100,913	29,194,030	16,906,883	7,969,3
	300	146,588	4,038,582.9	261,084	75,614,520	45,147,428	30,467,092	12,833,4
	350	115,356	2,982,187.0	352,135	56,997,875	33,080,256	23,917,619	9,251,9
	400	67,226	2,077,660.7	116,299	36,505,952	20,287,461	16,218,491	5,774,6
	450	99,627	1,710,345.1	138,643	33,737,240	18,081,173	15,656,067	5,194,3
	500	46,443	1,274,607.1	65,007	24,264,393	12,407,709	11,856,684	3,622,4
	550	47,368	1,334,344.2	48,113	26,869,399	12,974,989	13,894,410	3,941,1
	600	47,140	1,341,282.0	93,270	26,507,044	12,590,669	13,916,375	3,728,4
	650	24,652	717,129.1	34,982	14,504,433	6,239,314	8,265,119	2,079,6
	700	20,521	674,094.7	22,644	12,639,480	5,550,069	7,089,411	1,713,7
	750	20,249	557,266.4	8,684	11,883,373	4,943,178	6,940,195	1,531,3
	800	9,885	303,939.5	318	6,311,570	2,370,601	3,940,969	849,9
50	850	11,718	297,839.9	3,831	7,048,667	2,673,168	4,375,499	901,4
TO	900	9,488	250,541.9	661	6,078,425	2,188,084	3,890,341	769,0
1800	950	5,557	143,678.9	2,962	3,351,307	1,190,740	2,160,567	411,4
INC.	1000	8,907	290,724.7	458	5,304,988	1,890,241	3,414,747	626,9
	1050	11,468	229,210.7		6,647,597	2,329,300	4,318,297	749,3
	1100	5,242	127,599.1	584	3,208,070	1,025,492	2,182,578	361,6
	1150	3,119	75,716.1		2,018,765	690,636	1,328,129	210,0
	1200	2,396	61,011.0		1,636,945	553,360	1,083,585	166,7
	1250	2,042	46,044.0	992	1,295,479	359,422	936,057	142,0
	1300	713	16,776.3		466,170	121,348	344,822	48,8
	1350	865	32,024.6		782,509	248,868	533,641	76,6
	1400	271	6,641.4		201,135	60,948	140,187	20,1
	1450	190	4,694.9		134,003	33,152	100,851	13,1
	1500	83	1,672.7		47,434	12,886	34,548	4,8
	1550	67	813.6		34,424	8,098	26,326	3,2
	1600	152	3,687.8	1,197	133,156	38,068	95,088	11,0
	1650							
	1700							
	1750							
	1900							
	TOTAL	967,554	28,055,720.7	1,365,705	494,721,061	273,350,121	221,370,940	79,919,3

6	7	8	9	10	11	12	13	14	15	16	17	18
UE AS SETTLED	REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL	SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
S S. REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
					11.2		88.8		81.5		18.5	
					11.2		88.8		68.8		31.2	
					11.2		88.8		59.5		40.5	
					11.2		88.8		52.5		47.5	
					11.2		88.8		46.9		53.1	
					11.2		88.8		42.4		57.6	
					11.2		88.8		38.7		61.3	
					11.2		88.8		35.6		64.4	
					11.2		88.8		32.9		67.1	
					11.2		88.8		30.5		69.5	
					11.2		88.8		28.5		71.5	
					11.2		88.8		26.8		73.2	
					11.2		88.8		25.2		74.8	
					11.2		88.8		23.9		76.1	
					11.2		88.8		22.7		77.3	
					11.2		88.8		21.5		78.5	
					11.2		88.8		20.5		79.5	
					11.2		88.8		19.6		80.4	
					11.2		88.8		18.8		81.2	
					11.2		88.8		18.0		82.0	
					11.2		88.8		17.3		82.7	
					11.2		88.8		16.7		83.3	
					11.2		88.8		16.1		83.9	
					11.2		88.8		15.5		84.5	
					11.2		88.8		15.0		85.0	
					11.2		88.8		14.4		85.6	
					11.2		88.8		14.0		86.0	
					11.2		88.8		13.6		86.4	
					11.2		88.8		13.2		86.8	
					11.2		88.8		12.8		87.2	
					11.2		88.8		12.4		87.6	
					11.2		88.8		12.1		87.9	
					11.2		88.8		11.8		88.2	
					11.2		88.8		11.4		88.6	
					11.2		88.8		11.2		88.8	
					11.2		88.8		10.9		89.1	

TABULATION M

Ex. No. 2 to

SOUTHBOUND AND NORTHBOUND

1	2	3	4	5	6	7	8	9	10	11	12	13
				REVENUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SO		
				TOTAL		SOUTH		NORTH		TERMINAL		
MILES SOUTH	MILES NORTH	CARS	TONS	ARBITS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%
1800	50									10.9		89.
	100									10.9		89.
	150									10.9		89.
	200									10.9		89.
	250									10.9		89.
	300									10.9		89.
	350									10.9		89.
	400									10.9		89.
	450									10.9		89.
	500									10.9		89.
	550									10.9		89.
	600									10.9		89.
	650									10.9		89.
	700									10.9		89.
	750									10.9		89.
	800									10.9		89.
	850									10.9		89.
	900									10.9		89.
	950									10.9		89.
	1000									10.9		89.
	1050									10.9		89.
	1100									10.9		89.
	1150									10.9		89.
	1200									10.9		89.
	1250									10.9		89.
	1300									10.9		89.
	1350									10.9		89.
	1400									10.9		89.
	1450									10.9		89.
	1500									10.9		89.
	1550									10.9		89.
	1600									10.9		89.
	1650									10.9		89.
	1700									10.9		89.
	1750									10.9		89.
	1800									10.9		89.
TOTAL												

5	6	7	8	9	10	11	12	13	14	15	16	17	18
NUE AS SETTLED		REVENUE AS SETTLED				REVENUE COL. 7 SOUTH				REVENUE COL. 9 NORTH			
TOTAL		SOUTH		NORTH		TERMINAL		LINE HAUL		TERMINAL		LINE-HAUL	
TS S.	REMAINDER	REMAINDER	%	REMAINDER	%	%	AMOUNT	%	AMOUNT	%	AMOUNT	%	AMOUNT
						10.9		89.1		81.5		18.5	
						10.9		89.1		68.8		31.2	
						10.9		89.1		59.5		40.5	
						10.9		89.1		52.5		47.5	
						10.9		89.1		46.9		53.1	
						10.9		89.1		42.4		57.6	
						10.9		89.1		38.7		61.3	
						10.9		89.1		35.6		64.4	
						10.9		89.1		32.9		67.1	
						10.9		89.1		30.5		69.5	
						10.9		89.1		28.5		71.5	
						10.9		89.1		26.8		73.2	
						10.9		89.1		25.2		74.8	
						10.9		89.1		23.9		76.1	
						10.9		89.1		22.7		77.3	
						10.9		89.1		21.5		78.5	
						10.9		89.1		20.5		79.5	
						10.9		89.1		19.6		80.4	
						10.9		89.1		18.8		81.2	
						10.9		89.1		18.0		82.0	
						10.9		89.1		17.3		82.7	
						10.9		89.1		16.7		83.3	
						10.9		89.1		16.1		83.9	
						10.9		89.1		15.5		84.5	
						10.9		89.1		15.0		85.0	
						10.9		89.1		14.4		85.6	
						10.9		89.1		14.0		86.0	
						10.9		89.1		13.6		86.4	
						10.9		89.1		13.2		86.8	
						10.9		89.1		12.8		87.2	
						10.9		89.1		12.4		87.6	
						10.9		89.1		12.1		87.9	
						10.9		89.1		11.8		88.2	
						10.9		89.1		11.4		88.6	
						10.9		89.1		11.2		88.8	
						10.9		89.1		10.9		89.1	

UAL MILEAGE BLOCK FIGURES FROM PAGES 73 TO 108 -I E SOUTHBOUND AND NORTHBOUND COMBINED- OF TABULATION E, FOR EACH . COLUMN NUMBERS USED CORRESPOND TO COLUMN NUMBERS ON PAGES 73 TO 108 AND COLUMN NUMBERS SKIPPED -8, 10, 11, WERE NOT NECESSARY FOR THIS PAGE.

PAGE 109

S	5 REVENUE AS SETTLED TOTAL ARBITR S.	6 REMAINDER	7 REVENUE AS SETTLED SOUTH REMAINDER	9 NORTH REMAINDER	12 REVENUE -COL. 7- SOUTH TERMINAL AMOUNT	14 LINE-HAUL AMOUNT	16 REVENUE -COL. 9- TERMINAL AMOUNT	18 NORTH LINE-HAUL AMOUNT
6	6,435	15,545,082	11,213,610	4,331,472	3,541,551	7,672,059	3,530,149	801,323
4	5,237	11,551,012	7,875,398	3,675,614	2,531,038	5,344,360	2,528,821	1,146,793
6	43,579	29,519,975	19,993,080	9,526,895	5,641,450	14,351,630	5,668,502	3,858,393
9	88,625	27,779,726	17,977,345	9,802,381	5,147,926	12,829,419	5,146,251	4,656,130
9	69,965	46,100,913	29,194,030	16,906,883	7,969,366	21,224,664	7,929,328	8,977,555
9	261,084	75,614,520	45,147,428	30,467,092	12,833,468	32,313,963	12,918,048	17,549,044
0	352,135	56,997,875	33,080,256	23,917,619	9,251,925	23,828,331	9,256,118	14,661,501
7	116,299	36,505,952	20,287,461	16,218,491	5,774,642	14,512,819	5,773,783	10,444,708
1	138,643	33,737,240	18,081,173	15,656,067	5,194,370	12,886,803	5,150,846	10,505,221
1	65,007	24,264,393	12,407,709	11,856,684	3,622,439	8,785,270	3,616,291	8,240,393
2	48,113	26,869,399	12,974,989	13,894,410	3,941,162	9,033,827	3,959,908	9,934,502
0	93,270	26,507,044	12,590,669	13,916,375	3,728,463	8,862,206	3,729,588	10,186,787
1	34,982	14,504,433	6,239,314	8,265,119	2,079,615	4,159,699	2,082,811	6,182,308
7	22,644	12,639,480	5,550,069	7,089,411	1,713,795	3,836,274	1,694,369	5,395,042
4	8,684	11,883,373	4,943,178	6,940,195	1,531,334	3,361,844	1,575,425	5,364,770
5	318	6,311,570	2,370,601	3,940,969	849,972	1,520,629	847,308	3,093,661
9	3,831	7,048,667	2,673,168	4,375,499	901,495	1,771,673	896,975	3,478,524
9	661	6,078,425	2,188,084	3,890,341	769,080	1,419,004	762,506	3,127,835
9	2,962	3,351,307	1,190,740	2,160,567	411,499	779,241	406,186	1,754,381
7	458	5,304,988	1,890,241	3,414,747	626,937	1,263,304	614,655	2,800,092
7		6,647,597	2,329,300	4,318,297	749,338	1,579,962	747,067	3,571,230
8	584	3,208,070	1,025,492	2,182,578	361,628	663,864	364,491	1,818,087
9		2,018,765	690,636	1,328,129	210,096	480,540	213,829	1,114,300
0		1,636,945	553,360	1,083,585	166,708	386,657	167,956	915,629
0	992	1,295,479	359,422	936,057	142,058	217,364	140,410	795,647
3		466,170	121,348	344,822	48,847	72,501	49,654	295,168
3		782,509	248,868	533,641	76,657	172,211	74,709	458,932
4		201,135	60,948	140,187	20,139	40,809	19,066	121,121
4		134,003	33,152	100,851	13,167	19,985	13,312	87,539
5		47,434	12,886	34,548	4,881	8,005	4,422	30,126
5		34,424	8,098	26,326	3,249	4,849	3,265	23,061
6	1,197	133,156	38,068	95,088	11,031	27,037	11,506	83,582
7	1,365,705	494,721,061	273,350,121	221,370,940	79,919,318	193,430,803	79,897,555	141,473,385

EX. NO. 2 CO V.S.

TABULATION M - APPENDIX ONE

AVERAGE TERMINAL REVENUE PER CAR PRODUCED BY SOUTHBOUND AN D NORTHBOUND TR
THE TRAFFIC STUDY FOR EACH 50 MILE BLOCK UNDER THE DOCKET 29885 DIVISIONS

1	2	3	4	5	
MILEAGE BLOCK SOUTH	TOTAL CARS SOUTH	SOUTH TOTAL TERMINAL REVENUE SOUTH COL. 12 OF TAB. EM	AVG. REV. PER CAR 3/2	MILEAGE BLOCK NORTH	TO N
50	10,541	955,771	91	50	42
100	28,135	2,448,465	87	100	34
150	32,483	2,526,810	78	150	69
200	39,733	3,373,065	85	200	59
250	33,281	2,928,029	88	250	95
300	56,347	4,858,719	86	300	146
350	68,974	5,967,368	87	350	115
400	66,987	5,710,662	85	400	67
450	48,492	4,166,873	86	450	59
500	101,380	9,438,403	93	500	44
550	58,667	4,720,933	80	550	47
600	61,953	5,250,082	85	600	47
650	68,474	5,320,011	78	650	24
700	50,060	3,938,133	79	700	20
750	50,324	3,969,465	79	750	20
800	43,899	3,398,392	77	800	9
850	51,277	4,129,234	81	850	1
900	12,963	995,775	77	900	
950	23,677	1,714,642	72	950	
1000	34,465	2,347,956	68	1000	
1050	7,570	486,498	64	1050	1
1100	4,280	332,149	78	1100	
1150	7,771	535,548	69	1150	
1200	5,821	406,336	70	1200	
1250				1250	
1300				1300	
1350				1350	
1400				1400	
1450				1450	
1500				1500	
1550				1550	
1600				1600	
1650				1650	
1700				1700	
1750				1750	
1800				1800	

AVERAGE TERMINAL REVENUE PER CAR PRODUCED BY SOUTHBOUND AND NORTHBOUND TRAFFIC COMBINED, AS COVERED BY THE TRAFFIC STUDY FOR EACH 50 MILE BLOCK UNDER THE DOCKET 29885 DIVISIONS.

NAL UTH EM	4 AVG. REV. PER CAR 3/2	5 MILEAGE BLOCK NORTH	6 TOTAL CARS NORTH	7 N O R T H TOTAL TERMINAL REVENUE NORTH COL.16 OF TAB. EM	8 AVG. REV. PER CAR 7/6
771	91	50	42,719	3,530,149	83
465	87	100	34,494	2,528,821	73
810	78	150	69,722	5,668,502	81
065	85	200	59,859	5,146,251	86
029	88	250	95,427	7,929,328	83
719	86	300	146,588	12,918,048	88
368	87	350	115,356	9,256,118	80
562	85	400	67,226	5,773,783	86
873	86	450	59,627	5,150,846	86
403	93	500	44,443	3,616,291	81
933	80	550	47,368	3,959,908	84
082	85	600	47,140	3,729,538	79
011	78	650	24,652	2,082,811	84
33	79	700	20,521	1,694,369	83
65	79	750	20,249	1,575,425	78
92	77	800	9,885	847,308	86
34	81	850	11,718	896,975	77
75	77	900	9,488	762,506	80
42	72	950	5,557	406,186	73
56	68	1000	8,907	614,655	69
98	64	1050	11,468	747,067	65
48	78	1100	5,242	364,491	70
48	69	1150	3,119	213,829	69
36	70	1200	2,396	167,956	70
		1250	2,042	140,410	69
		1300	713	49,654	70
		1350	865	74,709	86
		1400	271	19,066	70
		1450	190	13,312	70
		1500	83	4,422	53
		1550	67	3,265	49
		1600	152	11,506	76
		1650			
		1700			
		1750			
		1800			

Ex. No. 2 to V.S.

TABULATION P

DISTRIBUTION OF "AS SETTLED - REMAINDER" REVENUE, AS TAKEN FROM TABULATION M, COLUMNS 7 AND 9, BY MILEAGE BLOCKS

MILES SOUTH	NORTH	50	100	150	200	250	300	350	400	450	500	550	600	
50	N	81,648	56,929	109,944	91,706	212,409	236,521	157,226	57,154	74,098	51,994	129,368	213,285	
	S	126,956	48,463	79,617	59,434	125,232	122,736	72,299	24,919	30,685	19,226	50,260	71,144	
	T	208,604	105,392	189,561	151,140	337,641	359,257	229,525	82,073	104,783	71,220	179,628	284,429	
100	N	73,779	91,454	184,521	289,525	273,098	637,014	668,980	225,171	380,370	293,544	1,448,573	803,139	
	S	87,170	91,474	157,149	218,703	189,999	393,633	372,566	113,018	179,797	131,749	578,774	312,052	
	T	160,949	182,928	341,670	508,228	463,097	1,030,647	1,041,546	338,189	560,167	425,293	2,027,347	1,115,191	
150	N	175,191	353,600	193,723	414,456	256,093	533,706	393,201	287,145	749,267	496,246	269,322	393,118	
	S	242,258	419,131	190,940	372,362	201,073	386,635	247,533	169,749	424,546	256,652	127,043	176,612	
	T	417,449	772,731	384,663	786,818	457,166	920,341	640,734	456,894	1,173,813	752,898	396,365	569,730	
200	N	260,388	330,672	373,644	307,395	269,596	1,049,272	721,540	778,488	582,620	606,619	699,810	386,997	
	S	402,800	437,841	421,533	307,432	242,021	858,825	523,107	521,159	371,270	354,714	378,755	199,164	
	T	663,188	768,513	795,177	614,827	511,617	1,908,097	1,244,647	1,299,647	953,890	961,333	1,078,565	586,161	
250	N	506,200	309,483	204,592	413,361	410,078	710,822	937,649	441,125	563,248	328,386	255,344	429,750	
	S	851,380	444,437	265,502	466,025	412,058	629,754	768,035	334,035	396,034	208,308	157,004	241,662	
	T	1,357,580	753,920	470,094	879,386	822,136	1,340,576	1,705,684	775,160	959,282	536,694	412,348	671,412	
300	N	206,133	238,779	669,570	601,192	1,040,789	1,774,434	1,518,198	832,307	658,186	1,125,797	631,417	1,060,601	
	S	399,075	391,197	927,003	734,505	1,177,395	1,781,442	1,398,344	708,866	518,416	814,306	418,034	671,022	
	T	605,208	629,976	1,596,573	1,335,697	2,218,184	3,555,876	2,916,542	1,541,173	1,176,602	1,940,103	1,049,451	1,731,623	
350	N	356,704	234,117	652,689	481,022	1,061,920	2,057,147	1,457,772	1,552,675	1,050,491	699,144	1,184,246	876,676	
	S	757,188	416,244	1,025,684	663,868	1,299,884	2,228,214	1,450,810	1,447,260	895,942	552,843	866,402	609,396	
	T	1,113,892	650,361	1,678,373	1,144,890	2,361,804	4,285,361	2,908,582	2,999,935	1,946,433	1,251,987	2,050,648	1,486,072	1,
400	N	166,909	171,440	699,491	683,193	899,503	1,906,910	1,671,990	1,100,424	1,223,857	950,980	1,043,183	1,264,120	
	S	390,825	332,055	1,191,108	1,024,377	1,190,715	2,224,709	1,822,092	1,110,825	1,130,752	809,409	830,080	954,733	
	T	557,734	503,495	1,890,599	1,707,570	2,090,218	4,131,619	3,494,082	2,211,249	2,354,609	1,760,389	1,873,263	2,218,853	1,
450	N	574,237	202,509	650,151	630,159	866,391	1,611,859	830,922	933,595	744,471	440,600	669,069	325,214	
	S	1,405,258	430,872	1,157,616	987,564	1,254,703	2,059,339	976,975	1,012,537	746,499	412,734	570,474	265,569	
	T	1,979,495	633,381	1,807,767	1,617,723	2,121,094	3,671,198	1,807,897	1,946,132	1,490,970	853,334	1,239,543	590,783	
500	N	421,695	224,804	974,860	1,180,474	2,757,029	6,044,469	3,518,336	1,348,338	1,896,514	587,076	914,107	1,417,807	
	S	1,136,322	500,478	1,879,828	2,003,072	4,307,449	8,348,522	4,517,605	1,576,860	2,061,519	588,223	842,194	1,255,675	
	T	1,558,047	725,282	2,854,688	3,183,546	7,064,478	14,392,991	8,035,941	2,925,198	3,958,033	1,175,299	1,756,301	2,673,482	1,
550	N	90,076	236,148	579,017	379,313	771,328	1,441,511	1,208,919	1,294,268	969,691	1,163,402	1,313,283	853,606	
	S	254,688	574,436	1,227,972	695,701	1,259,094	2,162,689	1,669,568	1,628,529	1,147,087	1,256,658	1,312,353	789,971	
	T	344,764	810,584	1,806,989	1,075,014	2,030,422	3,604,200	2,878,487	2,922,797	2,116,778	2,420,060	2,625,636	1,643,577	1,
600	N	296,348	173,426	433,442	529,935	1,045,081	2,207,433	1,368,704	1,528,603	991,608	873,838	863,422	946,029	
	S	890,493	446,083	963,816	1,019,098	1,862,459	3,463,799	1,977,726	2,029,254	1,229,082	985,834	946,637	944,178	
	T	1,186,841	619,509	1,397,258	1,549,033	2,907,540	5,671,232	3,346,430	3,557,857	2,220,690	1,859,672	1,810,059	1,890,207	
650	N	187,883	281,879	858,193	756,200	1,541,737	1,281,992	1,764,620	913,440	1,174,116	951,920	731,799	828,947	
	S	592,041	757,261	1,981,408	1,606,876	2,067,497	2,174,544	2,760,027	1,263,268	1,557,258	1,158,322	832,561	864,690	
	T	779,924	1,039,140	2,839,601	2,363,076	4,409,234	3,456,536	4,524,647	2,176,708	2,731,374	2,110,242	1,564,360	1,693,637	

DISTRIBUTION OF "AS SETTLED - REMAINDER" REVENUE, AS TAKEN FROM TABULATION M, COLUMNS 7 AND 9, BY MILEAGE BLOCKS

250	300	350	400	450	500	550	600	650	700	750	800	850
212,409	236,521	157,226	57,154	74,098	51,994	129,368	213,285	525,905	83,593	69,185	90,796	52,581
125,232	122,736	72,299	24,919	30,685	19,226	50,260	71,144	165,540	26,318	19,233	24,159	13,804
337,641	359,257	229,525	82,073	104,783	71,220	179,628	284,429	691,445	109,911	88,418	114,955	66,385
273,098	637,014	668,980	225,171	380,370	293,544	1,448,573	803,139	682,990	274,419	268,789	130,054	193,001
189,999	393,633	372,566	113,018	179,797	131,749	578,774	312,052	253,344	96,399	89,612	41,105	59,182
463,097	1,030,647	1,041,546	338,189	560,167	425,293	2,027,347	1,115,191	936,334	370,818	358,401	171,159	252,183
256,093	533,706	393,201	287,145	749,267	496,246	269,322	393,118	340,728	385,86[illegible]	379,974	473,421	317,377
201,073	386,635	247,533	169,749	424,546	256,652	127,043	176,612	145,702	157,5[illegible]	148,515	174,023	111,775
457,166	920,341	640,734	456,894	1,173,813	752,898	396,365	569,730	486,430	543,45[illegible]	528,489	647,444	429,152
269,596	1,049,272	721,540	778,488	582,620	606,619	699,810	386,997	343,278	358,746	206,119	683,979	294,973
242,021	858,825	523,107	521,159	371,270	354,714	378,755	199,164	162,842	160,855	90,692	278,820	116,329
511,617	1,908,097	1,244,647	1,299,647	953,890	961,333	1,078,565	586,161	506,120	519,601	296,811	962,799	411,302
410,078	710,822	937,649	441,125	563,248	328,386	255,344	429,750	297,469	451,114	269,291	274,726	415,545
412,058	629,754	768,035	334,035	396,034	208,308	157,004	241,662	160,011	233,125	131,102	123,419	172,689
822,136	1,340,576	1,705,684	775,160	959,282	536,694	412,348	671,412	457,480	684,239	400,393	398,145	588,234
1,040,789	1,774,434	1,518,198	832,307	658,186	1,125,797	631,417	1,060,601	477,661	257,834	507,989	233,813	344,992
1,177,395	1,781,442	1,398,344	708,866	518,416	814,306	418,034	671,022	280,695	141,657	272,006	117,582	171,868
2,218,184	3,555,876	2,916,542	1,541,173	1,176,602	1,940,103	1,049,451	1,731,623	758,356	399,491	779,995	351,395	516,860
1,061,920	2,057,147	1,457,772	1,552,675	1,050,491	699,144	1,184,246	876,676	893,522	371,914	943,369	356,523	138,387
1,299,884	2,228,214	1,450,810	1,447,260	895,942	552,843	866,402	609,396	571,931	227,867	536,303	201,344	74,487
2,361,804	4,285,361	2,908,582	2,999,935	1,946,433	1,251,987	2,050,648	1,486,072	1,465,453	599,781	1,449,672	557,867	212,874
899,503	1,906,910	1,671,990	1,100,424	1,223,857	950,980	1,043,183	1,264,120	706,798	945,696	650,972	192,178	859,015
1,190,715	2,224,709	1,822,092	1,110,825	1,130,752	809,409	830,080	954,733	510,743	630,989	417,400	117,695	510,205
2,090,218	4,131,619	3,494,082	2,211,249	2,354,609	1,760,389	1,873,263	2,218,853	1,217,541	1,576,685	1,068,372	309,873	1,369,220
866,391	1,611,859	830,922	933,595	744,471	440,600	669,069	325,214	299,425	318,224	528,106	120,316	130,150
1,254,703	2,059,339	976,975	1,012,537	746,499	412,734	570,474	265,569	226,026	231,134	368,687	79,752	79,683
2,121,094	3,671,198	1,807,897	1,946,132	1,490,970	853,334	1,239,543	590,783	525,451	549,358	866,793	200,068	209,833
2,757,029	6,044,469	3,518,336	1,348,338	1,896,514	587,076	914,107	1,417,807	567,710	396,973	298,998	320,311	287,977
4,307,449	8,348,522	4,517,605	1,576,860	2,061,519	588,223	842,194	1,255,675	468,876	314,388	223,260	229,801	192,182
7,064,478	14,392,991	8,035,941	2,925,198	3,958,033	1,175,299	1,756,301	2,673,482	1,036,586	711,361	522,258	550,112	480,159
771,328	1,441,511	1,208,919	1,294,268	969,691	1,163,402	1,313,283	853,606	665,752	252,587	565,120	185,234	153,666
1,259,094	2,162,689	1,669,568	1,628,529	1,147,087	1,256,658	1,312,353	789,971	575,045	215,007	446,051	139,712	111,263
2,030,422	3,604,200	2,878,487	2,922,797	2,116,778	2,420,060	2,625,636	1,643,577	1,240,797	467,594	1,011,171	324,946	264,929
1,045,081	2,207,433	1,368,704	1,528,603	991,608	873,838	863,422	946,029	386,193	996,416	782,741	121,301	112,851
1,862,459	3,463,799	1,977,726	2,029,254	1,229,082	985,834	946,637	944,178	371,989	940,616	665,317	98,698	85,150
2,907,540	5,671,232	3,346,430	3,057,857	2,220,690	1,859,672	1,810,059	1,890,207	758,182	1,937,032	1,448,058	219,999	198,001
1,541,737	1,281,992	1,764,620	913,440	1,174,116	951,920	731,799	828,947	467,280	409,400	169,693	111,717	193,401
2,067,497	2,174,544	2,760,027	1,263,268	1,557,258	1,158,322	832,561	864,690	467,386	392,598	154,044	93,493	158,820
4,409,234	3,456,536	4,524,647	2,176,708	2,731,374	2,110,242	1,564,360	1,693,637	934,666	801,998	323,737	205,210	352,221

	T	344,764	810,584	1,806,989	1,075,014	2,030,422	3,604,200	2,878,487	2,922,797	2,116,778	2,420,060	2,625,636	1,643,577	1,240,
600	N	296,348	173,426	433,442	529,935	1,045,081	2,207,433	1,368,704	1,528,603	991,608	873,838	863,422	946,029	386,
	S	890,493	446,083	963,816	1,019,098	1,862,459	3,463,799	1,977,726	,029,254	1,229,082	985,834	946,637	944,178	371,
	T	1,186,841	619,509	1,397,258	1,549,033	2,907,540	5,671,232	3,346,430	,557,857	2,220,690	1,859,672	1,810,059	1,890,207	758,
650	N	187,883	281,879	858,193	756,200	1,541,737	1,281,992	1,764,620	913,440	1,174,116	951,920	731,799	828,947	467,
	S	592,041	757,261	1,981,408	1,606,876	2,867,497	2,174,544	2,760,027	1,263,268	1,557,258	1,158,322	832,561	864,690	467,
	T	779,924	1,039,140	2,839,601	2,363,076	4,409,234	3,456,536	4,524,647	2,176,708	2,731,374	2,110,242	1,564,360	1,693,637	934,
700	N	164,390	114,574	510,162	404,212	649,099	1,647,166	869,788	1,008,988	605,411	795,470	772,332	905,006	454,
	S	531,081	326,709	1,269,962	883,506	1,254,942	2,936,338	1,419,610	1,508,924	833,990	1,010,126	905,598	1,021,713	461,
	T	695,971	441,283	1,780,124	1,292,718	1,904,041	4,583,504	2,289,398	2,517,912	1,439,401	1,805,596	1,677,930	1,926,719	916,
750	N	247,909	221,076	534,231	471,332	1,105,133	1,573,092	1,098,393	1,075,599	768,755	361,923	420,413	592,185	326,
	S	878,186	663,223	1,369,301	1,098,962	2,252,553	2,915,305	1,874,463	1,680,644	1,106,785	475,116	539,873	693,469	368,
	T	1,126,095	884,299	1,903,532	1,570,294	3,357,686	4,488,397	2,972,856	2,756,243	1,875,540	837,039	960,286	1,285,654	694,
800	N	53,258	86,099	303,032	669,683	566,610	1,288,848	1,151,158	964,007	847,563	523,435	482,031	804,449	336,
	S	199,811	273,950	817,530	1,638,502	1,260,398	2,472,909	2,034,791	1,592,205	1,264,782	752,413	650,412	979,732	395,
	T	253,069	360,049	1,120,562	2,308,185	1,827,008	3,761,757	3,185,949	2,556,212	2,112,345	1,275,848	1,132,443	1,784,181	731,
850	N	151,880	53,123	472,498	595,851	861,615	1,562,573	1,824,532	621,073	873,784	588,293	1,323,051	972,167	180,
	S	609,441	176,022	1,344,555	1,532,464	2,005,459	3,166,760	3,390,641	1,072,226	1,426,956	880,681	1,827,929	1,290,664	220,
	T	761,321	229,145	1,817,053	2,128,315	2,867,074	4,729,333	5,215,173	1,693,299	2,300,740	1,468,974	3,150,980	2,262,831	401,
900	N	33,658	53,025	168,615	114,221	244,259	316,097	425,086	286,783	345,324	120,583	171,426	117,584	62
	S	143,543	186,280	508,135	308,783	564,352	666,163	828,320	521,523	601,471	189,041	246,720	162,383	80
	T	177,201	239,305	676,750	423,004	808,611	982,260	1,253,406	808,306	946,795	309,624	418,146	279,967	143
950	N	115,328	65,766	271,301	243,486	522,963	901,057	490,305	247,028	483,798	221,658	215,900	279,486	35
	S	490,938	239,189	854,505	691,030	1,295,355	2,000,427	993,513	458,651	859,712	360,738	325,413	403,975	47
	T	606,266	304,955	1,125,806	934,566	1,818,318	2,901,484	1,483,818	705,679	1,343,510	582,396	541,313	683,461	82
1000	N	61,108	79,082	375,168	276,632	840,956	896,527	1,449,735	208,778	356,775	373,429	249,137	345,567	111
	S	278,042	298,316	1,256,223	776,184	2,157,922	2,008,834	3,066,245	408,426	663,893	637,631	390,919	523,632	155
	T	339,150	377,398	1,631,391	1,052,816	2,998,878	2,995,361	4,515,980	617,204	1,020,668	1,011,060	640,056	869,199	266
1050	N	15,967	20,002	80,879	39,251	190,478	141,174	124,304	174,428	129,137	106,581	87,119	72,450	66
	S	72,622	79,931	270,766	116,918	514,888	343,395	271,196	347,862	250,326	189,405	142,312	113,312	94
	T	88,589	99,933	351,645	156,169	705,366	484,569	395,500	522,290	379,463	295,986	229,431	185,762	160
1100	N	1,493	23,420	79,015	75,528	77,870	119,976	136,965	99,401	92,919	14,069	5,075	28,192	23
	S	7,264	99,795	279,235	243,545	211,092	308,690	319,366	214,260	189,295	26,135	8,656	45,921	35
	T	8,757	123,215	358,250	319,073	288,962	428,666	456,331	313,661	282,214	40,204	13,731	74,113	59
1150	N	56,968	17,645	78,835	90,708	207,153	172,738	115,540	189,166	82,432	181,697	14,983		13
	S	299,096	75,339	296,359	311,427	580,519	468,689	291,730	424,547	170,309	337,445	26,586		20
	T	356,064	92,984	375,194	402,135	787,672	641,427	407,270	613,713	252,741	519,142	41,569		34
1200	N	31,822	36,562	69,322	63,546	235,695	354,754	13,756	50,507	11,632				
	S	167,132	166,672	257,333	211,957	706,971	935,077	33,694	117,914	24,767				
	T	198,954	203,234	326,655	275,503	942,666	1,289,831	47,450	168,421	36,399				
TOTAL	N	4,331,472	3,675,614	9,526,895	9,802,381	16,906,883	30,467,092	23,917,619	16,218,491	15,656,067	11,856,684	13,894,410	13,916,375	8,265
	S	11,213,610	7,875,398	19,993,080	17,977,345	29,194,030	45,147,428	33,080,256	20,287,461	18,081,173	12,407,709	12,974,989	12,590,669	6,239
	T	15,545,082	11,551,012	29,519,975	27,779,726	46,100,913	75,614,520	56,997,875	36,505,952	33,737,240	24,264,393	26,869,399	26,507,044	14,504

16,906,883 29,194,030 46,100,913	30,467,092 45,147,428 75,614,520	23,917,619 33,080,256 56,997,875	16,218,491 20,287,461 36,505,952	15,656,067 18,081,173 33,737,240	11,856,684 12,407,709 24,264,393	13,894,410 12,974,989 26,869,399	13,916,375 12,590,669 26,507,044	8,265,119 6,239,314 14,504,433	7,089,411 5,550,069 12,639,480	6,940,195 4,943,178 11,883,373	3,940,969 2,370,601 6,311,570	4,375,499 2,673,168 7,048,667	
235,695 706,971 942,666	354,754 935,017 1,289,831	13,756 33,694 47,450	50,507 117,914 168,421	11,632 24,767 36,399									
207,153 580,519 787,672	172,738 468,689 641,427	115,540 291,730 407,270	189,166 424,547 613,713	82,432 170,309 252,741	181,697 337,445 519,142	14,983 26,586 41,569	13,394 20,902 34,296			10,321 14,851 25,172			
77,870 211,092 288,962	119,976 308,690 428,666	136,965 319,366 456,331	99,401 214,260 313,661	92,919 189,295 282,214	14,069 26,135 40,204	5,075 8,563 13,731	28,192 45,921 74,113	23,783 35,658 59,441					
190,478 514,888 705,366	141,174 343,395 484,569	124,304 271,196 395,900	174,428 347,862 522,290	129,137 250,326 379,463	106,581 189,405 295,986	87,119 142,312 229,431	72,450 113,312 185,762	66,065 94,764 160,829		3,349 4,429 7,778			
896,527 2,098,834 2,995,361	1,449,735 3,066,245 4,515,980	208,778 408,426 617,204	356,775 663,893 1,020,668	373,429 637,631 1,011,060	249,137 390,919 640,056	345,567 523,632 869,199	111,064 155,117 266,181	107,079 139,622 246,701	36,267 46,169 82,436	37,548 44,099 81,647	54,410 61,586 115,996	
8410,956 2,157,922 2,998,878	1,571,463 3,067,497 4,409,234	1,764,620 2,760,027 4,524,647	1,178,116 1,557,258 2,731,374	951,920 1,158,322 2,110,242	731,799 832,561 1,564,360	467,280 467,386 934,666	279,486 403,975 683,461	215,900 325,413 541,313	221,658 360,738 582,396	483,798 859,712 1,343,510	247,028 458,651 705,679	490,305 993,513 1,483,818	901,057 2,000,427 2,901,484	522,963 1,295,355 1,818,318	
1,045,081 1,862,459 2,907,540	2,207,433 3,463,799 5,671,232	1,368,704 1,977,726 3,346,430	1,528,603 2,029,254 057,857	991,608 1,229,082 2,220,690	873,838 985,834 1,859,672	863,422 946,637 1,810,059	946,029 944,178 1,890,207	386,193 371,989 758,182	996,416 940,616 1,937,032	782,741 665,317 1,448,058	121,301 98,698 219,999	112,851 85,150 198,001	
1,105,133 2,252,553 3,357,686	573,092 915,305 1,488,397	1,098,393 1,874,463 2,972,856	1,075,599 1,680,644 2,756,243	761,923 1,106,785 1,875,540	420,413 539,873 960,286	326,189 368,122 694,311	592,185 693,469 1,285,654	225,083 235,173 460,256	452,529 362,220 904,749	168,287 161,621 329,908	254,992 231,581 486,573		
566,610 1,260,398 1,827,008	1,288,848 2,072,909 3,761,757	1,151,158 2,034,791 3,185,949	964,007 1,592,205 2,556,212	847,563 1,264,782 2,112,345	523,435 752,413 1,275,848	482,031 650,412 1,132,443	804,449 929,732 1,734,181	336,455 395,092 731,547	648,270 730,688 1,378,958	238,893 248,265 487,158	37,926 37,847 75,773	333,274 310,230 643,504	
861,615 2,005,459 2,867,074	1,562,573 3,166,760 4,729,333	1,824,532 3,390,641 5,215,173	621,073 1,072,226 1,693,299	873,784 1,426,956 2,300,740	588,293 880,681 1,468,974	1,323,051 1,827,929 3,150,980	972,167 1,290,664 2,262,831	180,423 220,743 401,166	347,847 407,841 755,688	306,340 329,977 636,317	274,205 285,029 559,234	69,587 69,609 139,196	
2444,259 564,352 808,611	316,097 666,163 982,260	425,086 828,320 1,253,406	286,783 521,523 808,306	345,324 601,471 946,795	120,583 189,041 309,624	171,426 246,720 418,146	117,584 162,383 279,967	62,805 80,225 143,030	18,035 21,662 39,697	4,930 5,782 10,712	26,336 28,506 54,842	6,614 6,720 13,334	
649,099 1,254,942 1,904,041	1,647,166 2,936,338 4,583,504	869,788 1,419,610 2,289,398	1,008,958 1,508,924 2,517,912	605,411 833,990 1,439,401	795,470 1,010,126 1,805,596	772,332 905,599 1,677,930	905,006 1,021,713 1,926,719	454,815 461,384 916,199	224,552 226,457 451,009	251,634 247,986 499,620	817,346 77,051 164,397	159,028 132,016 291,044	
1,105,133 2,252,553 3,357,686	1,573,092 2,915,305 4,488,397	1,098,393 1,874,463 2,972,856	1,075,599 1,680,644 2,756,243	768,755 1,106,785 1,875,540	361,923 475,116 837,039	420,413 539,873 960,286	592,185 693,469 1,285,654	326,189 368,122 694,311	225,083 235,173 460,256	452,529 362,220 904,749	168,287 161,621 329,908	254,992 231,581 486,573	
566,610 1,260,398 1,827,008	1,288,848 2,072,909 3,761,757	1,151,158 2,034,791 3,185,949	964,007 1,592,205 2,556,212	847,563 1,264,782 2,112,345	523,435 752,413 1,275,848	482,031 650,412 1,132,443	804,449 929,732 1,734,181	336,455 395,092 731,547	648,270 730,688 1,378,958	238,893 248,265 487,158	37,926 37,847 75,773	333,274 310,230 643,504	
861,615 2,005,459 2,867,074	1,562,573 3,166,760 4,729,333	1,824,532 3,390,641 5,215,173	621,073 1,072,226 1,693,299	873,784 1,426,956 2,300,740	588,293 880,681 1,468,974	1,323,051 1,827,929 3,150,980	972,167 1,290,664 2,262,831	180,423 220,743 401,166	347,847 407,841 755,688	306,340 329,977 636,317	274,205 285,029 559,234	69,587 69,609 139,196	
2444,259 564,352 808,611	316,097 666,163 982,260	425,086 828,320 1,253,406	286,783 521,523 808,306	345,324 601,471 946,795	120,583 189,041 309,624	171,426 246,720 418,146	117,584 162,383 279,967	62,805 80,225 143,030	18,035 21,662 39,697	4,930 5,782 10,712	26,336 28,506 54,842	6,614 6,720 13,334	

_____ Ex. No. 2 to V.S. No. 11A of

TABULATION P

DISTRIBUTION OF "AS SETTLED - REMAINDER" REVENUE, AS TAKEN FROM TABULATION M, COLUMNS 7 AND 9, BY MILEAGE BLOCKS

MILES SOUTH	NORTH	900	950	1000	1050	1100	1150	1200	1250	1300	1350	1400	1450	1500
50	N	193,151	38,199	135,642		10,203				11,283				
	S	46,472	12,363	29,793		2,087				1,985				
	T	239,623	50,562	165,435		12,290				13,268				
100	N	148,599	60,389	306,644	119,555	14,774	6,890	44,375	27,365					
	S	41,950	18,543	81,890	29,871	3,478	1,611	9,743	6,003					
	T	190,549	78,932	388,534	149,426	18,252	8,501	54,118	33,368					
150	N	319,883	208;791	79,317	213,670	20;292	13,056		12,166	51,020				
	S	106,780	66,002	33,166	64,249	5,109	3,480		3,036	12,781				
	T	426,663	274,793	112,483	277,919	25,401	16,536		15,202	63,801				
200	N	244,422	218,000	195,436	144,478	331,552	198,764	59,901	307,655	81,074	49,008	13,325	23,251	
	S	90,824	76,874	68,664	48,155	104,708	53,423	17,869	88,306	22,658	13,041	3,549	5,822	
	T	335,246	294,874	264,100	192,633	436,260	252,187	77,770	395,961	103,732	62,049	16,874	29,073	
250	N	134,585	195,394	109,842	16,982	54,441	40,845	8,995	24,865	10,502	9,866	24,101		
	S	59,188	80,080	42,648	6,292	19,117	14,626	3,005	10,524	3,322	2,948	6,801		
	T	193,773	275,474	152,490	23,274	73,558	55,471	12,000	35,389	13,824	12,814	30,902		
300	N	412,592	124,381	91,710	232,099	97,237	124,691	20,013	118,140	34,474	23,557			
	S	193,973	57,279	38,665	92,744	37,904	46,489	7,392	41,532	10,712	9,141			
	T	606,565	181,660	130,375	324,843	135,141	171,180	27,405	159,672	45,186	32,698			
350	N	464,947	135,066	389,994	1,238,923	660,925	165,631	117,733	154,121	36,981	101,609	14,847	57,882	27,3
	S	239,596	66,528	183,523	559,237	277,434	67,668	47,868	60,314	13,692	37,531	5,208	19,287	9,4
	T	704,543	201,594	573,517	1,798,160	938,359	233,299	165,601	214,435	50,673	139,140	20,055	77,169	36,8
400	N	416,464	317,192	332,247	291,416	122,740	35,983	49,781	30,832	6,261	8,694	8,486		7,2
	S	233,617	170,966	171,438	143,515	58,561	16,175	22,047	13,238	2,662	3,549	3,293		3,4
	T	650,081	488,158	503,685	434,931	181,301	52,158	71,828	44,070	8,923	12,243	11,779		10,6
450	N	243,175	90,068	64,640	111,814	68,714	29,929	22,203	75,365	37,835			19,718	
	S	142,584	51,150	34,803	57,643	35,259	14,755	8,838	33,416	13,353			8,043	
	T	385,759	141,218	99,443	169,457	103,973	44,684	31,041	108,781	51,188			27,761	
500	N	183,700	46,727	87,141	236,868	106,025	5,645	37,191	8,271	18,678	117,760	24,235		
	S	117,960	28,626	51,448	134,250	57,871	3,038	19,167	4,096	8,798	56,480	14,236		
	T	301,660	75,353	138,589	371,118	163,896	8,683	56,358	12,367	27,476	174,240	38,471		
550	N	210,434	92,651	342,700	156,294	506,268	58,207	296,909	81,477	29,125		22,902		
	S	146,172	63,769	219,072	90,633	300,830	29,490	158,048	43,456	15,005		11,408		
	T	356,606	156,420	561,772	246,927	807,098	87,697	454,957	124,933	44,130		34,310		
600	N	150,385	88,457	132,429	249,821	88,441	31,060	185,264	66,137	7,406	9,286	21,772		
	S	114,205	61,044	88,656	162,888	54,139	19,050	105,480	37,744	3,985	4,770	10,007		
	T	264,590	149,501	221,085	412,709	142,580	50;110	290,744	103,881	11,391	14,056	31,779		
650	N	161,388	94,511	801,551	462,050	41,282	138,317	131,883	22,674		192,021	10,519		
	S	126,653	69,211	578,733	316,907	27,258	96,183	81,522	13,306		108;010	6,446		
	T	288,041	163,722	1,380,284	778,957	68,540	234,500	213,405	35,980		300,031	16,965		

DISTRIBUTION OF "AS SETTLED - REMAINDER" REVENUE, AS TAKEN FROM TABULATION M, COLUMNS 7 AND 9, BY MILEAGE BLOCKS

1050	1100	1150	1200	1250	1300	1350	1400	1450	1500	1550	1600	TOTAL
	10,203 2,087 12,290				11,283 1,985 13,268							2,682,820 1,172,725 3,855,545
119,555 29,871 149,426	14,774 3,478 18,252	6,890 1,611 8,501	44,375 9,743 54,118	27,365 6,003 33,368								7,647,012 3,558,815 11,205,827
213,670 64,249 277,919	20,292 5,109 25,401	13,056 3,480 16,536		12,166 3,036 15,202	51,020 12,781 63,801							7,330,628 4,246,738 11,577,366
144,478 48,155 192,633	331,552 104,708 436,260	198,764 53,423 252,187	59,901 17,869 77,770	307,655 88,306 395,961	81,074 22,658 103,732	49,008 13,041 62,049	13,325 3,549 16,874	23,251 5,822 29,073		12,031 2,830 14,861		10,133,033 6,424,882 16,557,915
16,982 6,292 23,274	54,441 19,117 73,558	40,845 14,626 55,471	8,995 3,005 12,000	24,865 10,524 35,389	10,502 3,322 13,824	9,866 2,948 12,814	24,101 6,801 30,902					7,848,601 6,243,131 14,091,732
232,099 92,744 324,843	97,237 37,904 135,141	124,691 46,489 171,180	20,013 7,392 27,405	118,140 41,532 159,672	34,474 10,712 45,186	23,557 9,141 32,698						13,458,586 11,459,244 24,917,830
1,238,923 559,237 1,798,160	660,925 277,434 938,359	165,631 67,668 233,299	117,733 47,868 165,601	154,121 60,314 214,435	36,981 13,692 50,673	101,609 37,531 139,140	14,847 5,208 20,055	57,882 19,287 77,169	27,330 9,475 36,805	6,063 1,908 7,971	14,658 4,620 19,278	17,925,028 15,419,556 33,344,584
291,416 143,515 434,931	122,740 58,561 181,301	35,983 16,175 52,158	49,781 22,047 71,828	30,832 13,238 44,070	6,261 2,662 8,923	8,694 3,549 12,243	8,486 3,293 11,779		7,218 3,411 10,629			16,763,973 16,041,184 32,805,157
111,814 57,643 169,457	68,714 35,259 103,973	29,929 14,755 44,684	22,203 8,838 31,041	75,365 33,416 108,781	37,835 13,353 51,188			19,718 8,043 27,761				10,638,859 12,665,266 23,304,125
236,868 134,250 371,118	106,025 57,871 163,896	5,645 3,038 8,683	37,191 19,167 56,358	8,271 4,096 12,367	18,678 8,798 27,476	117,760 56,480 174,240	24,235 14,236 38,471			8,232 3,360 11,592		24,037,951 30,945,584 54,983,535
156,294 90,633 246,927	506,268 300,830 807,098	58,207 29,490 87,697	296,909 158,048 454,957	81,477 43,456 124,933	29,125 15,005 44,130		22,902 11,408 34,310				48,914 20,961 69,875	13,968,802 16,564,668 30,533,470
249,821 162,888 412,709	88,441 54,139 142,580	31,060 19,050 50,110	185,264 105,480 290,744	66,137 37,744 103,881	7,406 3,985 11,391	9,286 4,770 14,056	21,772 10,007 31,779				21,268 7,662 28,930	14,709,097 19,589,859 34,298,956
462,050 316,907 778,957	41,282 27,258 68,540	138,317 96,183 234,500	131,883 81,522 213,405	22,674 13,306 35,980		192,021 108,010 300,031	10,519 6,446 16,965				10,248 4,825 15,073	14,690,661 21,111,148 35,801,809

550	S	146,172	63,769	219,072	90,633	300,830	29,496	158,048	43,456	15,005		11,408		
	T	356,606	156,420	561,772	246,927	807,098	87,697	454,957	124,933	44,130		34,310		
600	N	150,385	88,457	132,429	249,821	88,441	31,060	185,264	66,137	7,406	9,286	21,772		
	S	114,205	61,044	88,656	162,888	54,139	19,050	105,480	37,744	3,985	4,770	10,007		
	T	264,590	149,501	221,085	412,709	142,580	50,110	290,744	103,881	11,391	14,056	31,779		
650	N	161,388	94,511	801,551	462,050	41,282	138,317	131,883	22,674		192,021	10,519		
	S	126,653	69,211	578,733	316,907	27,258	96,183	81,522	13,306		108,010	6,446		
	T	288,041	163,722	1,380,284	778,957	68,540	234,500	213,405	35,980		300,031	16,965		
700	N	251,150	259,546	271,916	617,080	51,410	391,111	84,536	6,989	20,183				
	S	205,429	196,827	205,594	448,927	35,752	260,694	55,077	4,451	12,395				
	T	456,579	456,373	477,510	1,066,007	87,162	651,805	139,613	11,440	32,578				
750	N	154,437	67,108	48,864	214,889	8,274	88,000	24,801			21,840			
	S	131,563	54,936	40,776	162,123	5,985	63,954	17,304			13,398			
	T	286,000	122,044	89,640	377,012	14,259	151,954	42,105			35,238			
800	N	82,538	65,207	15,031										
	S	76,265	57,846	12,807										
	T	158,803	123,053	27,838										
850	N	85,818	15,878	9,643										
	S	82,380	14,669	8,565										
	T	168,198	30,547	18,208										
900	N		11,330											
	S		10,883											
	T		22,213											
950	N	7,919	19,332											
	S	8,254	19,314											
	T	16,173	38,646											
1000	N	24,754	5,037		12,358									
	S	24,219	5,253		11,866									
	T	48,973	10,290		24,224									
1050	N													
	S													
	T													
1100	N													
	S													
	T													
1150	N		7,303											
	S		8,577											
	T		15,880											
1200	N													
	S													
	T													
TOTAL	N	3,890,341	2,160,567	3,414,747	4,318,297	2,182,578	1,328,129	1,083,585	936,057	344,822	533,641	140,187	100,851	34
	S	2,188,084	1,190,740	1,890,241	2,329,300	1,025,492	690,636	553,360	359,422	121,348	248,868	60,948	33,152	12
	T	6,078,425	3,351,307	5,304,988	6,647,597	3,208,070	2,018,765	1,636,945	1,295,479	466,170	782,509	201,135	134,003	47

90,633 246,927	300,830 807,098	29,490 87,697	158,046 454,957	43,456 124,933	15,009 44,130		34,310				69,875	30,533,470
249,821 162,888 412,709	88,441 54,139 142,580	31,060 19,050 50,110	185,264 105,480 290,744	66,137 37,744 103,881	7,406 3,985 11,391	9,286 4,770 14,056	21,772 10,007 31,779				21,268 7,662 28,930	14,709,097 19,589,859 34,298,956
462,050 316,907 778,957	41,282 27,258 68,540	138,317 96,183 234,500	131,883 81,522 213,405	22,674 13,306 35,980		192,021 108,010 300,031	10,519 6,446 16,965				10,248 4,825 15,073	14,690,661 21,111,148 35,801,809
617,080 448,927 1,066,007	51,410 35,752 87,162	391,111 260,694 651,805	84,536 55,077 139,613	6,989 4,451 11,440	20,183 12,395 32,578							11,578,394 16,477,539 28,055,933
214,889 162,123 377,012	8,274 5,985 14,259	88,060 63,954 151,954	24,801 17,304 42,105			21,840 13,398 35,238						10,525,334 17,486,636 28,011,970
												9,497,767 15,806,475 25,304,242
												11,190,181 20,142,611 31,332,792
												2,526,711 5,080,492 7,607,203
												4,180,722 9,120,439 13,301,161
12,358 11,866 24,224												5,901,411 13,044,198 18,945,609
												1,251,184 2,812,126 4,063,310
												777,706 1,988,912 2,766,618
												1,238,883 3,326,376 4,565,259
												867,596 2,621,517 3,489,113
4,318,297 2,329,300 6,647,597	2,182,578 1,025,492 3,208,070	1,328,129 690,636 2,018,765	1,083,585 553,360 1,636,945	936,057 359,422 1,295,479	344,822 121,348 466,170	533,641 248,868 782,509	140,187 60,948 201,135	100,851 33,152 134,003	34,548 12,886 47,434	26,326 8,098 34,424	95,088 38,068 133,156	221,370,940 273,350,121 494,721,061

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APPENDIX.
Volume IV.
(Pages 713 to 1156.)

Office-Supreme Court, U.S.
FILED
JUL 5 1968
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1967 [redacted] 1968

No. [redacted] 13

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,
Appellants,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,
Appellees.

No. [redacted] 15

INTERSTATE COMMERCE COMMISSION,
Appellant,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,
Appellees.

Appeals From the United States District Court for the Eastern District of Louisiana, New Orleans Division.

Filed December 18 and 21, 1967.
Probable jurisdiction noted March 4, 1968.

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VERIFIED STATEMENT NO. 14
OF HARRY A. DeBUTTS

[12]

Passenger Deficits

In view of the Northern lines' reliance upon over-all figures, including composite rates of return for a group of railroads, the tremendous effect of passenger deficits upon such data must be considered and understood.

It is essential to an understanding of the passenger problem that it be realized that the deficits associated with intercity passenger service must be sharply distinguished from the deficits also incurred by some roads in providing suburban service within certain metropolitan areas in the North. They are separate types of operations, both physi-

[13]

cally and in the problems which they present.

Intercity passenger service is, in large part, performed over the same tracks, bridges and other facilities as are used in freight service. As a result, an important portion of passenger costs represents the allocation of costs common to freight and passenger service.

However, elimination of all intercity passenger trains experiencing out-of-pocket losses will not eliminate the reported passenger deficit. The passenger deficit will still reflect the large portion of carrier costs which would continue in any event if all passenger service ended. Under such circumstances, the intercity passenger deficit is treated as a burden to be recovered from the freight service. This becomes largely a matter of terminology, since the freight service is paying for the use of the common facilities that must be maintained for freight service in any event.

Suburban service deficits present a very different problem. The magnitude of this problem has not been shown in

detail, however, because the passenger deficits reported to the Commission for roads performing suburban service do not show separately the costs, revenues and deficits in suburban service. Intercity and suburban passenger operations are merged into a single passenger deficit figure.

* * *

[15]

The aggregate effect of the suburban service deficits and the entire passenger deficit for the Northern roads as well as the effect of the passenger deficit of the Southern roads is shown in Exhibit E, attached. These figures show that, apart from suburban service deficits, the passenger deficit for the Northern lines is not a greater but a lesser burden on earnings from freight service than is the case with the Southern lines.

The separate and extraordinary character of the suburban service causing these substantial deficits, as distinguished from freight and intercity passenger service, was also shown by the Northern roads in their presentation to the Senate Committee (pages 15-16):

> "Another vitally important feature of railroad suburban service is the subject of wide misunderstanding by the public. This is the extent of railroad investment and railroad costs represented by fixed facilities, such as track. It is a widely held but entirely false belief that railroads use, for their suburban and commutation services, primarily those roadway facilities which they must necessarily have and maintain for their other operations. The disastrous corollary to this false belief is that little, if any, in the way of operating expenses on the roadway need be assigned or attributed to this service, and that the railroads do not have any substantial investment in these facilities on which, as private businesses, they should earn a fair and adequate return over costs.

[16] "These notions are completely false as applied to railroads handling a substantial volume of suburban passengers. Reference to Exhibit J exemplifies the situation which actually exists. It shows track occupancy by various types of trains in the twenty-four hours of a typical weekday of October 1958 on the line of the Pennsylvania Railroad between Overbrook and Bryn Mawr, Pennsylvania, which is a portion of one of that company's principal Philadelphia suburban lines. It will be noted that there are four main tracks in this territory. The outside tracks—No. 1 Eastbound and No. 4 Westbound—are used primarily by suburban trains; while the middle tracks (Nos. 2 and 3) are used primarily for through passenger and freight trains.

"The symbols appearing on the Exhibit for each of the three types of trains demonstrate immediately that all of the through passenger and freight trains could readily have been handled exclusively on two tracks only—in this case Nos. 2 and 3. It thus follows inevitably that one-half of the track facilities in this territory are maintained solely because of the company's suburban service operations. A far larger proportion of other roadway facilities, such as stations, terminals, coach yards and repair shops, are maintained solely in connection with the suburban service."

High wage costs and low utilization of equipment, due to the peak periods of morning and afternoon commuter travel on a five day week, are peculiar to suburban passenger service. The Northern roads have described these and other aspects of the "crushing burdens of rail suburban service losses" in their presentation to the Senate Committee.

* * *

[18]

This effort is implicit in the over-all company and regional average data, including rates of return, relied upon by the Northern lines. Nor was the effort left to implication. At page 14 of V. S. No. 7, Mr. Shannon, then speaking for the Northern lines and the New Haven, stated generally: "The people served by the New Haven's passenger operations form a substantial part of the producers and users of freight traffic to and from the South, as well as to and from other areas of the country"; reference is then made to the New Haven passenger operations as forming "a large part of its total operations". With a half of its passenger deficit accounted for by its suburban service deficit, this is an open effort to use the suburban service deficit in determining divisions of Official-Southern freight rates.

What such an approach means, very realistically, is that the Southern shippers, as the ultimate source of our revenues, are being called upon to subsidize the suburban service in certain Northern cities. This effort to burden freight service with suburban service deficits would be temporizing at best, as it would not go to the source of these essentially separate and localized deficits. Such an approach would seriously damage the Southern roads, with their greater dependence on revenues from Official-Southern traffic.

[19]

The Northern lines, having undertaken generally through their over-all company and regional data, and specifically through Mr. Shannon, to treat suburban service deficits as a burden on freight service, have now reversed their position since filing their statements in this proceeding in October 1959. They have come out strongly for the policy recommended by the Commission in their presentation in April, 1960, to the Senate Committee (pages 3-4 and 24):

"There are basically two things which Government—Federal as well as local—must assure for the railroads in Eastern territory now providing these loss-ridden suburban services. First, for those services which are deemed essential to a sound program of passenger transportation in metropolitan areas, the railroads involved must be assured fair and adequate compensation for performing those services, through any combination of (a) higher revenues through increased fares, (b) reduced expenditures, e.g., through tax relief, and (c) payments under long term contracts by Government authorities for the type and volume of service required by them. Second, wherever the public or the local authorities are unwilling to support a program of the above type for any suburban service, the railroads should be accorded full freedom to take any steps required by sound business judgment, including abandonment of the service and of the facilities used in the service.

"All of these facts demonstrate a critical need for complete revision of Government policy with regard to railroad suburban services. Largely through action by Government itself, there is no longer the slightest reason for expecting railroads to bear the

[20]

attendant responsibilities and burdens. If these suburban services are not to be completely abandoned, Government itself must assume responsibility for deficits necessarily incurred in providing them. The first question which this necessity poses is whether all levels of Government have a responsibility and, if so, to what extent should each level share in its discharge."

In thus adopting the approach previously recommended by the Commission, the Northern lines should be required to abandon their attempt to cover their local deficits out of interterritorial freight rates. It would be a distinct disservice to the real interests of the Northern lines for the Commission to act in conflict with its previously stated policy on the subject by relying upon over-all company and regional average data reflecting suburban service deficits in determining divisions of freight rates.

• • •

(Verification omitted in printing.)

(1) Suburban Service Revenues

(2) Total Passenger Revenues

(3) Percent (1) of (2)

(4) Suburban Service Deficit

(5) Total Passenger Deficit

(6) Percent (4) of (5)

Source: EXHIBIT A a
S

"EASTERN TERRITORY SUBURBAN RAILROADS"
YEAR 1957

	Boston & Maine	New Haven	New York Central	Delaware, Lackawanna & Western	Central of New Jersey	Erie	Pennsylvania	Reading
Suburban Service Revenues	$ 4,735,464	$15,921,360	$18,216,180	$6,409,100	$6,055,348	$ 3,989,812	$18,636,590	$5,218,682
Total Passenger Revenues	10,157,238	53,661,892	88,453,741	9,639,341	6,348,209	7,005,553	121,739,972	7,123,050
Percent (1) of (2)	46.62%	29.67%	20.59%	66.49%	95.39%	56.95%	15.31%	73.26%
Suburban Service Deficit	2,646,450	7,623,000	6,300,000	3,354,000	6,300,000	2,350,000	13,213,000	3,183,000
Total Passenger Deficit	12,590,280	15,224,559	52,282,982	5,542,857	7,054,135	12,374,606	57,530,867	9,047,051
Percent (4) of (5)	21.02%	50.07%	12.05%	60.51%	89.31%	18.99%	22.97%	35.18%

Source: EXHIBIT A accompanying presentation on behalf of Eastern Territory Suburban Railroads before the Senate Committee on Interstate and Foreign Commerce (April, 1960).

Passenger Deficits, and Passenger Deficits excluding Suburban Service Deficit,
As Percent of Freight Net Railway Operating Income

Year 1957	Eastern District	Northern Roads (Eastern District Incl. Pocahontas Region)	Southern Roads (Southern Region)
(1) Passenger Deficit	$242,555,801	$271,336,115	$102,982,213
(2) Freight Net Railway Operating Income	482,945,795	656,613,957	258,237,911
(3) Percent (1) of (2)	50.22%	41.32%	39.88%
(4) Suburban Service Deficit	44,969,450*	44,969,450*	0
(5) Passenger Deficit (Excl. Suburban Service Deficit)	197,586,351	226,366,665	102,982,213
(6) Percent (5) of (2)	40.91%	34.47%	39.88%

* For the "Eastern Territory Suburban Railroads", i.e. B&M, New Haven, NYC, DL&W, CNJ, Erie, PRR and Reading.

VERIFIED STATEMENT NO. 15
OF W. THOMAS RICE

[1]

My name is William Thomas Rice. I am President and a Director of the Atlantic Coast Line Railroad Company.

Following graduation from Virginia Polytechnic Institute in 1934 with a B.S. degree in Civil Engineering, I entered the service of the Pennsylvania Railroad in the Operating Department and held several positions before being called to active duty with the United States Army in 1942. Among my assignments while on active duty was the command of a portion of the Iranian State Railway. I am now a Major General in the Army Reserve Corps, serving as the Director General, Transportation Railway Service, and also as Civilian Aide to the Secretary of the Army for the State of Virginia.

Upon my return to civilian life, I entered the service of the Richmond, Fredericksburg & Potomac Railroad in February, 1946. I served as Superintendent of Potomac Yard, Superintendent at Richmond and General Superintendent prior to my election as President of Richmond, Fredericksburg & Potomac Railroad Company on January 1, 1955. I became President of the Atlantic Coast Line Railroad Company on August 1, 1957.

* * *

[25]

Conclusion

It is apparent from what I have said that if Coast Line is to be able to adequately handle the increased volume of traffic generated by the continued growth in the industrialization of the South, to maintain its facilities and equipment, to acquire additional specialized equipment, and to keep pace with the rapid technological changes in the railroad industry, it is essential that Coast Line not only retain

every cent of its present inadequate revenues but that it also receive its proper share of the revenues on Official-Southern Territory traffic.

Exhibit 5:

Value Added by Manufacture
(In thousands of dollars)

	U.S.A.		South	
	Value	Per Cent Inc. over 1935	Value	Per Cent Inc. over 1935
1935	$ 18,552,553	—	$ 1,719,927	—
1947	74,290,475	300	8,435,076	390
1956	139,682,968	653	16,325,603	849

South: Virginia, North Carolina, South Carolina, George, Florida, Kentucky, Alabama, Mississippi, Louisiana, Tennessee.

Source: Survey of Manufacturers, Bureau of the Census, Department of Commerce.

Exhibit 11:

Selected Per Capita Statistics for Various Economic Categories

	Per Capita		South as Per Cent of U.S.A.
	U.S.A.	South	
Manufacturers' Expenditures for New Plant and Equipment, 1956 ..	$ 67	$ 48	71
Value Added by Manufacture, 1956 ..	835	500	60
Total Bank Assets, 1955	1,398	670	48
Total Value of Farm Products Sold, 1954	153	131	86
Retail Sales, 1954	1,054	815	77

South: Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Louisiana.

Source: Bureau of the Census Publications.

VERIFIED STATEMENT NO. 16
OF JOHN W. SMITH

[1]

My name is John W. Smith. I am President and a Director of Seabord Air Line Railroad Company.

I graduated from the University of Maryland in 1921 with a BS Degree in Civil Engineering and shortly thereafter was employed by Seaboard Air Line Railway Company in construction work and held several positions in the Maintenance of Way Department, including that of Division Engineer. Subsequently, I held positions of Division Superintendent, Assistant Chief Engineer, Assistant General Superintendent, Assistant to President, Vice President-Administrative, and in 1952 became President of Seaboard Air Line Railroad Company.

The Seaboard is one of the principal trunk line railroads in the Southeast. It operates 4,147 miles of road in the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, serving the capital of each of these States. Its lines of railroad extend from Richmond and Portsmouth, Va. on the north to Atlanta, Ga., Birmingham and Montgomery, Ala., and Chattahoochee, Fla. (forming a through line with the L&N Railroad to New Orleans and the West Coast) on the west and to Miami and Tampa, Fla., via Jacksonville, on the south. It serves all major South Atlantic Ports and the Ports of Tampa and Boca Grande on the Gulf.

* * *

[7]

A factor which is having a decided effect on freight car requirements and utilization has been the postwar swing of industry generally from the six-day to a five-day week which has the effect of increasing by one day a week the idle time of cars awaiting loading or unloading.

Expenditure of the aforementioned very substantial sums for improvements in plant and equipment has promoted more efficient operations by the Seaboard as indicated by the following comparisons:

(a) Gross train load in 1959 was 56 per cent greater than the 1947-1949 average.

Gross ton miles per train hour increased 66 per cent during that period.

(b) The average number of employees decreased from 19,270 in 1946 to 12,305 in 1959 notwithstanding a substantial increase in volume of traffic handled. However, average annual wages paid employees increased during that period from $3,051 to $6,179 so that while the number of employees decreased 36 per cent, the average annual wages increased 103 per cent.

(c) Man hours on track maintenance work per million gross ton miles decreased from 238 in 1946 to 61 in 1959. Mechanization of all roadway maintenance work was primarily responsible for this improvement.

* * *

[16]

The South is developing more rapidly than almost any other section of the United States. If the Southern railroads are to keep pace with the growth of the territory they serve, it is imperative that they have the funds necessary to continue to expand and modernize their plants and facilities. In no other way can they render adequate service or hold their own in the competitive struggle for traffic. A large part of the revenue of the Southern railroads is derived from the traffic involved in this case and the Commission's decision will therefore vitally affect their future and their ability to render the service of which they are capable and which the public has the right to expect.

VERIFIED STATEMENT NO. 17
OF WILLIAM H. KENDALL

[9]

In order to obtain a true picture of our performance in recent years, it is necessary to restate our net railway operating income and rate of return figures to eliminate the temporary and distorting effect of the tax deferrals resulting from the accelerated amortization of defense projects. These tax deferrals and their effect on our net operating income and rate of return are shown fully in Exhibit F. A summary of the results are shown in the following table:

Year	Net Railway Operating Income Restated Excluding Tax Deferrals	Rate of Return Restated
1955	$23,274,896	3.46%
1956	24,116,310	3.51%
1957	19,065,764	2.80%
1958	17,021,172	2.46%
1959	18,962,788	2.65%

Conclusion

The rapidly expanding economy of the South is continuing to make tremendous demands on the Louisville and Nashville Railroad and other southern railroads for more efficient and flexible services to handle the traffic generated by industrialization and for more specialized services to satisfy the requirements of our shippers.

The Louisville and Nashville Railroad has been compelled to increase debt to finance the extraordinarily heavy capital expenditures required for expanding and modernizing our railroad properties to control costs

[10]

and provide necessary transportation service. And this has occurred during a period when intense competition from other forms of transportation has compelled drastic rate

reductions on a wide variety of commodities and rising wage and material costs have further narrowed our already slim profit margins. Our debt and expenditures for improvements have increased, while our revenue per ton mile, net railway operating income and rate of return have declined to perilously low levels despite our determined efforts to reverse the adverse trends.

All of these factors show a compelling need for additional revenues for the Louisville and Nashville Railroad.

VERIFIED STATEMENT NO. 26
OF E. LYMAN

[51]

A comparison of the total number of cars moving through the various primary divide points taken from Witness Wolford's V.S. No. 11 with those moving through these points but not interchanged, that is, those cars involved in the interior break issue, shows:

Divide Points	Total Cars	Cars Not Interchanged	
		Number	Percent of Total
Cairo) Metropolis)	74,514	65,470	87.9
Thebes-Gale)			
E. St. Louis	55,767	11,005	19.7
Evansville	29,342	5,269	18.0
Louisville	90,538	5,099	5.6
Grand Total	967,554	86,843	9.0

As shown in Exhibit B, a shift in the break points from those presently in use to the points of interchange on traffic interchanged at interior Illinois and Indiana junctions would cost Southern Lines $2,743,675 per year on the traffic involved herein. This sum, however, does not fully indicate just what is involved in the Official Lines' contention that the primary break should be made at the points of interchange between Official and Southern Lines.

Exhibit B
Page 1

Revenue Study on Carload Traffic Between Points in Southern Territory and Points in Official Territory, including Illinois Territory, Interchanged Between Northern and Southern Railroads at Interior Points in Illinois and Indiana Based on Interline Settlements for Period July 1958-June 1959 inclusive.

Recapitulation

	1	2	3	4	5	6	7	8	9	10
Line No.	Direction	Cars	Tons	Total Revenue	Revenue as Settled		Revenue if ICC Docket 29885 Prorating Factors Applied South and North of Interior Interchange Points			
							Basis I	(See Note)	Basis II	(See Note)
					South	North	South	North	South	North
1	Northbound	59,497	1,885,100	$33,952,189	$21,209,086	$12,743,103	$19,284,155	$14,668,034	$19,401,478	$14,550,711
2					62.5%	37.5%	56.8%	43.2%	57.1%	42.9%
3	Southbound	27,346	740,871	15,690,253	10,530,456	5,159,797	9,565,977	6,124,276	9,594,389	6,095,864
4					67.1%	32.9%	61.0%	39.0%	61.1%	38.9%
5	Total	86,843	2,625,971	49,642,442	31,737,542	17,902,900	28,850,132	20,792,310	28,995,867	20,646,575
6					63.9%	36.1%	58.1%	41.9%	58.4%	41.6%

Note: BASIS I—ICC Docket 29885 Prorating Factors applied to Short Line distances South and North of Interior Interchange Points.

BASIS II—ICC Docket 29885 Prorating Factors applied to Short Line distances of Southern Lines south of Interior Interchange Points and To Short Line Distances of Official Lines North of Interior Interchange Points.

VERIFIED STATEMENT NO. 28
OF L. T. ANDREWS

[29]

RICHMOND

The most important gateway for the interchange of traffic between Coast Line and Official Territory carriers is at Richmond, Virginia. At Richmond, Coast Line interchanges traffic directly with two Official Territory carriers, the Richmond, Fredericksburg & Potomac Railroad and with the Chesapeake & Ohio Railroad.

The interchange point between Coast Line and the RF&P is at Acca Yard, which lies north of the James River. Acca Yard is a joint yard of RF&P and Coast Line. The RF&P performs all switching of inbound and outbound Coast Line trains as well as the processing of the necessary clerical work on outbound trains. Forces in Acca Yard Office process waybills for interchange between the two lines. Inspection of cars, servicing of locomotives, etc. is performed for our account by RF&P. Certain tracks in the north side of the yard are assigned to Coast Line and Coast Line is billed for its proportion of the mainte-

[30]

nance cost, interest rental and taxes on these tracks as well as for the switching, clerical and mechanical services performed for our account on an agreed basis.

Interchange of northbound traffic is established at the time waybills are delivered by Coast Line Conductor to the RF&P Yardmaster's Office. Southbound, the interchange of traffic from RF&P to Coast Line is established at the time when outbound inspection of our train is completed. Normally there are four Coast Line trains interchanged to RF&P daily and four trains received from the RF&P daily.

While traffic in main line freight trains is interchanged to RF&P Railroad upon arrival of the trains at Acca Yard and delivery of waybills to the yard office, it is likewise nec-

essary that traffic from our South Richmond Yard be interchanged to the RF&P. This service is performed by Coast Line yard engine. A considerable amount of this traffic is received from the C&O. Cars received from the RF&P for transfer between Acca Yard and South Richmond Yard are likewise handled by a Coast Line switch engine. As in the reverse direction, a considerable amount of this traffic is for delivery to the C&O.

Transfer traffic is delivered to the RF&P in the north side of Acca Yard and traffic received from the RF&P for transfer to South Richmond Yard is received from the RF&P in the south side of the yard. The transfer engine delivers traffic to the RF&P at Acca at 1:31 P.M. and 4:00 A.M., the former delivery being daily except Sunday. We receive traffic from the RF&P at 4:00 A.M. and at 1:00 P.M., the latter delivery being daily except Sunday. Traffic delivered to and received from the RF&P is inspected by Coast Line inspector before departure on the northbound trip and after arrival at South Richmond Yard on the southbound trip. This traffic is also inspected before departing and/or upon arrival at Acca Yard by car inspectors located at that point.

Waybills covering traffic delivered to the RF&P are processed by clerical forces assigned in Coast Line's South Richmond Yard. Waybills for traffic received from the RF&P are processed by yard forces assigned in Acca Yard.

Traffic for movement from Acca Yard to Coast Line's South Richmond Yard is interchanged from RF&P to Coast Line after arrival of RF&P trains at Acca and interchange time is established when inspection on the cars has been completed.

Coast Line performs switching for account of the RF&P at Sunnyside siding located between Acca Yard and Pier 5. In each case where switching is performed at this point, Coast Line is paid a switching charge by the RF&P.

Interchange with the C&O is made on the interchange track of Second Street connection on the north side of the James River opposite the Coast Line's South Richmond Yard which is located near the south bank of the James River on the line from Falling Creek to South Richmond via Clopton. The interchange track branches off Coast Line's old main line toward the west just north of the James River. The extreme west end of the interchange track connects with the C&O main line about ¼ mile west of the Second Street Yard Office. The interchange track will hold approximately 35 cars; however, we can deliver up to 100 cars to the C&O by utilizing Coast Line's connecting track extending onto Coast Line's James River Bridge. The C&O likewise permits cars to hang out on their track which leads from Second Street connection to their main line. The interchange track with the C&O is located about 6 miles from our main line junction point at Falling Creek. We deliver traffic to the C&O at 6:59 A.M., 9:00 A.M., 1:30 P.M., 10:00 P.M. and 11:59 P.M. The 9:00 A.M. delivery is a special delivery of traffic which arrives at "FA" in our Train 112 and the Acca-Weldon turn for the purpose of connecting with C&O Train 91. The 10:00 P.M. delivery is designed for connection with C&O Train 95 and traffic interchanged at this time arrives "FA" in our Train 210. Usually on the 9:00 A.M. and 10:00 P.M. deliveries, only loads destined to the West are interchanged with the C&O. We receive traffic from the C&O at 5:00 A.M., 11:00 A.M., 5:00 P.M. and 10:00 P.M.

A Coast Line Clerk goes to the C&O interchange track,

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checks the cars received from that line and accepts waybills. Waybills covering traffic delivered to the C&O are placed in a box at a designated location by the yard crew delivering the cars to the interchange track. One car inspector is provided on each shift around the clock and this man is a joint employee of the C&O and Coast Line. In addition, we

have one car inspector assigned in Coast Line South Richmond Yard 6:00 A.M. to 2:00 P.M. and one car inspector assigned 10:00 P.M. to 6:00 A.M.; the expense of these employees being borne solely by Coast Line.

All traffic received from the C&O is inspected before it is delivered to Coast Line and all traffic delivered to the C&O is inspected by Coast Line at our South Richmond Yard before delivery is made.

The C&O dispatches an engine from the yard to the interchange track to pull cars delivered to them by Coast Line and their engine places cars on the interchange track for delivery to Coast Line. It may thus be seen that the C&O performs the same interchange service that Coast Line performs at this point.

PETERSBURG, VIRGINIA

At Petersburg, Virginia, Southern-Official Territory traffic is interchanged by Coast Line directly to the Norfolk & Western-Virginian Railway at two locations. The largest interchange point is at the tracks located a short distance

[34]

east of Appomattox Street station paralleling the N&W-Virginian main line, which will accommodate about 80 cars. Cars are likewise delivered to the N&W-Virginian on the A&J connection track which branches off to the west from Coast Line's old main line or Petersburg Branch at a point just south of Pocahontas Yard. The A&J connection track will accommodate 22 cars. The east end of this track ties into N&W-Virginian main line about ¼ mile west of Appomattox Street Station.

As a general rule Coast Line delivers traffic to the N&W-Virginian at about 3:00 to 4:00 A.M., 3:00 P.M. and about 11:00 P.M. A Coast Line yard engine assigned at Petersburg delivers all traffic to the N&W-Virginian. In the

reverse direction, N&W-Virginian yard engines deliver traffic to Coast Line on the same interchange tracks, but, in addition, N&W-Virginian eastbound trains sometimes pick up at Secoast.

The Norfolk & Western-Virginian Railway delivers traffic to Coast Line at three different locations within the Petersburg area. The heaviest point is Secoast, which is approximately ½ mile from the midpoint of Coast Line's Collier Yard. The interchange track at this location will accommodate about 70 cars. Only eastbound through freight trains set off traffic at the Secoast connection track. Traffic is delivered to Coast Line at Secoast by the N&W-Virginian on an average of 5 times per day. Normally, delivery is made at 1:30 A.M., 9:30 A.M., 12:00 noon, 8:00 P.M. and 9:30 P.M. Traffic received from the N&W-Vir-

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ginian at Secoast is normally inspected by Coast Line car inspector.

Traffic originating on the N&W-Virginian in the Petersburg area and that which arrives in Petersburg in westbound trains is delivered to Coast Line at the regular interchange track located a short distance east of Appomattox Street Station or at the A&J connection track just west of Appomattox Street Station. The N&W-Virginian car inspector inspects traffic delivered in the Appomattox Street area. Deliveries are received from the N&W-Virginian in the Appomattox Street area at about 7:00 A.M., 9:00 P.M., 11:30 P.M. and 1:00 A.M.

Waybills are processed by Coast Line at Collier Yard on traffic for delivery to the N&W-Virginian. On traffic delivered to Coast Line by the N&W-Virginian, waybills are processed by that line. Delivery time of traffic to Coast Line at Secoast is established at the time the eastbound through freight trains set off at that point and waybills are placed at a designated location. Delivery time is established at

A&J connection and/or interchange track in the Appomattox Street area at the time the traffic is placed on those tracks and waybills are delivered to Coast Line.

The interchange time for traffic delivered to the N&W-Virginian by Coast Line is established at the time of placement of cars on interchange track and delivery of waybills to the N&W-Virginian Yardmaster's Office. Waybills

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covering traffic set off at Secoast interchange track are picked up by our yard engine foreman and are returned to Collier Yard, where they are processed. On cars delivered to the Norfolk and Western-Virginian, our yard engine foreman takes the waybills to the N&W-Virginian Yard Office. On traffic received from the N&W-Virginian in the Appomattox Street area, waybills are placed in a bill box at "RS" Tower.

JARRATT, VIRGINIA

At Jarratt, Virginia, Southern-Official Territory traffic is interchanged with the N&W-Virginian Railway.

Coast Line delivers traffic to the Norfolk & Western-Virginian in the N&W-Virginian's yard, the east end of which is about 300 to 400 feet west of Coast Line main line. The N&W-Virginian yard parallels the north side of the N&W-Virginian main line. The yard has 3 tracks which vary in capacity from 30 to 38 cars per track. Traffic is interchanged to the N&W-Virginian normally between 3:00 and 4:00 P.M., 8:00 and 9:00 P.M. and at about 2:30 A.M. The interchange is made by main line freight trains as there are no yard engines assigned at that point.

The N&W-Virginian Railway delivers traffic to Coast Line on an interchange track which parallels the Coast Line main line beginning at a point north of the N&W-Virginian crossing and on the west side of our main line. The

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capacity of this track is about 100 cars. The N&W-Virginian delivers to Coast Line at 10:00 A.M., 2:00 P.M., between 10:00 P.M. and 11:00 P.M. and between 1:30 A.M. and 5:30 A.M. The N&W-Virginian deliveries are made by their freight trains as the N&W-Virginian does not have yard engine service at Jarratt either.

Coast Line has no car inspectors assigned at Jarratt, but the N&W-Virginian has a car inspector who inspects certain traffic delivered to the N&W-Virginian by Coast Line.

Waybills for traffic delivered to the N&W-Virginian are processed by Coast Line forces at Jarratt and bills are delivered to the N&W-Virginian Office. The N&W-Virginian forces are supposed to deliver waybills to Coast Line covering traffic received from that line; however due to the fact that there is an interlocking plant located at Jarratt, Coast Line forces normally pick up the N&W-Virginian waybills so as to prevent the necessity of leaving the interlocking plant unattended.

Delivery time for the interchange is established in both directions at the time when cars are placed on the interchange tracks and waybills are ready for delivery to the other road. The interchange facilities at Jarratt are not always adequate to accommodate the number of cars to be interchanged between Coast Line and the N&W-Virginian. Since the Coast Line delivers a large number of cars to the

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N&W-Virginian on occasions and the N&W-Virginian yard is not of sufficient size to accommodate all of the traffic, it is often necessary for us to place traffic in the N&W-Virginian pass track. In the reverse direction, on occasions large numbers of empty hopper cars are received from the N&W-Virginian, having been released from coal movement, and it is sometimes necessary that the N&W-Virginian place such cars in the Coast Line's pass track.

SECONDARY GATEWAYS FOR INTERCHANGE WITH OFFICIAL TERRITORY CARRIERS

As previously stated Portsmouth and Suffolk, Virginia, are secondary gateways through which Coast Line interchanges Southern-Official Territory traffiic with Official Territory carriers.

The Official Territory carrier involved in the direct interchange of traffic with Coast Line at Suffolk is the N&W-Virginian Railway.

The interchange track of Coast Line and the N&W-Virginian Railway is located between the Coast Line Yard and the N&W-Virginian Railway Yard, approximately ¼ mile south of the Coast Line Freight Office and ¼ mile from the N&W-Virginian Railway Yard Office. The interchange track has a capacity of approximately 7 cars. Coast Line normally delivers traffic to the N&W-Virginian Railway between 10:00 A.M. and 12:00 noon and receives traffic from the N&W-Virginian Railway about noon. The interchange occurs at the time the cars are placed on the delivery

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track and waybills are ready for delivery. Interchange reports are prepared by the agency forces of each carrier. Waybills and interchange reports are delivered by Coast Line to the N&W-Viginian Railway Yard Office and the N&W-Virginian Railway delivers waybills to the Coast Line Freight Office. The N&W-Virginian Railway performs the same interchange service at Suffolk as is performed by Coast Line.

The N&W Virginian Railway also delivers traffic to Coast Line on an interchange track located just south of the Coast Line-N&W-Virginian Crossing about ¼ mile north of the Coast Line's Freight Office. The interchange track connects the Coast Line main line and the N&W-Virginian main line and has a capacity of approximately 30 cars.

Coast Line interchanges to N&W-Virginian on an interchange track located just north of the Coast-Line N&W-Virginian main lines. This track has a capacity of about 22 cars. N&W-Virginian delivers to Coast Line about 11:00 A.M. daily, except Sunday, and Coast Line delivers to N&W-Virginian between 10:00 A.M. and noon and about 3:30 P.M., the latter delivery being daily except Sunday. During the season of heavy peanut movements, Coast Line frequently makes 3 or 4 deliveries a day to N&W-Virginian. Occasionally the N&W-Virginian also makes an additional delivery to Coast Line. Coast Line and N&W-Virginian agency forces alternate weekly in handling waybills and in-

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terchange reports between the Coast Line Freight Office and the N&W-Virginian Freight Office. Each line prepares an interchange report for the cars delivered, using the actual time the cars were placed on the interchange track as the established delivery time.

Interchange is made with the Atlantic & Danville Railway at Suffolk on the interchange track located adjacent to the main lines of both railroads just south of the Coast Line's freight station. This interchange track, with a capacity of 5 cars, connects the Coast Line yard with the A&D yard. Coast Line interchanges to the A&D between 10:00 A.M. and noon daily, except Sunday, and the A&D interchanges to Coast Line about noon daily, except Sunday. Freight agency forces of each line make interchange reports covering cars delivered, inserting the actual time the cars were placed on the interchange track as the delivery time. Bills and interchange reports are delivered by agency forces between the freight offices of the two lines.

Cars moved into Suffolk by Coast Line for delivery to the N&W-Virginian, or A&D for local delivery in Suffolk, are interchanged on switching order and the waybill is retired by Coast Line. Peanuts are handled to Suffolk by Coast Line on milling or storing in transit rates and when

this commodity moves outbound, even though it may not be billed for Coast Line handling, Coast Line agency forces prepare revenue waybills.

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At Portsmouth, Virginia, Coast Line interchanges traffic to the Chesapeake & Ohio Railway, Norfolk & Western-Virginian Railway, Norfolk Southern Railway and the Pennsylvania Railroad through the Norfolk & Portsmouth Belt Line. Interchange reports covering all cars delivered to and received from the Norfolk & Portsmouth Belt Line are prepared by joint interchange clerks under the supervision of the Norfolk & Portsmouth Belt Line in its yard. Time of interchange is based on the actual time cars are placed on designated tracks in the Norfolk & Portsmouth Belt Line's yard. Interchange is made by yard engines.

Traffic is delivered to and received from the Norfolk & Portsmouth Belt Line in its yard which is located .7 of a mile from midpoint of the Coast Line's yard at Portsmouth. Track 5 with a capacity of 43 cars is the designated track for delivery of traffic to Coast Line and track 6 with a capacity of 45 cars is the designated track for delivery of traffic to the Norfolk & Portsmouth Belt Line for interchange purposes.

Generally, Coast Line makes four deliveries a day and the Norfolk & Portsmouth Belt Line makes three or four deliveries a day. On Sunday, one delivery is usually adequate to take care of the traffic which the Coast Line interchanges to the Norfolk & Portsmouth Belt Line.

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Coast Line interchanges traffic directly with the Atlantic & Danville Railway at Portsmouth without the use of the Norfolk & Portsmouth Belt Line. Coast Line handles all cars for the Atlantic & Danville Railway's account at Portsmouth. We make up its outbound trains and switch its inbound trains. In addition, Coast Line handles its interchange movements. All billing of cars moving between Coast Line and A&D is handled by Coast Line employees.

If the traffic is ready, A&D cars are handled to and from interchange tracks along with Coast Line traffic by Coast Line yard engines. If the traffic is not ready when Coast Line deliveries are made, special moves are required for the handling of the A&D interchange traffic.

All loaded cars originating in the Norfolk-Portsmouth area on connecting lines for movement via Coast Line or A&D are delivered to Coast Line on switching order. All loaded cars for delivery in the Norfolk-Portsmouth area by connecting lines are delivered to connections on switching order. Waybills on inbound traffic are retired by Coast Line agency forces and waybills covering outbound traffic are prepared by Coast Line agency forces. Loaded through cars from Coast Line and A&D for movement via Chesapeake & Ohio Railway, Norfolk & Western- Virginian Railway, and Norfolk Southern Railway are handled by the Norfolk & Portsmouth Belt Line on switching order prepared by Coast Line agency forces. Through cars from these lines

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to Coast Line and A&D are received from connections on revenue billing.

The Norfolk & Portsmouth Belt Line bases its switching charges on published tariffs for various commodities and bills Coast Line for cars handled for its account. Through cars for delivery to, or received from, the Pennsylvania Railroad move on revenue billing without switching order via the Norfolk & Portsmouth Belt Line and the Norfolk & Portsmouth Belt Line's bill covering the handling of such traffic is prorated between Coast Line and Pennsylvania.

Traffic interchanged between Coast Line and A&D is recorded by Coast Line yard clerks. The time of interchange is established when the cars are actually switched out of inbound trains or placed at the wharf for loading for account of the other line, or when orders are filled for empty equipment.

Waybills and switching orders are processed in the Coast Line freight agent's office between 8:00 A.M. and 5:00 P.M. At all other times waybills and switching orders are processed at Pinners Point Wharf Office by the Coast Line agency clerk on duty at that point.

All cars are given inbound inspection by Coast Line car inspectors on arrival at the yard at Portsmouth.

From the foregoing detailed description of the interchange services performed by Coast Line and the Official Territory carriers at Rich-

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mond, Petersburg, Jarratt, Portsmouth and Suffolk, Virginia, it is readily apparent that the services performed by the Official Territory carriers and Coast Line at these gateways are absolutely equal. From an operations standpoint, there can be no justification for any assertion that the services performed by the Official Territory carriers are either more burdensome or more extensive than those performed by Coast Line at the same points.

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VERIFIED STATEMENT NO. 29
OF J. N. BROETZMAN

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GATEWAY INTERCHANGES WITH OFFICIAL TERRITORY CARRIERS

As previously stated, the principal gateways at which Seaboard interchanges traffic with Official Territory lines are Richmond, Petersburg, Alberta and Portsmouth, Virginia. The following description of the services performed by each carrier at those points is tendered to show that the interchange services performed by the Official Territory railroads are no more burdensome or time consuming than the services performed by the Seaboard. In several cases, the Seaboard's interchange services are actually more extensive than those of the Official Territory lines.

Seaboard interchanges Official-Southern Territory traffive at Richmond, Virginia with the Richmond, Fredericksburg & Potomac Railroad and the Chesapeake & Ohio Railway. The Seaboard also provides inter-

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mediate service to accomplish interchange between the Chesapeake & Ohio Railway and the Richmond, Fredericksburg & Potomac Railroad.

All traffic interchanged between the RF&P and Seaboard at Richmond is handled between Acca Yard and Seaboard's Hermitage Yard by Seaboard engines and crews. Seaboard engines and crews deliver interchange traffic to RF&P at Acca Yard and move interchange traffic from the RF&P from Acca Yard to Hermitage Yard. These interchange movements usually involve long cuts of cars and 10 to 12 trips are made by Seaboard yard engines each day to handle the interchange traffic with the RF&P. The frequency of the movements is necessary to protect through

schedules and to handle the large volume of traffic interchanged.

Because of the fast and exacting schedules for the handling of important North-South traffic, Seaboard and RF&P have a special arrangement by which the locomotives which operate between Potomac Yard, Virginia and Hamlet, North Carolina on some of the through scheduled trains are pooled and Seaboard caboose cars are operated through between Potomac Yard and Hamlet on southbound train No. 27 and northbound train No. 280. This was done to eliminate the necessity of changing motive power and caboose cars at Acca or Hermitage Yard. The interchange on these trains is accomplished by Seaboard yard crews which move the arriving southbound RF&P train intact from Acca Yard to Hermitage Yard for manning by a road crew for expedited movement south. With respect to northbound train No. 280, the same arrangement is in effect in reverse. Seaboard road crews are relieved at Hermitage Yard and Seaboard yard crews deliver the train intact to the RF&P at Acca Yard.

While motive power and caboose cars are not operated through on

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other trains, Seaboard train No. 86 remains intact except for the caboose and perhaps some Richmond cars to be cut off on the rear. The Seaboard yard crew mans the road engine, which remains attached to the head of the train and moves the train into Acca Yard promptly so as to meet schedule requirements. The Seaboard yard crew then brings the road engine back to Hermitage Yard and changes over to a yard engine to resume their regular work.

Also, because of the short time interval of these trains in the terminal, special arrangements have been made for the processing of waybills. Arrangements have been worked out with the RF&P for the interchange of waybill information by tape to card transmission between Hamlet, Hermitage and Acca Yard. Southbound, RF&P and Seaboard

receive waybill information by the tape to card process from Potomac Yard.

The interchange between the C&O and Seaboard at Richmond is accomplished on four interchange tracks located at Brown Street, approximately four miles south of Seaboard's Hermitage Yard and two miles from the C&O Yard. The C&O yard crews deliver on two of the tracks and Seaboard yard crews deliver to the C&O on the remaining two. Joint inspectors are employed at the interchange for the inspection of this traffic and each carrier bears its proportion of the expense of this inspection service. The southbound interchange traffic received from the C&O is normally moved by Seaboard switching crews from the interchange tracks to the Brown Street Yard, where they are classified and dispatched in southbound trains which pick-up the traffic at the Brown Street Yard. In some instances, the received traffic is moved to Hermitage Yard for placement in through trains there to avoid the necessity of the additional pick up at the Brown Street Yard. There are other occasions when deliveries by the C&O are late and the traffic must be moved to the South Yard at Richmond for consolidation with other

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south cars for pick-up by through trains at that point. Seaboard also receives a substantial amount of livestock traffic from the C&O which must be switched and placed at the Union Stock Yard within three hours after receipt. This, in nearly every instance, requires a special trip by yard engines to make the placement on schedule.

The northbound traffic, which is principally bridge traffic handled by the Seaboard for interchange between the C&O and RF&P, is dispatched to Hermitage Yard and coordinated with other RF&P cars for delivery to the RF&P.

The interchange at Petersburg, Virginia with the Norfolk & Western-Virginian Railway is accomplished by yard crews of each line at designated interchange tracks

located between the Seaboard's and Norfolk & Western-Virginian Railway's tracks. A Seaboard car inspector at the interchange point inspects the cars received from and delivered to the Norfolk & Western-Virginian Railway.

Another interchange with the Norfolk & Western-Virginian Railway is located at Secoast, Virginia, approximately four miles south of Petersburg. This interchange is used to facilitate the through movement of important traffic. Traffic is set out on an interchange track located beside the Norfolk & Western-Virginian Railway's main line approximately one-half mile from the Seaboard's main line. Southbound Seaboard trains normally require approximately 40 minutes to make the pick-up at Secoast. However, when southbound trains picking up at Ryan meet or are to be passed by through trains, they must clear in the siding before doing their work, which involves from 15 to 30 minutes additional delay.

At Alberta, Virginia, Seaboard has another interchange with the Nor-

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folk & Western-Virginian Railway. Interchange cars are handled by road crews of each line and inspection is made by the crews making the deliveries and receiving the traffic. Delivery to the Norfolk & Western-Virginian Railway is made on interchange tracks located beside their main line about one-quarter mile from Seaboard's main line. Seaboard's northbound trains make delivery in approximately 20 minutes, but southbound trains require 40 minutes to pull the cars to the connection and return through the Norfolk & Western-Virginian Railway's pass track. Interchanges are accomplished by road train crews and additional delays are often sustained when the delivering or receiving trains are required to clear the main line to permit other through movements.

At Portsmouth, Virginia, Seaboard interchanges traffic with the Pennsylvania Railroad, the Norfolk & Western-Virginian Railway, the Southern Railway, the Atlantic

Coast Line Railroad, and the Norfolk Southern Railway by means of the Norfolk & Portsmouth Belt Line as the intermediate carrier. The Norfolk & Portsmouth Belt Line performs all intermediate switching services necessary to accomplish the interchanges between railroads and all lines participate in the cost of operating the Norfolk & Portsmouth Belt Line on an equal per car basis.

VERIFIED STATEMENT NO. 30
OF L. L. WATERS

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There is an especially large movement of Official-Southern Territory traffic from automobile plants in Official Territory to three automobile assembly plants located near Atlanta. Automobile parts moving to assembly plants require many specially equipped cars. Special racks for motors, fenders, and other parts which must be installed in box cars render such cars unsuitable for other loading. Other high-grade cars, many with D-F devices, must be provided to protect the movement of automobile parts to assembly plants. In order to assure an adequate supply of these cars for each assembly plant, the roads participating in the movement of automobile parts enter into separate arrangements requiring each road to assign cars to foreign line pools at origins in the North. In this way, the extra burdens of investment and repairs of special racks and other devices are apportioned between the roads handling the traffic. The Southern Railway has 969 specially equipped automobile parts cars assigned to such pools. All of the cars in these pools are in assigned service and are always returned empty to origin.

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SOUTHERN RAILWAY INTERCHANGES WITH OFFICIAL TERRITORY CARRIERS

The principal interchanges of Official-Southern Territory traffic between the Southern Railway and Official Territory carriers occur at Potomac Yard, Virginia; Cincinnati, Ohio; and Louisville, Kentucky. A lesser amount of Official-Southern Territory traffic is interchanged at Norfolk, Virginia and East St. Louis, Illinois. In each instance,

the Southern Railway performs at least as much service as the Official Territory carriers in accomplishing the mutual interchange of Official-Southern Territory traffic at these points.

A. Potomac Yard, Virginia

The Southern Railway interchanges Official-Southern Territory traffic with the Richmond, Fredericksburg & Potomac Railroad, the Baltimore & Ohio Railroad, the Chesapeake & Ohio Railroad, and the Pennsylvania Railroad at Potomac Yard, Virginia. Potomac Yard is owned by the RF&P but is operated as a joint facility under an operating contract which provides that each user line shall share in the expenses of operation according to the number of cars it handles through the yard. This

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results in each line being charged exactly the same amount per car handled as any other line. Certain charges, such as repair charges, are billed exactly against the account of the railroad for whose benefit the services were performed.

I am thoroughly familiar with the interchange services performed by all of the user railroads at Potomac Yard, having on two occasions served as a train-master on the Washington Division of the Southern Railway which extends into Potomac Yard, and, later, as Division Superintendent from 1954 to 1956, and can testify from my own first-hand experience that the interchange services performed by the Southern Railway and the four Official Territory carriers at Potomac Yard are absolutely equal.

The Southern Railway's northbound freight trains enter Potomac Yard at Braddock Road and move through a television installation into the northbound receiving yard. The Southern Railway's locomotives are detached from the train and moved by Southern Railway hostlers to our engine terminal in Alexandria or to our engine storage track located near the south end of Potomac Yard. The

conductor delivers the waybills to the Yardmaster's office while Potomac Yard car inspectors perform the inbound inspection. From the Yardmaster's office the waybills are sent to the office of the Joint Agent at Potomac Yard for checking and further processing.

The interchange occurs with the train standing in the northbound receiving yard without actual physical delivery from the Southern Railway to the Official Territory carriers. Actual time of interchange is determined by using the later of two times, namely, the completion of the Joint Agent's waybill check or the completion of the mechanical inspection of the inbound cars.

As soon as the inbound inspection has been completed, a Potomac Yard switch engine moves the train over the northbound hump and the cars

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are classified into tracks in the northbound classification yard. Separate classifications are made of the cars for the B&O and the PRR. Cars for the RF&P and the C&O are classified into the same track in the northbound classification yard and then moved by a Potomac Yard engine to the southbound classification yard where they are reclassified, this time into separate tracks. Potomac Yard engines make up the outbound trains for each railroad, the road locomotives and cabooses of the receiving line are coupled and the train departs for destination.

RF&P and C&O trains also arrive in the northbound receiving yard and receive the same service performed on Southern Railway interchange traffic.

The southbound operation is quite similar to the northbound procedure described above, except in the reverse direction. The trains of the PRR and B&O pull into the southbound receiving yard. The conductor delivers the waybills to the Yardmaster's office and they are transmitted to the Joint Agent for checking while the inbound inspection is being performed by Potomac Yard car inspectors.

The interchange on southbound traffic also occurs without physical delivery to the receiving line while the train is standing in the southbound receiving yard. Time of interchange is likewise determined by the later of the two events —completion of the waybill check by the Joint Agent or completion of the inbound inspection. When the inbound inspection is completed, the train is classified over the southbound hump and the road locomotives of the receiving line couple to the interchange cut and depart for destination.

B. Cincinnati, Ohio

The Southern Railway interchanges Official-Southern Territory traffic with the Baltimore & Ohio Railroad, the Chesapeake & Ohio Railroad, the Norfolk & Western-Virginian Railway, the New York Central Railroad and the Pennsylvania Railroad at Cincinnati, Ohio. I served as Terminal

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Trainmaster at Cincinnati for 2 years and a Division Superintendent with jurisdiction over the Cincinnati terminal for 6 years and possess a thorough knowledge of the services performed by each railroad in interchanging traffic between the Southern Railway and the Official Territory carriers at Cincinnati. In every case the Southern Railway performs at least as much service as the Official Territory carriers. The operational facts directly contradict any statement that the Official Territory carriers perform any more extensive or burdensome services in accomplishing the interchanges than must be performed by the Southern Railway.

1. Approximately 240 cars per day are interchanged between the Southern Railway and the Pennsylvania Railroad at Cincinnati. Southern Railway engines deliver the interchange traffic from our Gest Street Yard to the PRR at its Undercliff Yard, located approximately 8 miles away,

and pick up traffic from the PRR for handling to Gest Street Yard on the return trip. Similarly, PRR engines, operating over the same route, deliver interchange traffic to the Southern Railway at our Gest Street Yard and return to Undercliff Yard with interchange traffic for the PRR. Normally, each railroad makes one round trip each day and handles about 60 cars in each direction.

2. The interchange between the Southern Railway and the C&O is accomplished on two interchange tracks reached by a route approximately 2 miles long from Gest Street Yard and approximately 3 miles from the C&O's yard. The C&O delivers to the Southern Railway on one of the tracks and the Southern Railway delivers to the C&O on the other. Normally, each railroad makes 2 or 3 trips per day between its yard and the interchange point and approximately 60 cars per day are interchanged in each direction.

3. Cars for the CH&D Division of the B&O are delivered by the Southern Railway on two interchange tracks located approximately 1

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mile from our Gest Street Yard and 500 feet from the B&O's CH&D Yard. B&O engines also deliver to the Southern Railway on the same interchange tracks. It requires approximately 1 hour and 15 minutes for both B&O and the Southern Railway engines to make a round trip between their yards and the interchange track. Approximately 75 cars per day are interchanged in each direction. After making delivery, the engines of each line return light to their respective yards.

The interchanges between the Southern Railway and the Ohio Division of the B&O are accomplished by the Southern Railway delivering to the B&O in its Brighton Yard and the B&O delivering to the Southern Railway at our Gest Street Yard. The two yards are located about 1 mile apart and the engines of each carrier move over the same route in making the interchange. Approximately 1

hour and 30 minutes are required by each carrier in accomplishing the interchange. An average of 75 cars per day are interchanged in each direction between Brighton Yard and Gest Street Yard.

4. The Southern Railway and the New York Central Railroad interchange approximately 150 cars per day in each direction. Southern Railway engines deliver interchange traffic to the New York Central Railroad from Gest Street Yard through the joint Oklahoma Junction track, where the congestion often causes long delays, to the NYC's Riverside Yard. The NYC delivers interchange traffic to the Southern Railway from Riverside Yard over the same route to our Gest Street Yard.

During 1959, the Southern Railway re-iced 3,901 cars at Cincinnati, 2,409 of which were northbound and 1,492 of which were southbound. Cincinnati is a regular icing station at which all northbound cars moving under standard refrigeration must be re-iced, unless the shipping instructions specify otherwise, before delivery to connections. The Southern Railway also re-ices southbound cars moving under refrigeration for the

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C&O and the NYC which do not have icing facilities at Cincinnati.

C. Louisville, Kentucky

The interchange of Official-Southern Territory traffic between the Southern Railway and the five Official Territory carriers (Baltimore & Ohio Railroad, Chesapeake & Ohio Railroad, Monon Railroad, New York Central Railroad, and Pennsylvania Railroad) at Louisville, Kentucky, is accomplished through the Kentucky & Indiana Terminal Company, which is jointly owned by the Southern Railway, Baltimore & Ohio Railroad, and Monon Railroad. The Kentucky and Indiana Terminal Company charges each railroad exactly the same amount for its intermediate switching service.

The Kentucky & Indiana Terminal Company operates Youngstown Yard at Louisville, which consists of approximately 73 tracks, an engine terminal repair tracks, and icing facilities. The Southern Railway's westbound freight trains enter the K&I tracks at LS Junction, approximately 4 miles from Youngstown Yard, and move into the receiving tracks at the east side of Youngstown Yard. The road engine is cut off and moved to the engine terminal. The conductor places the waybills in a box at the entrance to the yard and a messenger takes them to the Joint Agent's office for processing. While the waybills are being processed, the train is thoroughly inspected by K&I car inspectors and then classified by K&I yard engines for each connection.

1. The interchanges between Southern Railway and B&O and Southern Railway and the Monon are accomplished at Youngstown Yard. Each railroad operates its road trains into Youngstown Yard, where the K&I performs the classification and switching service necessary to accomplish the interchange.

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2. The Southern Railway interchange traffic for the NYC is handled by the K&I to 11th Street, approximately 2.4 miles from Youngstown Yard, where it is delivered to the Illinois Central Railroad for movement to the joint IC-NYC yard approximately 1.4 miles away. In the reverse direction, the NYC brings interchange traffic for the Southern Railway to 11th Street and delivers it to the IC for movement to a track near Panama Yard and 16th Street, where it is picked up by the K&I and moved into Youngstown Yard, approximately 2 miles away. The interchange between the Southern Railway and the NYC averages about 5 cars per day in each direction. K&I engines handling interchange cuts between Youngstown Yard and the NYC interchange also handle other cars for intermediate destinations and/or connections.

3. The K&I delivers interchange traffic from the Southern Railway to the PRR at a PRR track located near Panama Yard, which is approximately 2½ miles from Youngstown Yard. The PRR delivers its interchange traffic to the K&I at Panama Yard for movement to Youngstown Yard. Approximately 15 cars per day are interchanged in each direction between the Southern Railway and the PRR.

4. The interchange between the Southern Railway and the C&O is accomplished by the K&I moving the traffic to City Yard, approximately 3 miles from Youngstown Yard, where the IC picks it up and delivers it to the C&O. In the reverse direction, the IC moves C&O interchange traffic for the Southern Railway to City Yard and delivers it to the K&I, which moves it into Youngstown Yard.

VERIFIED STATEMENT NO. 31
OF JACK SMALL

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Traffic Characteristics

During 1959 the consist of traffic handled by the Louisville and Nashville Railroad by major commodity groups was:

Commodity Group	Tons
Products of Agriculture	2,589,358
Animals and Animal Products	265,411
Products of Mines	47,507,381
Products of Forests	3,955,652
Manufactures and Miscellaneous	18,765,055
Forwarder Traffic	119,910
Less Carload Traffic	175,328
Total Freight Traffic	73,378,095

The principal commodities handled by the Louisville and Nashville Railroad during 1959 were:

Commodity	Class	Tons
Bituminous coal	305	30,999,327
Crushed stone	329	4,519,448
Gravel and sand	327	2,661,122
Iron ore	309	2,622,218
Clay and bentonite	323	2,214,838
Pulpwood	409	2,030,168
Fertilizers	539	1,806,416
Coke	307	1,404,651
Cement	633	1,239,322
Phosphate rock	343	993,987
Sulphuric acid	529	977,447
Feed, animal and poultry	773	869,097
Manufactured iron and steel	583	834,366
Lumber	411	776,490
Petroleum products	507	745,546
Food products, cans and packages	763	672,696
Chemicals	527	643,497
Paperboard	669	635,561
Wallboard	671	364,964
Iron and steel pipe and fittings	587	298,542

Bituminous coal contributed 30,999,327 tons or 42.2 percent of total tonnage during 1959. Volume commodities (sand and gravel, crushed stone, pulpwood, wet phosphate rock and iron ore) which move pre-

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dominantly within the South in large cuts of cars from one origin to a single destination contributed 12,826,943 tons or 17.5 percent of total tonnage during 1959.

The principal commodities, excluding coal and coke, moving between Official and Southern Territories over the lines of the Louisville and Nashville Railroad are iron and steel products, machinery, appliances, automobile parts, tires and rubber, glass jars and bottles, chemicals, petroleum products, lumber and forest products, paper and paper products, wallboard, soap, canned goods, mineral wool, animals, dairy products, meat and meat products, fruits and vegetables, beer and malt, fertilizer, and cement.

During the 1958-1959 perishable shipping season, the L&N handled a total of 16,250 cars of perishables. Practically all of this traffic moves in refrigerator cars to Official Territory destinations. These refrigerator cars must be checked and/or re-iced at regular icing stations by representatives of the Fruit Growers Express Company (our contractors) to prevent damage to the highly perishable contents. Furthermore, during the 1958-1959 season the L&N executed 2,525 diversion and reconsignment orders on perishables at our own expense without additional charge. In addition to the paper work involved, the execution of diversion orders often requires a large amount of additional switching.

In 1959, 32.31 percent of the traffic handled by the Louisville and Nashville Railroad consisted of local traffic which was both originated and terminated on the L&N. 46.51 percent consisted of traffic originated on the L&N and delivered to connections. 12.72 percent consisted of traffic received from connections and terminated on the L&N,

while 8.46 percent was overhead traffic which neither originated nor terminated at points on the L&N.

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Interchange With Official Territory Carriers

The Rail Form A system average costs for the year 1956, relied upon by the Official Territory carriers in this proceeding, attribute to the Official Territory carriers an average cost per interchange handling which is approximately 58 percent higher ($4.95 versus $3.14) than the average cost per interchange handling attributed to the Southern Railroads. The purpose of this section of my testimony is to show that, contrary to the implications of the 1956 Rail Form A system averages, the Official Territory carriers perform no more onerous or extensive service than the L&N in interchanging Official-Southern Territory traffic and that there is no factual justification for the Official Territory carriers' claim that their cost per interchange handling is

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any higher than that of the L&N for interchanging Official-Southern Territory traffic at the same gateway interchange points.

Cincinnati, Ohio

The heaviest interchange of traffic between the L&N and Official Territory carriers occurs at Cincinnati, Ohio. The L&N interchanges traffic directly with the New York Central, Pennsylvania Railroad, Baltimore and Ohio Railroad, and Chesapeake and Ohio Railroad. The interchange with the Erie Railroad is accomplished through the Baltimore and Ohio Railroad and with the Norfolk and Western Railway (which now includes the former Virginian Railway) through the Pennsylvania Railroad.

For per diem and other purposes the interchanges are considered to occur at the points where the tracks of the L&N and the Official Territory carriers connect. With the single exception of the L&N-C&O interchange at KC Junction in Covington, Kentucky, all of these points are located on the north side of the Ohio River, with the result that the L&N must bear the entire expense of owning or maintaining the bridges over which the interchange traffic moves in both directions.

The actual interchanges occur in the yards of the receiving carriers except for the interchange with the C&O, which occurs at interchange tracks near KC Junction. The distances from our DeCoursey Yard on the south side of the Ohio River to the yards of the Official Territory carriers on the north side of the Ohio River are extremely long: 22 miles to the NYC's (Cincinnati Division) Sharonville Yard; 11.1 miles to the NYC's (Chicago Division) Riverside Yard; 13 miles to the PRR's Undercliff Yard; 9.9 miles to the B&O's (Toledo Division) Mill Creek Yard; and 9.9 miles to the B&O's (Ohio Division) Brighton Yard.

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L&N transfer engines deliver interchange traffic to the C&O on interchange tracks near KC Junction in Covington, Kentucky and return with interchange traffic which the C&O delivers to the L&N at KC Junction. The interchange tracks at KC Junction are located 3 miles from our DeCoursey Yard and 4/10 miles from the C&O's Stevens Yard.

An arrangement has been in effect for many years at Cincinnati between the L&N and the NYC, PRR and B&O whereby the transfer crews of each line deliver interchange traffic to the other line and pick up cars destined to it for handling on the return trip. In other words, L&N transfer crews deliver interchange traffic to the NYC, PRR and B&O at their yards and pick up interchange traffic from these carriers and return with it to our DeCoursey Yard. Similarly the transfer crews of the NYC, PRR and B&O deliver

interchange traffic to the L&N at our DeCoursey Yard and return with interchange traffic from the L&N to their own yards.

The L&N and the Official Territory carriers (except the C&O) equalize the amount of service performed by each railroad through the equalization of engine hours operated on each other's rails, figured from the time the engine passes the per diem interchange points which are located near the junction of the tracks of the involved carriers on the north side of the Ohio River. Whenever it appears that one railroad is performing more switching than another, the railroad performing the lesser amount of service puts an additional engine into operation and the railroad performing the larger amount of service reduces its service until the engine hours are again equalized between the railroads. While the arrangement between the L&N and NYC provides for a monthly monetary settlement between the two railroads, this is not customarily followed as the equalization is accomplished through the addition or reduction of transfer engines as in the case of the PRR and B&O.

It is apparent that this equalization arrangement results in each

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railroad performing practically the same amount of service in interchanging traffic at Cincinnati. There is no justification for the application of system average costs which attribute a 58 percent higher cost per car interchanged by the Official Territory carriers. The Official Territory carriers have even gone so far as to admit at pages 39 and 40 of their general petition for reconsideration in Docket No. 32055 that:

> "It was there pointed out (in the Official Territory lines' Exceptions to the Examiner's Proposed Report) that whatever the burdens of interchange between defendants and the L&N at Cincinnati, they are shared equally between the carriers involved."

The New York Central Railroad's supplemental petition for reconsideration in Docket No. 32055 also emphasizes that the costs of the interchange services at Cincinnati are equal (at page 11):

> "Although the Commission points out the cost implications of the L&N's obligation to deliver traffic at the interchange point to the New York Central (Sheet 14), it fails to point out that the New York Central has the reciprocal obligation and cost attendant thereto. Thus, the costs of performing interchange service are equalized and, if the L&N requires a great number of terminal engines due to delays in the interchange runs, it causes the same situation for the New York Central, as the conditions encountered are common to the crews of both the L&N and the New York Central. (Tr. 88-89, 683-687; Exhibit 101, p. 55)".

The position of the L&N in Docket 32055, with which the Official Territory carriers there agreed, is the same as my point here, that the services performed at the interchange points by the L&N and the Official Territory carriers are equal for all practical purposes.

Louisville, Kentucky

The L&N interchanges traffic with five Official Territory carriers at Louisville, Kentucky: the New York Central Railroad, Chesapeake and Ohio Railroad, Pennsylvania Railroad, Baltimore and Ohio Railroad, and Monon Railroad. The following description of the relative serv-

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ices performed by each carrier clearly shows that the L&N and Official Territory carriers perform equal services in accomplishing the mutual interchange of traffic at Louisville. Again, there is no factual justification for the use of system averages which attribute 58 percent higher costs per car

interchanged to the Official Territory carriers since they perform no more onerous or extensive services than the L&N.

L&N transfer crews deliver interchange traffic from our five Louisville yards varying distances of from ½ to 8 miles to the common receiving point of the C&O and NYC. Thereafter the hauls of the C&O and NYC to their yard are about ½ mile. Traffic delivered to the L&N by the C&O and NYC is handled somewhat differently, the hauls of the C&O and NYC being from 1/10 to 1½ miles and the hauls of the L&N from ½ to 8 miles. The point where the interchange is actually accomplished is used for per diem purposes.

The L&N and PRR alternate at 6 months intervals in performing the interchange of traffic between the L&N's South Louisville Yard and the PRR's Jeffersonville Yard, which are located 7 miles apart. In other words, L&N crews both deliver interchange traffic to the PRR and pick up interchange traffic from the PRR for 6 months and then PRR crews deliver to and pick up from the L&N for the next 6 months. In this way the interchange services between the two roads are equalized. For per diem purposes, the interchange between the L&N and PRR crews occurs at 11th Street in both directions regardless of which road is handling the traffic.

The L&N delivers interchange traffic for the B&O and Monon at Louisville to the Kentucky and Indiana Terminal Company's Youngstown Yard, which is located 2 miles from our South Louisville Yard. The B&O and Monon are joint owners, along with the Southern Railway, of the Kentucky and Indiana Terminal Company. The Kentucky

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and Indiana Terminal Company delivers interchange traffic from the B&O and Monon to the L&N on interchange tracks between Gaulbert Avenue and the Southern Railway crossing, which are located 1 mile from Youngstown Yard and 1 mile from our South Louisville Yard. For per diem pur-

poses, the interchange between the L&N and both the B&O and Monon is considered to occur at 7th and Magnolia Streets in both directions.

Evansville, Indiana

The third important interchange between the L&N and Official Territory carriers is Evansville, Indiana, where traffic is interchanged with the New York Central Railroad, Illinois Central Railroad, and the Chicago and Eastern Illinois Railroad.

The NYC uses the L&N's yard at Howell, Indiana, on the north side of the Ohio River and the interchange of traffic is effected by delivery in that yard by the road trains of each road. The yard switching is performed by L&N engines and crews, for which the NYC compensates the L&N on a unit cost basis.

L&N crews and engines deliver interchange traffic from our Howell Yard to the IC at its Evansville Yard, located 3 miles away, and return light. In the opposite direction, IC crews and engines deliver interchange traffic to the L&N at our Howell Yard and return light to the IC's Evansville Yard.

L&N and C&EI crews alternate monthly in handling the interchange of traffic in both directions between the L&N's Howell Yard and the C&EI's Wansford Yard, which are located 4 miles apart.

From the foregoing description it is obvious that the services performed by the Official Territory lines and the L&N in accomplishing the interchange of traffic at Evansville are exactly comparable.

My final Exhibit E shows foot-pounds per gross ton mile of road

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on lines forming some of the principal southern routes compared to lines in the North.

VERIFIED STATEMENT NO. 33
OF E. H. BUELOW

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. . . For example, the Illinois Central Railroad handles a substantial movement of bananas from New Orleans to destinations in Official Territory. Bananas are transported in refrigerator cars owned or leased by the Illinois Central and assigned to the movement of bananas. These assigned cars have an empty ratio of 100%.

The Illinois Central Railroad handles more than 80,000 cars each month at New Orleans. To handle this traffic, 32 switch engines are operated Monday through Friday of each week and 17 switch engines operate on Saturday and Sunday. The Illinois Central regularly operates four trains daily in each direction to and from New Orleans on the main line through McComb and Jackson, Mississippi, and two trains daily in each direction on the Valley Route between New Orleans and Baton Rouge, with extra trains operating on each line as needed.

* * *

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Interchange with Official Carriers

The following discussion of the interchange services performed by the Illinois Central and Official carriers at the principal gateway interchange points shows that the services performed by the Official carriers in accomplishing the interchange of traffic with the Illinois Central are no more onerous nor extensive than those performed by the Illinois Central. Taking all of these interchanges together, the only conclusion justified by operating conditions is that the Illinois Central performs at least as much service and in some cases more than that performed by the Official carriers in the mutual interchange of Official-Southern traffic.

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East St. Louis, Illinois

East St. Louis, Illinois, which is served by 22 railroads, is one of the most complex terminals in the United States. The Illinois Central Railroad interchanges traffic with seven Official lines at East St. Louis: the New York Central Railroad, Pennsylvania Railroad, Baltimore & Ohio Railroad, Wabash Railroad, Nickel Plate Railroad, Chicago & Eastern Illinois Railroad, and Illinois Terminal Railroad. Except for the Illinois Terminal Railroad the Illinois Central has no direct connection with any of these Official lines at East St. Louis and in each instance the interchange of traffic is accomplished through the Terminal Railroad Association of St. Louis or the Alton & Southern Railroad. Both of these intermediate switching lines assess the same switching charge per car regardless of the direction of interchange or the distance which they handle the car in accomplishing the interchange. The following description shows that the Illinois Central must perform as much service in accomplishing the interchange of Official-Southern Territory traffic as the Official lines perform at East St. Louis.

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1. Interchange between Illinois Central and Pennsylvania Railroad.

(a) The Illinois Central delivers interchanged traffic destined for the PRR from our "B" Yard at East St. Louis to the Terminal Railroad at either Eads Bridge Yard or Wiggins Yard (3½ and 4½ miles, respectively) and the Terminal Railroad delivers it to the PRR at Rose Lake Yard. The PRR delivers interchange traffic destined for the Illinois Central from its Rose Lake Yard to the Terminal Railroad at either Eads Bridge Yard, Wiggins Yard, or Merchants Yard (2¾, 4 and 3½ miles, respectively) and the Terminal Railroad delivers it to the Illinois Central at our "B" Yard.

(b) The Illinois Central delivers interchange traffic destined for the PRR to the Alton & Southern Railroads at Davis Yard (a distance of 2 miles) and the Alton & Southern Railroad delivers to the PRR on interchange tracks at H N cabin (Hanover). The PRR delivers interchange traffic destined for the Illinois Central from its Rose Lake Yard to the Alton & Southern Railroad at H N cabin (Hanover) (a distance of 1 mile) and the Alton & Southern Railroad delivers to the Illinois Central at our "B" Yard.

2. Interchange between Illinois Central and Baltimore & Ohio Railroad.

(a) The Illinois Central delivers interchange traffic destined for the B&O from our "B" Yard to the Terminal Railroad at Eads Bridge Yard or Wiggins Yard (3½ and 4½ miles, respectively) and the Terminal Railroad delivers it to the B&O at Cone Yard. The B&O delivers interchange traffic destined for the Illinois Central from its Cone Yard to the Terminal Railroad at Eads Bridge Yard, Wiggins Yard, or Merchants Yard (½, 1¾ and 2¾ miles, respectively) and the Terminal Railroad delivers to the Illinois Central at our "B" Yard.

(b) The Illinois Central delivers interchange traffic destined for the B&O from our "B" Yard to the Alton & Southern Railroad at Davis Yard (a distance of 2 miles) and the Alton & Southern Railroad delivers to the B&O at H N cabin (Hanover). The B&O delivers interchange traffic destined for the Illinois Central from its Cone Yard to the Alton & Southern Railroad at H N cabin (Hanover) (a distance of 4 miles) and the Alton & Southern Railroad delivers to the Illinois Central at our "B" Yard.

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3. Interchange between Illinois Central and New York Central Railroad.

(a) The Illinois Central delivers interchange traffic destined for the NYC from our "B" Yard to the Terminal

Railroad at Eads Bridge Yard and Wiggins Yard (3½ and 4½ miles, respectively) and the Terminal Railroad delivers it to the NYC at its Lower Yard. The NYC delivers interchange traffic destined for the Illinois Central to the Terminal Railroad at the NYC's Lower Yard and at the Terminal Railroad's Eads Bridge Yard (a distance of ½ mile) and the Terminal Railroad delivers to the Illinois Central at our "B" Yard.

(b) The Illinois Central delivers interchange traffic destined for the NYC from our "B" Yard to the Alton & Southern Railroad at Davis Yard (a distance of 2 miles) and the Alton & Southern Railroad delivers to the NYC at Davis Yard. The NYC elects to receive as well as deliver cars from and to the Alton & Southern Railroad at Davis Yard because the NYC is also permitted to deliver cars to the Alton & Southern Railroad at Mitchell (Wooster), Illinois which is 17½ miles from Davis Yard without the payment of an additional switching charge. The Alton & Southern Railroad assesses the same

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intermediate switching charge on NYC cars received at Mitchell (Wooster) as it assesses on cars between the Alton & Southern Railroad and other railroads at East St. Louis.

4. Interchange between Illinois Central and Nickel Plate Railroads.

(a) The Illinois Central delivers interchange traffic destined for the NKP from our "B" Yard to the Terminal Railroad at Eads Bridge Yard (a distance of 3½ miles), where it is delivered to the NKP in track No. 6. The NKP delivers interchange traffic for the Illinois Central from their Freight House Yard to the Terminal Railroad in track No. 6 in Eads Bridge Yard and the Terminal Railroad delivers to the Illinois Central at our "B" Yard.

(b) The Illinois Central delivers interchange traffic destined for the NKP from our "B" Yard to the Alton & Southern Railroad at Davis Yard (a distance of 2 miles) and the Alton & Southern Railroad delivers to the NKP at Madison, Illinois. The NKP delivers interchange traffic destined for the Illinois Central from its yard in Madison, Illinois to the Alton & Southern Railroad on an interchange track located 1 mile away and the Alton & Southern Railroad delivers to the Illinois Central at our "B" Yard in East St. Louis.

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5. Interchange between Illinois Central and Chicago & Eastern Illinois Railroads.

(a) The Illinois Central delivers interchange traffic destined for the C&EI from our "B" Yard to the Terminal Railroad at Eads Bridge Yard or Wiggins Yard (3½ and 4½ miles, respectively) and the Terminal Railroad delivers to the C&EI at its yard near Madison, Illinois. The C&EI delivers interchange traffic destined for the Illinois Central from its yard near Madison, Illinois to the Terminal Railroad at Merchants Yard (a distance of 3¾ miles) and the Terminal Railroad delivers to the Illinois Central at our "B" Yard in East St. Louis.

(b) The Illinois Central delivers interchange traffic destined for the C&EI to the Alton & Southern Railroad at Davis Yard (a distance of 2 miles) and the Alton & Southern Railroad delivers to the C&EI at Mitchell, Illinois. The C&EI delivers interchange traffic destined for the Illinois Central from its yard near Madison, Illinois to the Alton & Southern Railroad on an interchange track in Madison (a distance of 3¾ miles).

6. Interchange between Illinois Central and Wabash Railroad.

(a) The Illinois Central delivers interchange traffic destined for the Wabash from its "B" Yard to the Terminal Railroad at Eads Bridge

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Yard and Wiggins Yard (3½ and 4½ miles, respectively) and the Terminal Railroad delivers to the Wabash at Levee Yard. The Wabash delivers interchange traffic from its Brooklyn Yard to the Terminal Railroad at Eads Bridge Yard and Wiggins Yard (1½ and ½ miles, respectively) and the Terminal Railroad delivers to the Illinois Central at our "B" Yard.

(b) The Illinois Central delivers interchange traffic destined for the Wabash from its "B" Yard to the Alton & Southern Railroad at Davis Yard (a distance of 2 miles) and the Alton & Southern Railroad delivers it to the Wabash at Mitchell, Illinois. The Wabash delivers interchange traffic destined to the Illinois Central to the Alton & Southern Railroad from its yard near Madison to the Alton & Southern Railroad on an interchange track at Madison (a distance of 3¾ miles) and the Alton & Southern Railroad delivers to the Illinois Central at our "B" Yard.

7. Interchange between Illinois Central and Illinois Terminal.

The Illinois Central delivers interchange traffic destined for the Illinois Terminal from our "B" Yard to the Illinois Terminal at an interchange track in Madison, Illinois (a distance of 6½ miles). The Illinois

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Terminal delivers interchange traffic destined for the Illinois Central from its Madison, Illinois Yard to an interchange track in Madison, Illinois (a distance of 2½ miles).

Cairo, Illinois

The Illinois Central interchanges traffic directly with the New York Central Railroad at Cairo, Illinois. The Illinois Central delivers interchange traffic from our North Cairo Yard to the NYC on an interchange track at the Big

Four wye. The NYC delivers interchange traffic from the NYC Yard at Cairo to the same interchange track. Although each railroad handles the interchange cars for approximately the same distance (the interchange track is located about 1½ miles from each yard), the Illinois Central's operation is more difficult because it must back its cars about half the total distance in accomplishing the interchange.

Evansville, Indiana

At Evansville, Indiana, the Illinois Central interchanges Official-Southern Territory traffic with the Chicago & Eastern Illinois Railroad and the New York Central Railroad.

1. Interchange between Illinois Central and C&EI.

Both railroads perform identical service and operate the same dis-

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tance over the same tracks in accomplishing the interchange. The Illinois Central delivers interchange traffic from Harwood Yard to the C&EI at Wansford Yard and the C&EI delivers to the Illinois Central from Wansford Yard to Harwood Yard, with the transfer engines of each line handling interchange traffic over the same tracks for the distance of 5½ miles between the two yards.

2. Interchange between the Illinois Central and NYC.

The New York Central has no yards in Evansville and its trains arrive and depart at C&EI's Wansford Yard or at L&N's Howell Yard. Interchange traffic between Illinois Central and New York Central via the C&EI is handled in the same manner as described above for traffic interchanged between the Illinois Central and the C&EI. Interchange traffic via the L&N is handled by Illinois Central from Harwood Yard to the NYC at L&N's Howell Yard (a distance

of 4½ miles) and in the reverse direction NYC cars for the Illinois Central are delivered from L&N's Howell Yard to Illinois Central at Harwood Yard (a distance of 4½ miles).

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Louisville, Kentucky

The Illinois Central interchanges Official-Southern Territory traffic at Louisville, Kentucky with five Official Territory carriers: The Chesapeake & Ohio Railway, Big Four (New York Central Railroad), Pennsylvania Railroad, Monon Railroad, and Baltimore & Ohio Railroad.

1. Illinois Central interchange with Chesapeake & Ohio Railway and New York Central Railroad.

Illinois Central traffic for interchange to both the C&O and the NYC is delivered from our Oak Street Yard to the C&O and NYC in NYC Yard (a distance of 3 miles) C&O and NYC cars for interchange to the Illinois Central are delivered by the NYC, which also performs transfer work for the C&O, from the NYC Yard to the Illinois Central at our Floyd Street Yard (a distance of 1¼ miles) and the Illinois Central must then transfer the interchange traffic to our Oak Street Yard.

2. Illinois Central interchange with the Monon Railroad and Baltimore & Ohio Railroad.

The Illinois Central has no direct connection with the Monon or B&O at Louisville and interchange traffic between the Illinois Central and

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these two Official lines is handled through the Kentucky & Indiana Terminal Company, an intermediate switching line which receives a uniform switching charge per car for its service. The Illinois Central pays the switching charge on northbound traffic and the Monon and B&O pay the switching charge on the southbound interchange traffic.

The Illinois Central delivers interchange traffic destined for the Monon or B&O from our Oak Street Yard to the Kentucky and Indiana Terminal Company at L.S. Junction (a distance of ¾ of a mile) and the Kentucky & Indiana Terminal Company delivers to the Monon and B&O in the K&IT's Youngstown Yard. Monon and B&O trains originate and terminate in the K&IT's Youngstown Yard and interchange traffic from these two railroads is delivered to the Kentucky & Indiana Terminal Company right in Youngstown Yard and the Kentucky & Indiana Terminal Company then delivers to the Illinois Central at L.S. Junction.

3. Illinois Central interchange with the Pennsylvania Railroad.

The Illinois Central delivers interchange traffic from our Oak Street Yard to the PRR in its Portland Avenue Yard and the PRR delivers from its Portland Avenue Yard to the Illinois Central at our Oak Street Yard, with the engines of each railroad delivering interchange traffic the

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same distance over the same route between the two yards and returning light.

The only Official line which performs as much service in accomplishing the interchange at Louisville as the Illinois Central performs is the PRR. In every other instance, the Illinois Central performs a greater amount of service in accomplishing the interchanges from the other Official carriers (i.e., the C&O, NYC, Monon and B&O).

VERIFIED STATEMENT NO. 35
OF J. L. LONON

[9]

INTERCHANGES

Clinchfield interchanges with eight Southern and two Official lines. The Official lines, naturally, connect at or near the northern extremities of the Clinchfield; and the Southern-line connections lie to the south. While Clinchfield is located principally in the Southern Region, its position as a link between railroads in Southern Territory and those in Official Territory places Clinchfield in the peculiar position of having problems of a like nature to the railroads in Official Territory, as well as those of the South. In coping with these problems, Clinchfield is in a position to experience to a great extent the expense of operations in both territories and finds them to be practically equal.

Elkhorn Yard

At Elkhorn Yard, Kentucky, the Clinchfield's connection with the Chesapeake & Ohio Railway, the operation is on a joint basis with each road using the same facility. The volume of traffic handled through this

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interchange for the first nine months of 1959 averaged 15,465 cars per month or approximately 7,700 cars for account of each road. To simplify description of the interchange facility, a map, identified as Exhibit No. C is submitted, which shows the general yard track layout and the location of structures incidental to the interchange between roads. Clinchfield Railroad owns and maintains all right of way, tracks, buildings, and other equipment necessary for the operation, shown between point A and point B on the map. For right to equal use of these facilities, Chesapeake & Ohio Railway pays Clinchfield Railroad 50 percent

of all maintenance plus a nominal annual interest (3 per cent) on an agreed valuation (of $359,078.14). In addition, Clinchfield is required to provide all employes to perform all work for both lines, furnish all office equipment, lights, water, fuel, telephone, etc., incidental thereto, and receives as compensation from the Chesapeake & Ohio Railway 50 per cent of all these expenses accrued, payable on a monthly basis.

No operating yard personnel are employed at Elkhorn Yard in operating the exchange yard as each line operates its own road trains into the yard under the direction of a joint yardmaster and effects delivery to the other line at the time the road train stops in the yard and/or the covering waybills are delivered to the yard office.

Switching necessary to the classification and movement of outbound trains is performed by the road crews and with the locomotive of the receiving carrier. For Chesapeake & Ohio outbound manifest trains (received from Clinchfield), classification is practically unnecessary as Clinchfield blocks all Chesapeake & Ohio manifest traffic at its Erwin,

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Tennessee classification yard in station order for the Chesapeake & Ohio to the extent that the train can move over the entire first division (Big Sandy) of the Chesapeake & Ohio Railway and into its first general classification yard (Russell, Kentucky) without switching. These switching movements by Chesapeake & Ohio Railway crews at Elkhorn Yard, Kentucky on its outbound manifest trains are limited to doubling the train together from one track to another, setting out a bad order car, or an occasional move to place a car which was picked up by the Clinchfield at some point intermediate to Erwin and Elkhorn Yard in its proper classification block.

Classification of Clinchfield outbound manifest trains (received from C. & O.) requires considerably more switching than the Chesapeake & Ohio outbound manifest trains

due to the fact that the Chesapeake & Ohio only sets up two classification blocks at its Russell, Kentucky Yard on trains for delivery to the Clinchfield at Elkhorn City, Kentucky. One block contains all cars, mixed and unclassified, terminating in the States of Kentucky, Virginia and Tennessee, and the other contains all cars terminating at Erwin, Tennessee, or points in the South beyond. As all of the traffic moving in the Virginia-Tennessee block terminates on the Clinchfield locally, or is for delivery to connecting lines short of Clinchfield's first general classification yard and terminal (Erwin, Tennessee), such cars must be classified into three blocks (e.g., Dante, Virginia; Kingsport, Tennessee; and Johnson City, Tennessee) at Elkhorn Yard, Kentucky. Other switching moves necessary to outbound movement of Clinchfield trains are limited, as in the case of the Chesapeake & Ohio,

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to doubling the train together from one track to another, setting out bad order cars and the occasional proper placement of a car improperly classified by the delivering line.

Train inspection for each road is effected by one and the same group of joint employes under the direction of a joint mechanical foreman. This function is performed on a first-come, first-served basis with the exception of northbound Florida perishable trains delivered to the Chesapeake & Ohio which are given preference over other trains that may have arrived first.

Road crews of both the C. & O. and Clinchfield who perform switching and other work in Elkhorn Yard preparatory to the outbound movement of their trains receive initial terminal arbitraries which are compensatory on an approximately equal basis for the time consumed in this service and therefore the expense for each line is likewise equalized.

In summing up the matter of the expense accruing to each line at the Elkhorn Yard, Kentucky interchange, the

cost per car interchanged is obviously at least equal for each railroad. If anything, our costs are greater, with the Clinchfield carrying the burden of the obligation to provide employes, facilities and service satisfactory to the Chesapeake & Ohio Railway for which Clinchfield receives no compensation in return.

St. Paul, Virginia

The second interchange point between Clinchfield Railroad and an Official line is with the Norfolk & Western Railway at St. Paul, Virginia, at which point the volume of traffic interchanged between the two roads amounted to an average of 6,066 cars per month during the first nine

[13]

months of 1959. Each road provides interchange tracks and other physical facilities on its own right of way and adjacent to its own main track necessary to the receipt of traffic from the other. The two yards are physically connected by a lead track approximately 1,000 feet in length. To be of assistance in clarifying the description of this facility, a map showing track layout is submitted as Exhibit No. D. These facilities are provided on somewhat of an equalization basis: that is, the carrier having the least amount of track provided for the sole purpose of interchange will pay to the other a nominal annual interest on the agreed difference in valuation of the two interchange yards for the right of use of that additional portion. Presently, the valuation of such properties provided by each line for the sole purpose of accepting traffic in interchange is agreed as equal and current expenses to either line for this item are nil.

The Norfolk & Western furnishes all employes, with the exception of mechanical inspection forces, who perform the work. It also provides necessary buildings and other items such as lights, water, etc., incidental to the work required of the employes, and bills Clinchfield for 50 per cent of all direct expenses plus a nominal interest on an

agreed valuation of structures and real estate for the right of use of such property. No operating yard personnel are employed in the interchange yards as each line effects delivery to the other's interchange facility with road crews. Switching or classification necessary to the outbound movement is performed by road crews. Required equipment inspection is accomplished

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separately by each company, with the Norfolk & Western maintaining its own mechanical personnel at point of interchange to perform this service for its account and Clinchfield providing employes for its account from a nearby classification yard. In using the foregoing facts to determine whether the burden of terminal and interchange expenses is greater for one of these carriers than the other, one would reasonably and simply conclude that such costs are approximately equal.

* * *

FREIGHT REVENUES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	195
EASTERN DISTRICT	$2,684,991	$3,035,316	$2,601,052	$2,874,912	$3,162,445	$3,123,350	$3,231,242	$2,687,450	$3,006,707	$3,181
Pennsylvania Railroad	665,657	752,967	619,091	685,832	783,634	767,358	787,464	628,135	718,492	766
New York Central	496,734	561,361	500,919	544,621	585,948	581,224	605,610	511,159	569,250	585
Baltimore and Ohio	313,964	353,289	313,560	353,483	395,645	388,279	407,948	330,851	383,955	416
Nickel Plate Road	88,599	105,422	94,796	140,144	153,111	154,943	159,445	138,165	155,149	166
POCAHONTAS REGION	464,671	533,313	430,704	499,629	596,450	572,417	550,961	492,431	609,378	686
Chesapeake and Ohio	263,027	307,999	251,548	296,064	340,812	329,928	318,601	280,977	352,579	389
EASTERN DISTRICT PLUS POCAHONTAS	3,149,663	3,568,629	3,031,756	3,374,542	3,758,895	3,695,768	3,782,203	3,179,882	3,616,086	3,867
SOUTHERN REGION	965,138	1,094,487	982,077	1,098,228	1,224,544	1,275,812	1,289,299	1,153,955	1,212,784	1,280
Southern Railway Company	186,185	207,256	178,569	201,940	221,124	230,743	236,557	212,394	241,809	240
Louisville and Nashville	162,111	179,600	152,781	176,205	197,352	196,702	204,921	171,269	159,970	187
Seaboard Air Line	94,387	107,025	98,944	109,874	123,473	133,259	130,067	124,702	129,160	135
Atlantic Coast Line	95,987	106,370	96,135	104,942	126,623	135,557	131,539	121,000	129,408	135

Source: I.C.C. Transport Statistics in the United States.

Exhibit 1
Page 2

FREIGHT REVENUES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	$2,684,991	$3,035,316	$2,601,052	$2,874,912	$3,162,445	$3,123,350	$3,231,242	$2,687,450	$3,006,707	$3,181,853	$3,139,597	$2,636,384	$2,731,134
d	665,657	752,967	619,091	685,832	783,634	767,358	787,464	628,135	718,492	766,907	765,175	634,742	672,760
	496,734	561,361	500,919	544,621	585,948	581,224	605,610	511,159	569,250	585,530	561,849	485,876	517,039
	313,964	353,289	313,560	353,483	395,645	388,279	407,948	330,851	383,955	416,477	414,084	340,036	349,365
	88,599	105,422	94,796	140,144	153,111	154,943	159,445	138,165	155,149	166,703	165,084	134,310	142,836
	464,671	533,313	430,704	499,629	596,450	572,417	550,961	492,431	609,378	686,034	715,949	581,131	570,664
	263,027	307,999	251,548	296,064	340,812	329,928	318,601	280,977	352,579	389,278	401,308	328,470	322,724
POCAHONTAS	3,149,663	3,568,629	3,031,756	3,374,542	3,758,895	3,695,768	3,782,203	3,179,882	3,616,086	3,867,888	3,855,547	3,217,516	3,301,798
	965,138	1,094,487	982,077	1,098,228	1,224,544	1,275,812	1,289,299	1,153,955	1,212,784	1,280,900	1,261,250	1,175,368	1,216,331
pany	186,185	207,256	178,569	201,940	221,124	230,743	236,557	212,394	241,809	240,961	233,738	225,045	240,576
lle	162,111	179,600	152,781	176,205	197,352	196,702	204,921	171,269	159,970	187,443	198,062	201,865	203,499
	94,387	107,025	98,944	109,874	123,473	133,259	130,067	124,702	129,160	135,771	137,590	129,819	135,586
	95,987	106,370	96,135	104,942	126,623	135,557	131,539	121,000	129,408	135,817	133,659	122,495	129,415

port Statistics in the United States.

TOTAL OPERATING REVENUES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
EASTERN DISTRICT	$3,442,436	$3,823,663	$3,320,372	$3,639,382	$3,976,664	$3,948,473	$4,031,911	$3,420,957	$3,737,048	$3,936,1
Pennsylvania Railroad	903,268	999,982	848,211	930,140	1,044,387	1,028,750	1,034,394	848,805	934,972	991,1
New York Central	703,340	779,860	697,304	759,684	806,952	806,926	825,348	708,729	762,666	780,4
Baltimore and Ohio	360,294	400,190	356,708	402,541	451,277	442,676	460,848	378,088	432,061	465,4
Nickel Plate Road	92,520	109,481	98,853	146,923	160,705	162,727	167,364	144,921	162,296	174,5
POCAHONTAS REGION	513,593	584,191	474,784	545,343	651,702	625,431	600,907	538,983	661,303	742,0
Chesapeake and Ohio	287,253	334,555	273,958	318,676	368,186	355,682	344,048	304,517	380,281	418,7
EASTERN DISTRICT PLUS POCAHONTAS	3,956,029	4,407,855	3,795,156	4,184,726	4,628,367	4,573,905	4,632,818	3,959,941	4,398,351	4,678,2
SOUTHERN REGION	1,181,900	1,317,818	1,184,858	1,316,646	1,455,358	1,513,172	1,516,342	1,362,774	1,417,644	1,489,4
Southern Railway Company	222,833	245,013	212,771	239,906	262,289	271,624	275,212	249,079	276,913	275,4
Louisville and Nashville	189,697	207,271	177,396	203,016	226,475	226,723	232,983	196,841	181,206	212,4
Seaboard Air Line	119,140	132,695	122,894	135,536	149,337	160,584	156,643	149,472	154,164	162,4
Atlantic Coast Line	128,429	136,336	122,992	133,658	159,255	169,945	164,579	152,013	158,891	166,4

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TOTAL OPERATING REVENUES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	$3,442,436	$3,823,663	$3,320,372	$3,639,382	$3,976,664	$3,948,473	$4,031,911	$3,420,957	$3,737,048	$3,936,189	$3,876,967	$3,342,648	$3,439,016
old	903,268	999,982	848,211	930,140	1,044,387	1,028,750	1,034,394	848,805	934,972	991,107	987,336	844,232	887,684
	703,340	779,860	697,304	759,684	806,952	806,926	825,348	708,729	762,666	780,434	741,571	658,984	689,192	
s	360,294	400,190	356,708	402,541	451,277	442,676	460,848	378,088	432,061	465,484	461,303	382,540	395,179
	92,520	109,481	98,853	146,923	160,705	162,727	167,364	144,921	162,296	174,578	172,517	141,233	150,408
N	513,593	584,191	474,784	545,343	651,702	625,431	600,907	538,983	661,303	742,012	774,850	633,581	618,406
ia	287,253	334,555	273,958	318,676	368,186	355,682	344,048	304,517	380,281	418,727	432,330	355,742	347,594
P	POCAHONTAS	3,956,029	4,407,855	3,795,156	4,184,726	4,628,367	4,573,905	4,632,818	3,959,941	4,398,351	4,678,202	4,651,818	3,976,229	4,057,422
		1,181,900	1,317,818	1,184,858	1,316,646	1,455,358	1,513,172	1,516,342	1,362,774	1,417,644	1,489,598	1,462,786	1,363,965	1,408,835
mpany		222,833	245,013	212,771	239,906	262,289	271,624	275,212	249,079	276,913	275,385	266,846	256,334	271,881
ville		189,697	207,271	177,396	203,016	226,475	226,723	232,983	196,841	181,206	212,397	223,517	227,941	229,713
		119,140	132,695	122,894	135,536	149,337	160,584	156,643	149,472	154,164	162,150	163,119	154,417	161,441
		128,429	136,336	122,992	133,658	159,255	169,945	164,579	152,013	158,891	166,630	163,340	149,588	156,088

RAILWAY OPERATING EXPENSES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
EASTERN DISTRICT	$2,839,429	$3,063,407	$2,755,136	$2,889,551	$3,236,863	$3,175,756	$3,219,262	$2,819,545	$2,949,917	$3,137,23
Pennsylvania Railroad	789,878	832,846	729,414	784,528	892,946	865,886	864,523	712,746	768,201	816,76
New York Central	606,537	667,343	597,038	632,848	688,691	681,927	683,643	596,222	603,721	633,64
Baltimore and Ohio	300,377	324,221	293,358	324,576	366,328	351,517	366,066	311,503	350,416	375,14
Nickel Plate Road	67,246	74,255	70,811	94,255	110,305	109,794	113,860	101,980	110,090	121,74
POCAHONTAS REGION	360,928	422,247	372,127	373,622	446,545	438,931	431,016	393,441	440,721	493,80
Chesapeake and Ohio	212,008	253,900	219,379	221,010	261,222	253,214	248,498	225,487	258,841	284,49
EASTERN DISTRICT PLUS POCAHONTAS	3,200,357	3,485,654	3,127,263	3,263,173	3,683,408	3,614,687	3,650,278	3,212,986	3,390,639	3,631,03
SOUTHERN REGION	939,558	1,025,571	943,477	959,558	1,093,597	1,108,594	1,101,437	1,035,679	1,031,969	1,113,22
Southern Railway Company	171,673	184,607	166,439	168,558	191,964	188,102	186,400	176,101	181,030	188,86
Louisville and Nashville	156,337	169,453	149,457	150,685	173,992	173,248	168,867	161,063	140,756	168,06
Seaboard Air Line	96,767	104,324	98,870	98,822	111,211	116,886	112,836	109,129	111,265	120,45
Atlantic Coast Line	112,462	118,288	104,217	107,041	128,237	138,427	141,646	127,239	132,158	142,08

Source: I.C.C. Transport Statistics in the United States.

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RAILWAY OPERATING EXPENSES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	$2,839,429	$3,063,407	$2,755,136	$2,889,551	$3,236,863	$3,175,756	$3,219,262	$2,819,545	$2,949,917	$3,137,234	$3,180,155	$2,798,552	$2,840,956
load	789,878	832,846	729,414	784,528	892,946	865,886	864,523	712,746	768,201	816,761	838,955	715,186	727,473
	606,537	667,343	597,038	632,848	688,691	681,927	683,643	596,222	603,721	633,643	627,432	561,157	576,870
	300,377	324,221	293,358	324,576	366,328	351,517	366,066	311,503	350,416	375,141	373,261	308,847	321,012
	67,246	74,255	70,811	94,255	110,305	109,794	113,860	101,980	110,090	121,741	123,246	103,042	106,888
	360,928	422,247	372,127	373,622	446,545	438,931	431,016	393,441	440,721	493,805	519,267	430,074	425,957
io	212,008	253,900	219,379	221,010	261,222	253,214	248,498	225,487	258,841	284,497	299,904	255,014	259,066
OCAHONTAS	3,200,357	3,485,654	3,127,263	3,263,173	3,683,408	3,614,687	3,650,278	3,212,986	3,390,639	3,631,039	3,699,422	3,228,627	3,266,913
	939,558	1,025,571	943,477	959,558	1,093,597	1,108,594	1,101,437	1,035,679	1,031,969	1,113,223	1,136,243	1,072,211	1,175,318
mpany	171,673	184,607	166,439	168,558	191,964	188,102	186,400	176,101	181,030	188,864	190,582	186,087	183,915
ille	156,337	169,453	149,457	150,685	173,992	173,248	168,867	151,063	140,756	168,063	185,719	188,828	182,930
	96,767	104,324	98,870	98,822	111,211	116,886	112,836	109,129	111,265	120,450	122,812	122,894	122,226
	112,462	118,288	104,217	107,041	128,237	138,627	141,646	127,239	132,158	142,085	137,340	123,910	125,910

port Statistics in the United States.

OPERATING RATIO

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
EASTERN DISTRICT	82.48	80.12	82.98	79.40	81.40	80.43	79.84	82.42	78.94	79.70
Pennsylvania Railroad	87.45	83.29	85.99	84.35	85.50	84.17	83.58	83.97	82.16	82.41
New York Central	86.24	85.57	85.62	83.30	85.34	84.51	82.83	84.12	79.16	81.19
Baltimore and Ohio	83.37	81.02	82.24	80.63	81.18	79.41	79.43	82.39	81.10	80.59
Nickel Plate Road	72.68	67.82	71.63	64.15	68.64	67.47	68.03	70.37	67.83	69.73
POCAHONTAS REGION	70.27	72.28	78.38	68.51	68.52	70.18	71.73	73.00	66.64	66.55
Chesapeake and Ohio	73.80	75.89	80.08	69.35	70.95	71.19	72.23	74.05	68.07	67.94
EASTERN DISTRICT PLUS POCAHONTAS	80.90	79.08	82.40	77.98	79.58	79.03	78.79	81.14	77.09	77.62
SOUTHERN REGION	79.50	77.82	79.63	72.88	75.14	73.26	72.64	76.00	72.79	74.73
Southern Railway Company	77.04	75.35	78.22	70.26	73.19	69.25	67.73	70.70	65.37	68.58
Louisville and Nashville	82.41	81.75	84.25	74.22	76.83	76.41	72.48	81.82	77.68	79.13
Seaboard Air Line	81.22	78.62	80.25	72.91	74.47	72.79	72.03	73.01	72.17	74.28
Atlantic Coast Line	87.57	86.76	84.73	80.09	80.52	81.57	86.07	83.70	83.17	85.27

Source: I.C.C. Transport Statistics in the United States.

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OPERATING RATIO

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	82.48	80.12	82.98	79.40	81.40	80.43	79.84	82.42	78.94	79.70	82.03	83.72	82.61
	87.45	83.29	85.99	84.35	85.50	84.17	83.58	83.97	82.16	82.41	84.97	84.71	81.95
	86.24	85.57	85.62	83.30	85.34	84.51	82.83	84.12	79.16	81.19	84.61	85.15	83.70
	83.37	81.02	82.24	80.63	81.18	79.41	79.43	82.39	81.10	80.59	80.91	80.74	81.23
	72.68	67.82	71.63	64.15	68.64	67.47	68.03	70.37	67.83	69.73	71.44	72.96	71.07
	70.27	72.28	78.38	68.51	68.52	70.18	71.73	73.00	66.64	66.55	67.02	67.88	68.88
	73.80	75.89	80.08	69.35	70.95	71.19	72.23	74.05	68.07	67.94	69.37	71.69	74.53
OCAHONTAS	80.90	79.08	82.40	77.98	79.58	79.03	78.79	81.14	77.09	77.62	79.53	81.20	80.52
	79.50	77.82	79.63	72.88	75.14	73.26	72.64	76.00	72.79	74.73	77.68	78.61	76.22
	77.04	75.35	78.22	70.26	73.19	69.25	67.73	70.70	65.37	68.58	71.42	72.60	67.85
	82.41	81.75	84.25	74.22	76.83	76.41	72.48	81.82	77.68	79.13	83.09	82.84	79.63
	81.22	78.62	80.25	72.91	74.47	72.79	72.03	73.01	72.17	74.28	75.29	79.59	75.71
	87.57	86.76	84.73	80.09	80.52	81.57	86.07	83.70	83.17	85.27	84.08	82.83	80.71

Statistics in the United States.

NET RAILWAY OPERATING INCOME

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955
EASTERN DISTRICT	$ 217,543	$ 334,479	$ 211,921	$ 303,466	$ 290,475	$ 341,101	$ 367,146	$ 245,155	$ 358,295
Pennsylvania Railroad	32,311	69,293	37,177	57,873	59,519	74,930	74,796	48,061	68,966
New York Central	24,519	37,221	32,295	37,475	40,049	49,817	63,180	33,034	73,897
Baltimore and Ohio	29,099	43,110	27,887	34,142	36,833	44,339	43,797	29,487	38,898
Nickel Plate Road	10,212	16,316	13,143	25,189	22,393	22,766	21,782	18,665	21,872
POCAHONTAS REGION	86,882	95,080	53,491	87,317	91,804	98,018	98,186	89,454	123,159
Chesapeake and Ohio	40,874	45,448	25,894	45,879	49,442	56,983	59,916	52,352	68,909
EASTERN DISTRICT PLUS POCAHONTAS	304,425	429,560	265,412	390,784	382,280	439,119	465,332	334,609	481,454
SOUTHERN REGION	102,698	138,971	105,948	168,713	157,136	182,267	193,622	161,024	197,102
Southern Railway Company	21,375	29,148	21,863	31,933	27,947	36,376	41,986	34,557	48,430
Louisville and Nashville	16,280	21,175	12,836	26,031	24,339	27,658	34,384	23,921	29,014
Seaboard Air Line	8,789	13,187	11,048	17,361	19,185	23,040	23,829	22,905	24,363
Atlantic Coast Line	3,049	5,126	6,753	9,816	10,037	12,233	10,296	10,963	12,903

Source: I.C.C. Transport Statistics in the United States.

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NET RAILWAY OPERATING INCOME

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	$ 217,543	$ 334,479	$ 211,921	$ 303,466	$ 290,475	$ 341,101	$ 367,146	$ 245,155	$ 358,295	$ 328,211	$ 240,389	$ 110,825	$ 140,084
	32,311	69,293	37,177	57,873	59,519	74,930	74,796	48,061	68,966	67,120	43,154	11,738	29,835
	24,519	37,221	32,295	37,475	40,049	49,817	63,180	33,034	73,897	58,320	29,532	11,824	24,014
	29,099	43,110	27,887	34,142	36,833	44,339	43,797	29,487	38,898	43,458	37,917	28,588	28,051
	10,212	16,316	13,143	25,189	22,393	22,766	21,782	18,665	21,872	21,632	19,692	15,448	18,053
	86,882	95,080	53,491	87,317	91,804	98,018	98,186	89,454	123,159	138,506	144,887	123,917	123,501
	40,874	45,448	25,834	45,879	49,442	56,983	59,916	52,352	68,909	77,571	78,154	63,440	54,940
POCAHONTAS	304,425	429,560	265,412	390,784	382,280	439,119	465,332	334,609	481,454	466,718	385,277	234,742	263,585
	102,698	138,971	105,948	168,713	157,136	182,267	193,622	161,024	197,102	184,034	155,255	139,577	137,547
any	21,375	29,148	21,863	31,933	27,947	36,376	41,986	34,557	48,430	45,691	40,530	37,476	39,692
	16,280	21,175	12,836	26,031	24,339	27,658	34,384	23,921	29,014	27,358	23,363	18,821	19,046
	8,789	13,187	11,048	17,361	19,185	23,040	23,829	22,905	24,363	22,938	21,342	18,406	19,078
	3,049	5,126	6,753	9,816	10,037	12,233	10,296	10,963	12,903	9,268	9,206	8,626	9,485

rt Statistics in the United States.

NET INVESTMENT

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957
EASTERN DISTRICT	$ 8,774,356	$ 9,028,945	$ 9,204,259	$ 9,313,942	$ 9,520,332	$ 9,800,593	$ 9,962,204	$ 9,933,827	$ 9,829,891	$ 9,826,821	$ 9,867,
Pennsylvania Railroad	2,209,909	2,274,514	2,308,748	2,309,404	2,371,726	2,470,650	2,509,848	2,480,292	2,430,177	2,434,356	2,418,
New York Central	1,714,432	1,749,865	1,779,572	1,801,435	1,852,908	1,951,068	2,017,080	2,012,836	1,986,065	1,970,120	1,980,
Baltimore and Ohio	932,887	979,533	1,004,159	1,008,112	1,021,421	1,040,263	1,054,557	1,056,350	1,055,915	1,064,949	1,084,
Nickel Plate Road	331,667	348,687	361,757	366,951	371,481	375,857	380,872	383,678	384,836	392,108	399,
POCAHONTAS REGION	1,277,376	1,337,108	1,408,289	1,445,863	1,495,582	1,574,115	1,628,067	1,634,132	1,633,693	1,703,940	1,831,
Chesapeake and Ohio	641,728	677,563	720,759	738,128	772,656	830,058	862,594	859,582	859,995	903,153	964,
EASTERN DISTRICT PLUS POCAHONTAS	10,051,732	10,366,053	10,612,548	10,759,805	11,015,914	11,374,708	11,590,271	11,567,959	11,463,584	11,530,761	11,699,
SOUTHERN REGION	2,946,036	3,033,868	3,095,931	3,175,034	3,317,963	3,457,195	3,549,472	3,591,496	3,614,268	3,669,564	3,747,
Southern Railway Company	612,340	633,186	639,511	639,085	661,527	682,648	690,521	693,416	697,002	705,254	717,
Louisville and Nashville	409,429	428,024	442,727	455,762	474,799	500,464	531,774	545,735	545,982	552,869	683,
Seaboard Air Line	244,740	263,124	278,520	291,833	318,239	343,431	355,659	363,162	370,437	383,354	400,
Atlantic Coast Line	311,402	317,027	323,355	337,380	378,881	414,494	424,472	427,260	428,867	434,573	442,

Net Investment Method is the carriers' investment in road and equipment, material and supplies, and cash; less accrued depreciation and amortization at the end of the year under consideration, as reported to the Bureau of Railway Economics. The base at the middle of the year was determined by averaging the figures at the beginning and end of the year.

Source: Association of American Railroads.

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NET INVESTMENT

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	$ 8,774,356	$ 9,028,945	$ 9,204,259	$ 9,313,942	$ 9,520,332	$ 9,800,593	$ 9,962,204	$ 9,933,827	$ 9,829,891	$ 9,826,821	$ 9,867,385	$ 9,848,860	$ 9,699,207
	2,209,909	2,274,514	2,308,748	2,309,404	2,371,726	2,470,650	2,509,848	2,480,292	2,430,177	2,434,356	2,418,870	2,390,749	2,359,844
	1,714,432	1,749,865	1,779,572	1,801,435	1,852,908	1,951,068	2,017,080	2,012,8[illegible]	1,986,065	1,970,120	1,980,688	1,962,930	1,908,602
	932,887	979,533	1,004,159	1,008,112	1,021,421	1,040,263	1,054,557	1,056,350	1,055,915	1,064,949	1,084,522	1,095,867	1,080,704
	331,667	348,687	361,757	366,951	371,481	375,857	380,872	383,678	384,836	392,108	399,081	397,306	393,607
	1,277,376	1,337,108	1,408,289	1,445,863	1,495,582	1,574,115	1,628,067	1,634,132	1,633,693	1,703,940	1,831,925	1,880,856	1,867,362
	641,728	677,563	720,759	738,128	772,656	830,058	862,594	859,582	859,995	903,153	964,362	970,474	943,398
CAHONTAS	10,051,732	10,366,053	10,612,548	10,759,805	11,015,914	11,374,708	11,590,271	11,567,959	11,463,584	11,530,761	11,699,310	11,729,716	11,566,570
	2,946,036	3,033,868	3,095,931	3,175,034	3,317,963	3,457,195	3,549,472	3,591,496	3,614,268	3,669,564	3,747,383	3,788,434	3,787,050
	612,340	633,186	639,511	639,085	661,527	682,648	690,521	693,416	697,002	705,254	717,976	723,385	715,933
	409,429	428,024	442,727	455,762	474,799	500,464	531,774	545,735	545,982	552,869	683,071	686,408	703,586
	244,740	263,124	278,520	291,833	318,239	343,431	355,659	363,162	370,437	383,354	400,267	409,013	410,524
	311,402	317,027	323,355	337,380	378,881	414,494	424,472	427,260	428,867	434,573	442,779	440,322	430,720

[illegible] carriers' investment in road and equipment, material and supplies, and [illegible] reserve for depreciation [illegible] Bureau of Railway Economics. The base of the series

Source: Association of American Railroads.

RATES OF RETURN - NET INVESTMENT METHOD

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	
EASTERN DISTRICT	2.46	3.70	2.30	3.26	3.05	3.48	3.69	2.47	3.63	3.34	
Pennsylvania Railroad	1.46	3.05	1.61	2.51	2.51	3.03	2.98	1.94	2.84	2.77	
New York Central	1.43	2.13	1.81	2.08	2.16	2.55	3.13	1.64	3.72	2.96	
Baltimore and Ohio	3.12	4.40	2.78	3.39	3.61	4.26	4.15	2.79	3.68	4.08	
Nickel Plate Road	5.07	7.30	5.30	6.86	6.03	6.06	5.72	4.86	5.68	5.52	
POCAHONTAS REGION	6.94	7.11	3.79	6.04	6.14	6.23	6.03	5.47	7.54	8.13	
Chesapeake and Ohio	6.64	6.71	3.58	6.22	6.40	6.86	6.95	6.09	8.01	8.59	
EASTERN DISTRICT PLUS POCAHONTAS	3.03	4.14	2.50	3.63	3.47	3.86	4.01	2.89	4.19	4.05	
SOUTHERN REGION	3.52	4.57	3.42	5.31	4.74	5.27	5.45	4.48	5.45	5.02	
Southern Railway Company	3.49	4.60	3.42	5.00	4.22	5.33	6.08	4.98	6.95	6.48	
Louisville and Nashville	3.98	4.95	2.90	5.71	5.13	5.53	6.47	4.38	5.31	4.95	
Seaboard Air Line	3.59	5.01	3.97	5.95	6.03	6.71	6.70	6.31	6.58	5.98	
Atlantic Coast Line	0.98	1.62	2.09	2.91	2.65	2.95	2.43	2.57	3.01	2.13	

Source: Association of American Railroads.

RATES OF RETURN - NET INVESTMENT METHOD

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	2.46	3.70	2.30	3.26	3.05	3.48	3.69	2.47	3.63	3.34	2.44	1.13	1.43
ıd	1.46	3.05	1.61	2.51	2.51	3.03	2.98	1.94	2.84	2.77	1.78	0.49	1.26
	1.43	2.13	1.81	2.08	2.16	2.55	3.13	1.64	3.72	2.96	1.49	0.60	1.26
	3.12	4.40	2.78	3.39	3.61	4.26	4.15	2.79	3.68	4.08	3.50	2.61	2.60
	5.07	7.30	5.30	6.86	6.03	6.06	5.72	4.86	5.68	5.52	4.93	3.89	4.59
N	6.94	7.11	3.79	6.04	6.14	6.23	6.03	5.47	7.54	8.13	7.91	6.59	6.61
io	6.64	6.71	3.58	6.22	6.40	6.86	6.95	6.09	8.01	8.59	8.10	6.54	5.82
S POCAHONTAS	3.03	4.14	2.50	3.63	3.47	3.86	4.01	2.89	4.19	4.05	3.29	2.00	2.27
	3.52	4.57	3.42	5.31	4.74	5.27	5.45	4.48	5.45	5.02	4.14	3.68	3.63
mpany	3.49	4.60	3.42	5.00	4.22	5.33	6.08	4.98	6.95	6.48	5.65	5.18	5.54
ville	3.98	4.95	2.90	5.71	5.13	5.53	6.47	4.38	5.31	4.95	3.49	2.74	2.71
	3.59	5.01	3.97	5.95	6.03	6.71	6.70	6.31	6.58	5.98	5.33	4.50	4.65
	0.98	1.62	2.09	2.91	2.65	2.95	2.43	2.57	3.01	2.13	2.08	1.96	2.20

of American Railroads.

FIXED CHARGES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957
EASTERN DISTRICT	$ 216,709	$ 213,434	$ 211,634	$ 201,232	$ 198,136	$ 203,556	$ 204,876	$ 180,438	$ 175,532	$ 175,380	$ 176,530
Pennsylvania Railroad	71,156	72,205	71,878	62,815	60,591	62,466	62,962	49,438	47,188	47,239	46,134
New York Central	41,518	42,573	42,675	43,627	46,246	48,242	49,153	47,325	48,384	44,984	45,806
Baltimore and Ohio	26,666	26,972	27,492	26,911	25,573	25,819	25,343	17,858	16,527	19,229	18,789
Nickel Plate Road	3,466	3,535	3,634	4,865	5,001	5,037	5,252	5,529	5,148	5,527	5,069
POCAHONTAS REGION	11,900	13,322	15,894	16,258	15,716	16,651	17,140	16,933	16,231	16,297	18,277
Chesapeake and Ohio	8,002	9,438	11,670	12,006	11,687	12,874	13,397	13,087	12,393	12,505	13,920
EASTERN DISTRICT PLUS POCAHONTAS	228,610	226,756	227,529	217,491	213,852	220,208	222,016	197,372	191,764	191,677	194,807
SOUTHERN REGION	56,157	54,621	53,668	54,427	55,094	58,368	59,189	59,652	58,927	58,349	58,597
Southern Railway Company	12,716	12,740	12,978	12,817	12,640	12,974	13,201	13,465	13,357	12,608	11,398
Louisville and Nashville	6,178	6,807	7,410	7,440	7,969	8,707	8,939	9,246	9,028	9,031	9,627
Seaboard Air Line	2,025	2,089	1,911	2,326	2,177	2,910	3,943	3,856	3,783	3,939	4,092
Atlantic Coast Line	4,050	3,987	4,273	4,741	5,438	6,301	6,611	6,900	7,023	6,868	7,199

Source: I.C.C. Transport Statistics in the United States.

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FIXED CHARGES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	$ 216,709	$ 213,434	$ 211,634	$ 201,232	$ 198,136	$ 203,556	$ 204,876	$ 180,438	$ 175,532	$ 175,380	$ 176,530	$ 176,748	$ 171,570
	71,156	72,205	71,878	62,815	60,591	62,466	62,962	49,438	47,188	47,239	46,134	45,423	45,012
	41,518	42,573	42,675	43,627	46,246	48,242	49,153	47,325	48,384	44,984	45,806	45,243	42,026
	26,666	26,972	27,492	26,911	25,573	25,819	25,343	17,858	16,527	19,229	18,789	19,678	18,977
	3,466	3,535	3,634	4,865	5,001	5,037	5,252	5,529	5,148	5,527	5,069	5,066	5,150
	11,900	13,322	15,894	16,258	15,716	16,651	17,140	16,933	16,231	16,297	18,277	21,406	23,028
	8,002	9,438	11,670	12,006	11,687	12,874	13,397	13,087	12,393	12,505	13,920	15,514	14,533
POCAHONTAS	228,610	226,756	227,529	217,491	213,852	220,208	222,016	197,372	191,764	191,677	194,807	198,155	194,598
	56,157	54,621	53,668	54,427	55,094	58,368	59,189	59,652	58,927	58,349	58,597	60,819	60,256
pany	12,716	12,740	12,978	12,817	12,640	12,974	13,201	13,465	13,357	12,608	11,398	11,807	11,757
e	6,178	6,807	7,410	7,440	7,969	8,707	8,939	9,246	9,028	9,031	9,627	11,428	11,896
	2,025	2,089	1,911	2,326	2,177	2,910	3,943	3,856	3,783	3,939	4,092	4,467	4,335
	4,050	3,987	4,273	4,741	5,438	6,301	6,611	6,900	7,023	6,868	7,199	7,063	6,745

ort Statistics in the United States.

NET INCOME

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957
EASTERN DISTRICT	$ 81,804	$181,054	$ 88,741	$181,458	$155,263	$192,033	$208,516	$122,878	$238,819	$213,179	$123,896
Pennsylvania Railroad	7,285	34,429	12,474	38,420	26,697	36,981	37,036	18,552	41,183	41,545	19,056
New York Central	2,306	14,727	9,727	18,315	14,718	24,716	34,002	9,187	52,283	39,104	8,423
Baltimore and Ohio	5,612	12,575	4,244	8,818	11,420	15,488	15,406	14,528	23,918	30,038	24,131
Nickel Plate Road	8,178	15,353	12,473	21,019	18,482	18,802	17,866	14,460	16,686	16,329	14,706
POCAHONTAS REGION	79,373	78,397	36,879	73,878	79,707	85,349	84,917	75,328	110,469	127,331	132,666
Chesapeake and Ohio	34,346	29,791	11,357	33,947	38,122	44,999	48,068	39,909	57,982	66,735	67,566
EASTERN DISTRICT PLUS POCAHONTAS	161,177	259,451	125,620	255,337	234,970	277,383	293,433	198,207	349,288	340,510	256,562
SOUTHERN REGION	55,191	94,296	62,769	128,291	110,703	140,503	151,190	118,353	153,804	145,988	117,655
Southern Railway Company	11,892	19,248	11,914	22,400	18,856	27,834	33,190	26,262	37,993	38,871	34,066
Louisville and Nashville	13,286	18,497	8,216	24,308	22,788	25,098	30,653	18,926	24,637	25,026	19,394
Seaboard Air Line	3,504	9,965	8,156	14,175	15,990	19,988	20,907	20,132	21,538	20,145	18,509
Atlantic Coast Line	6,003	7,684	7,743	12,778	13,170	17,325	12,028	11,747	13,850	11,834	10,388

Source: I.C.C. Transport Statistics in the United States

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NET INCOME

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	$ 81,804	$181,054	$ 88,741	$181,458	$155,263	$192,033	$208,516	$122,878	$238,819	$213,179	$123,896	$ 31,010	$ 33,479
lroad	7,285	34,429	12,474	38,420	26,697	36,981	37,036	18,552	41,183	41,545	19,056	3,544	7,267
al	2,306	14,727	9,727	18,315	14,718	24,716	34,002	9,187	52,283	39,104	8,423	4,050	8,403
hio	5,612	12,575	4,244	8,818	11,420	15,488	15,406	14,528	23,918	30,038	24,131	15,068	14,809
al	8,178	15,353	12,473	21,019	18,482	18,802	17,866	14,460	16,686	16,329	14,706	10,433	13,289
ION	79,373	78,397	36,879	73,878	79,707	85,349	84,917	75,328	110,469	127,331	132,666	109,863	109,494
Ohio	34,346	29,791	11,357	33,947	38,122	44,999	48,068	39,909	57,982	66,735	67,566	51,703	45,687
US POCAHONTAS	161,177	259,451	125,620	255,337	234,970	277,383	293,433	198,207	349,288	340,510	256,562	140,873	142,974
	55,191	94,296	62,769	128,291	110,703	140,503	151,190	118,353	153,804	145,988	117,655	98,746	101,814
Company	11,892	19,248	11,914	22,400	18,856	27,834	33,190	26,262	37,993	38,871	34,066	30,254	33,127
ville	13,286	18,497	8,216	24,308	22,788	25,098	30,653	18,926	24,637	25,026	19,394	13,244	13,445
	3,504	9,965	8,156	14,175	15,990	19,988	20,907	20,132	21,538	20,145	18,509	15,002	17,033
e	6,003	7,684	7,743	12,778	13,170	17,325	12,028	11,747	13,850	11,834	10,388	9,985	11,841

nsport Statistics in the United States

LONG TERM DEBT (INCLUDING EQUIPMENT OBLIGATIONS)

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957
EASTERN DISTRICT	$3,633,544	$3,742,738	$3,776,483	$3,845,627	$4,004,963	$4,175,459	$4,158,551	$4,061,976	$4,042,944	$4,050,875	$4,048,025
Pennsylvania Railroad	643,179	676,276	694,544	707,185	786,342	830,597	810,207	768,424	740,209	724,115	706,576
New York Central	608,842	632,116	668,098	674,971	721,443	819,768	834,767	822,737	827,447	813,670	827,684
Baltimore and Ohio	596,976	619,577	603,180	597,516	595,083	601,194	587,066	543,125	491,177	491,695	477,315
Nickel Plate Road	121,066	121,534	120,071	119,548	121,497	113,436	123,524	125,795	159,826	160,989	162,034
POCAHONTAS REGION	377,571	449,093	464,941	476,065	494,114	514,542	512,187	489,355	470,653	485,826	547,045
Chesapeake and Ohio	267,453	329,784	335,193	349,569	372,721	400,165	395,924	371,703	355,935	373,358	402,268
EASTERN DISTRICT PLUS POCAHONTAS	4,011,116	4,191,832	4,241,424	4,321,692	4,499,078	4,690,002	4,670,739	4,551,331	4,513,597	4,536,702	4,595,071
SOUTHERN REGION	1,125,568	1,156,482	1,203,404	1,212,624	1,285,665	1,338,530	1,352,720	1,333,068	1,317,709	1,263,818	1,321,293
Southern Railway Company	229,864	242,650	253,009	242,026	206,855	275,149	274,329	277,048	271,809	214,632	219,921
Louisville and Nashville	182,810	217,357	212,582	222,673	238,846	259,789	275,518	273,114	266,365	267,012	289,677
Seaboard Air Line	107,195	103,353	106,487	111,887	120,222	120,157	116,727	114,368	112,858	115,449	122,000
Atlantic Coast Line	95,890	101,687	116,642	126,325	168,075	175,076	183,971	178,823	181,700	174,797	180,471

Source: I.C.C. Transport Statistics in the United States.

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LONG TERM DEBT (INCLUDING EQUIPMENT OBLIGATIONS)

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	$3,633,544	$3,742,738	$3,776,483	$3,845,627	$4,004,963	$4,175,459	$4,158,551	$4,061,976	$4,042,944	$4,050,875	$4,048,025	$3,951,199	$3,858,166
	643,179	676,276	694,544	707,185	786,342	830,597	810,207	768,424	740,209	724,115	706,576	692,271	674,878
	608,842	632,116	668,098	674,971	721,443	819,768	834,767	822,737	827,447	813,670	827,684	747,521	736,454
	596,976	619,577	603,180	597,516	595,083	601,194	587,066	543,125	491,177	491,695	477,315	485,972	461,142
	121,066	121,534	120,071	119,548	121,497	113,436	123,524	125,795	159,826	160,989	162,034	162,625	161,847
	377,571	449,093	464,941	476,065	494,114	514,542	512,187	489,355	470,653	485,826	547,045	572,156	692,176
	267,453	329,784	335,193	349,569	372,721	400,165	395,924	371,703	355,935	373,358	402,268	382,624	367,815
CAHONTAS	4,011,116	4,191,832	4,241,424	4,321,692	4,499,078	4,690,002	4,670,739	4,551,331	4,513,597	4,536,702	4,595,071	4,523,355	4,550,342
	1,125,568	1,156,482	1,203,404	1,212,624	1,285,665	1,338,530	1,352,720	1,333,068	1,317,709	1,263,818	1,321,293	1,340,648	1,327,643
	229,864	242,650	253,009	242,026	206,855	275,149	274,329	277,048	271,809	214,632	219,921	229,355	223,570
	182,810	217,357	212,582	222,673	238,846	259,789	275,518	273,114	266,365	267,012	289,677	304,564	315,554
	107,195	103,353	106,487	111,887	120,222	120,157	116,727	114,368	112,858	115,449	122,000	117,769	117,122
	95,890	101,687	116,642	126,325	168,075	175,076	183,971	178,823	181,700	174,797	180,471	170,870	168,436

Statistics in the United States.

AVERAGE NUMBER OF EMPLOYEES

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	19
EASTERN DISTRICT	558,529	540,635	478,337	493,987	515,157	486,121	476,853	407,697	408,448	402,657	383,
Pennsylvania Railroad	148,521	138,020	116,743	124,629	137,604	125,924	126,359	100,544	106,195	103,624	98,
New York Central	119,199	119,721	105,640	110,950	108,981	104,456	99,698	84,977	81,552	80,450	75,
Baltimore and Ohio	59,540	57,197	49,848	53,592	57,932	53,732	54,067	44,976	46,177	46,932	45,
Nickel Plate Road	12,021	12,866	12,327	16,112	16,909	15,832	15,986	14,078	14,506	14,696	13,
POCAHONTAS REGION	68,335	72,538	63,192	63,027	69,562	65,838	61,769	54,648	57,103	61,042	59,
Chesapeake and Ohio	37,605	41,612	35,439	35,463	39,313	36,745	34,183	30,284	32,361	34,078	32,
EASTERN DISTRICT PLUS POCAHONTAS	626,864	613,173	541,529	557,014	584,719	551,959	538,622	462,345	465,551	463,699	443,
SOUTHERN REGION	197,904	194,021	169,101	169,793	177,755	171,883	166,112	152,021	144,173	143,324	133,
Southern Railway Company	37,710	36,210	31,457	32,050	33,010	31,151	29,174	26,081	23,973	22,086	19,
Louisville and Nashville	33,505	33,250	27,556	27,150	28,549	27,708	26,304	23,544	20,198	21,381	22,
Seaboard Air Line	19,134	18,591	17,013	17,127	17,811	17,048	16,402	15,309	15,270	14,965	14,
Atlantic Coast Line	22,721	20,893	16,644	16,636	19,450	19,761	20,077	17,841	18,652	18,866	16,

Source: I.C.C. Transport Statistics in the United States.

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AVERAGE NUMBER OF EMPLOYEES

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	558,529	540,635	478,337	493,987	515,157	486,121	476,853	407,697	408,448	402,657	383,605	316,097	306,577
	148,521	138,020	116,743	124,629	137,604	125,924	126,359	100,544	106,195	103,624	98,853	80,727	79,516
	119,199	119,721	105,640	110,950	108,981	104,456	99,698	84,977	81,552	80,450	75,252	61,678	61,425
	59,540	57,197	49,848	53,592	57,932	53,732	54,067	44,976	46,177	46,932	45,481	33,378	32,786
	12,021	12,866	12,327	16,112	16,909	15,832	15,986	14,078	14,506	14,696	13,977	11,526	11,253
	68,335	72,538	63,192	63,027	69,562	65,838	61,769	54,648	57,103	61,042	59,551	46,413	42,454
	37,605	41,612	35,439	35,463	39,313	36,745	34,183	30,284	32,361	34,078	32,921	26,142	24,964
OCAHONTAS	626,864	613,173	541,529	557,014	584,719	551,959	538,622	462,345	465,551	463,699	443,156	362,510	349,031
	197,904	194,021	169,101	169,793	177,755	171,883	166,112	152,021	144,173	143,324	133,835	116,380	111,720
ry	37,710	36,210	31,457	32,050	33,010	31,151	29,174	26,081	23,973	22,086	19,943	17,919	17,739
	33,505	33,250	27,556	27,150	28,549	27,708	26,304	23,544	20,198	21,381	22,170	21,008	19,558
	19,134	18,591	17,013	17,127	17,811	17,048	16,402	15,309	15,270	14,965	14,295	13,174	12,305
	22,721	20,893	16,644	16,636	19,450	19,761	20,077	17,841	18,652	18,866	16,371	13,938	13,671

Statistics in the United States.

LABOR CHARGES TO OPERATING EXPENSES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957
EASTERN DISTRICT	$1,737,532	$1,877,789	$1,699,546	$1,805,370	$2,049,765	$2,024,208	$2,032,563	$1,797,191	$1,872,045	$2,000,728	$2,019,
Pennsylvania Railroad	472,236	500,057	438,622	484,014	558,627	543,515	547,212	454,498	488,529	521,331	527,
New York Central	381,368	417,342	379,261	402,096	451,808	447,976	439,917	390,592	399,679	415,143	414,
Baltimore and Ohio	174,267	189,448	170,464	189,714	217,111	211,243	217,244	185,692	202,347	229,586	230,
Nickel Plate Road	43,067	46,843	46,021	62,882	72,321	72,234	75,195	67,776	72,921	80,203	80,
POCAHONTAS REGION	208,852	248,908	212,954	224,264	269,322	264,149	256,636	238,098	261,008	299,204	311,
Chesapeake and Ohio	126,357	147,882	129,410	137,183	161,310	156,740	153,153	141,248	156,992	178,391	186,
EASTERN DISTRICT PLUS POCAHONTAS	1,946,385	2,126,697	1,912,501	2,029,635	2,319,087	2,288,357	2,289,199	2,035,290	2,133,053	2,299,933	2,330,
SOUTHERN REGION	572,638	630,671	572,407	588,154	674,876	688,709	675,730	633,087	618,581	665,820	667,
Southern Railway Company	110,693	117,178	106,729	109,653	123,602	122,398	118,320	110,396	107,928	110,218	109,
Louisville and Nashville	96,553	104,076	89,841	93,094	109,104	109,696	105,032	96,860	84,775	99,786	111,
Seaboard Air Line	58,814	63,345	61,815	61,969	69,907	72,383	70,718	68,435	68,850	73,922	75,
Atlantic Coast Line	67,304	69,869	61,341	62,693	75,655	80,942	81,432	76,317	81,256	87,717	83,

Source: I.C.C. Transport Statistics in the United States.

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LABOR CHARGES TO OPERATING EXPENSES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	$1,737,532	$1,877,789	$1,699,546	$1,805,370	$2,049,765	$2,024,208	$2,032,563	$1,797,191	$1,872,045	$2,000,728	$2,019,659	$1,800,390	$1,808,064
ead	472,236	500,057	438,622	484,014	558,627	543,515	547,212	454,498	488,529	521,331	527,751	458,469	466,714
	381,368	417,342	379,261	402,096	451,808	447,976	439,917	390,592	399,679	415,143	414,279	373,957	377,280
o	174,267	189,448	170,464	189,714	217,111	211,243	217,244	185,692	202,347	229,586	230,548	187,711	192,544
	43,067	46,843	46,021	62,882	72,321	72,234	75,195	67,776	72,921	80,203	80,046	70,253	71,400
N	208,852	248,908	212,954	224,264	269,322	264,149	256,636	238,098	261,008	299,204	311,023	266,478	250,336
ile	126,357	147,882	129,410	137,183	161,310	156,740	153,153	141,248	156,992	178,391	186,995	162,539	153,394
S POCAHONTAS	1,946,385	2,126,697	1,912,501	2,029,635	2,319,087	2,288,357	2,289,199	2,035,290	2,133,053	2,299,933	2,330,682	2,066,868	2,058,400
	572,638	630,671	572,407	588,154	674,876	688,709	675,730	633,087	618,581	665,820	667,556	635,410	634,642
mpany	110,693	117,178	106,729	109,653	123,602	122,398	118,320	110,396	107,928	110,218	109,450	106,527	103,690
ville	96,553	104,076	89,841	93,094	109,104	109,696	105,032	96,860	84,775	99,786	111,323	116,463	111,403
	58,814	63,345	61,815	61,969	69,907	72,383	70,718	68,435	68,850	73,922	75,397	75,247	74,368
	67,304	69,869	61,341	62,693	75,655	80,942	81,432	76,317	81,256	87,717	83,288	77,012	78,509

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MILES OF ROAD (OPERATED)

As of December 31

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	19
EASTERN DISTRICT	53,812	53,604	53,503	53,406	53,328	53,174	52,966	52,802	52,471	51,688	50
Pennsylvania Railroad	10,108	10,145	10,118	10,112	10,120	10,090	10,066	10,034	10,006	9,963	9
New York Central	10,745	10,731	10,735	10,727	10,724	10,714	10,713	10,710	10,613	10,621	10
Baltimore and Ohio	6,192	6,202	6,202	6,188	6,187	6,186	6,183	6,184	6,021	6,006	5
Nickel Plate Road	1,687	1,687	2,192	2,192	2,188	2,184	2,185	2,179	2,178	2,179	2
POCAHONATAS REGION	7,969	8,008	8,237	8,215	8,225	8,192	8,178	8,203	8,200	7,993	7
Chesapeake and Ohio	5,062	5,098	5,118	5,116	5,117	5,116	5,102	5,128	5,132	5,132	5
EASTERN DISTRICT PLUS POCAHONTAS	61,781	61,612	61,740	61,621	61,553	61,366	61,144	61,005	60,671	59,681	58
SOUTHERN REGION	38,180	38,025	37,769	37,740	37,662	37,324	37,292	37,265	37,188	37,392	37
Southern Railway Company	6,483	6,411	6,195	6,344	6,306	6,299	6,286	6,289	6,288	6,281	6
Louisville and Nashville	4,759	4,759	4,780	4,778	4,765	4,738	4,737	4,734	4,732	4,731	5
Seaboard Air Line	4,152	4,153	4,146	4,146	4,145	4,080	4,078	4,064	4,064	4,062	4
Atlantic Coast Line	5,572	5,562	5,527	5,452	5,471	5,379	5,366	5,344	5,287	5,292	5

Source: I.C.C. Transport Statistics in the United States.

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MILES OF ROAD (OPERATED)

As of December 31

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	53,812	53,604	53,503	53,406	53,328	53,174	52,966	52,802	52,471	51,688	50,900	50,625	50,539
	10,108	10,145	10,118	10,112	10,120	10,090	10,066	10,034	10,006	9,963	9,937	9,917	9,895
	10,745	10,731	10,735	10,727	10,724	10,714	10,713	10,710	10,613	10,621	10,521	10,446	10,368
	6,192	6,202	6,202	6,188	6,187	6,186	6,183	6,184	6,021	6,006	5,946	5,917	5,911
	1,687	1,687	2,192	2,192	2,188	2,184	2,185	2,179	2,178	2,179	2,179	2,179	2,170
	7,969	8,008	8,237	8,215	8,225	8,192	8,178	8,203	8,200	7,993	7,989	7,986	7,983
	5,062	5,098	5,118	5,116	5,117	5,116	5,102	5,128	5,132	5,132	5,132	5,122	5,122
POCAHONTAS	61,781	61,612	61,740	61,621	61,553	61,366	61,144	61,005	60,671	59,681	58,889	58,611	58,522
	38,180	38,025	37,769	37,740	37,662	37,324	37,292	37,265	37,188	37,392	37,296	37,498	37,434
ny	6,483	6,411	6,195	6,344	6,306	6,299	6,286	6,289	6,288	6,281	6,273	6,269	6,267
	4,759	4,759	4,780	4,778	4,765	4,738	4,737	4,734	4,732	4,731	5,697	5,697	5,696
	4,152	4,153	4,146	4,146	4,145	4,080	4,078	4,064	4,064	4,062	4,060	4,146	4,147
	5,572	5,562	5,527	5,452	5,471	5,379	5,366	5,344	5,287	5,292	5,292	5,307	5,260

Statistics in the United States.

MILES OF TRACK (OPERATED).

As of December 31

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957
EASTERN DISTRICT	115,519	115,221	114,889	114,537	114,226	113,451	112,800	112,062	110,237	108,231	106,513
Pennsylvania Railroad	25,026	25,122	25,100	25,110	25,131	25,112	25,006	24,895	24,283	23,855	23,652
New York Central	24,219	24,218	24,135	24,093	24,053	23,953	23,823	23,575	23,023	22,705	22,278
Baltimore and Ohio	12,021	12,072	12,088	12,065	12,048	11,993	11,976	11,962	11,720	11,706	11,604
Nickel Plate Road	2,928	2,945	3,972	3,976	3,998	4,003	4,020	4,022	4,032	4,038	4,037
POCAHONTAS REGION	15,932	16,037	16,429	16,495	16,533	16,551	16,594	16,645	16,694	16,509	16,546
Chesapeake and Ohio	9,651	9,715	9,843	9,933	9,956	9,989	10,037	10,093	10,152	10,174	10,190
EASTERN DISTRICT PLUS POCAHONTAS	131,451	131,258	131,318	131,032	130,759	130,002	129,394	128,707	126,931	124,740	123,059
SOUTHERN REGION	60,087	59,998	59,782	59,773	59,713	59,603	59,510	59,600	59,682	59,913	59,626
Southern Railway Company	10,587	10,507	10,254	10,409	10,300	10,354	10,320	10,283	10,336	10,262	10,279
Louisville and Nashville	7,916	7,920	7,959	7,951	7,942	7,913	7,898	7,949	7,932	7,859	9,296
Seaboard Air Line	5,814	5,829	5,849	5,886	5,926	5,919	5,950	5,997	6,020	6,034	6,100
Atlantic Coast Line	7,955	7,952	7,908	7,826	7,886	7,790	7,806	7,780	7,764	7,805	7,795

Source: I.C.C. Transport Statistics in the United States.

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MILES OF TRACK (OPERATED)

As of December 31

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	115,519	115,221	114,889	114,537	114,226	113,451	112,800	112,062	110,237	108,231	106,513	105,257	101,659
	25,026	25,122	25,100	25,110	25,131	25,112	25,006	24,895	24,283	23,855	23,652	23,555	23,458
	24,219	24,218	24,135	24,093	24,053	23,953	23,823	23,575	23,023	22,705	22,278	21,812	21,524
	12,021	12,072	12,088	12,065	12,048	11,993	11,976	11,962	11,720	11,706	11,604	11,525	11,447
	2,928	2,945	3,972	3,976	3,998	4,003	4,020	4,022	4,032	4,038	4,037	4,034	4,008
	15,932	16,037	16,429	16,495	16,533	16,551	16,594	16,645	16,694	16,509	16,546	16,580	16,567
	9,651	9,715	9,843	9,933	9,956	9,989	10,037	10,093	10,152	10,174	10,190	10,221	10,260
POCAHONTAS	131,451	131,258	131,318	131,032	130,759	130,002	129,394	128,707	126,931	124,740	123,059	121,837	118,226
	60,087	59,998	59,782	59,773	59,713	59,603	59,510	59,600	59,682	59,913	59,626	59,951	59,851
	10,587	10,507	10,254	10,409	10,300	10,354	10,320	10,283	10,336	10,262	10,279	10,313	10,318
	7,916	7,920	7,959	7,951	7,942	7,913	7,898	7,949	7,932	7,859	9,296	9,368	9,355
	5,814	5,829	5,849	5,886	5,926	5,919	5,950	5,997	6,020	6,034	6,100	6,211	6,214
	7,955	7,952	7,908	7,826	7,886	7,790	7,806	7,780	7,764	7,805	7,795	7,801	7,737

Statistics in the United States.

REVENUE TON MILES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957
EASTERN DISTRICT	231,361,216	221,163,528	176,290,632	198,354,262	212,736,203	195,935,579	196,361,245	169,088,498	195,978,420	205,221,968	190,759,556
Pennsylvania Railroad	61,368,234	57,936,703	44,858,473	49,878,307	54,815,940	50,093,192	50,233,242	42,349,088	50,126,452	53,419,636	50,644,050
New York Central	43,570,787	41,926,446	34,378,663	39,064,646	40,902,182	37,642,460	38,009,810	33,047,659	38,105,715	37,733,255	34,215,425
Baltimore and Ohio	30,242,321	29,087,199	24,255,080	27,546,419	30,328,175	27,615,542	28,050,303	23,739,913	28,709,421	31,069,842	29,145,205
Nickel Plate Road	8,568,158	8,506,984	7,122,785	10,516,855	11,508,496	10,733,630	10,724,985	9,410,754	11,167,491	11,874,985	10,919,255
POCAHONTAS REGION	63,605,702	62,097,624	44,326,046	51,131,901	62,502,805	55,734,259	50,991,834	46,036,870	60,722,884	67,469,231	69,645,630
Chesapeake and Ohio	37,091,017	35,962,097	25,738,965	30,600,217	36,450,203	32,886,272	29,791,875	26,414,408	35,435,511	38,831,603	39,618,498
EASTERN DISTRICT PLUS POCAHONTAS	294,966,918	283,261,152	220,616,678	249,486,163	275,239,008	251,669,838	247,353,079	215,125,368	256,701,304	272,691,199	260,405,186
SOUTHERN REGION	88,243,450	87,429,479	73,574,359	83,961,917	90,724,738	88,796,050	87,211,089	82,601,035	90,444,291	93,914,726	89,166,854
Southern Railway Company	14,462,104	13,788,905	11,384,054	13,031,315	13,947,551	13,515,833	13,388,753	13,203,653	15,423,493	15,348,346	14,412,614
Louisville and Nashville	16,847,831	16,464,405	12,688,308	15,017,712	15,298,864	14,308,800	14,771,951	13,459,146	13,420,107	15,257,262	15,592,541
Seaboard Air Line	8,067,131	8,205,360	7,357,955	8,262,713	9,140,307	9,269,600	8,787,838	8,756,928	9,347,679	9,826,172	9,443,915
Atlantic Coast Line	7,868,971	7,672,218	6,614,973	7,480,213	9,151,779	9,150,774	8,595,234	8,161,406	9,007,417	9,418,482	8,869,758

REVENUE TON MILES

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	231,361,216	221,163,528	176,290,632	198,354,262	212,736,203	195,935,579	196,361,245	169,088,498	195,978,420	205,221,968	190,759,556	159,297,258	165,905,052
	61,368,234	57,938,703	44,858,473	49,878,307	54,815,940	50,093,192	50,233,242	42,349,088	50,126,452	53,419,636	50,644,050	41,479,080	43,414,489
	43,570,787	41,926,446	34,378,663	39,064,646	40,902,182	37,642,460	38,009,810	33,047,659	38,105,715	37,733,255	34,215,425	29,881,128	31,791,818
	30,242,321	29,087,199	24,255,080	27,546,419	30,328,175	27,615,542	28,050,303	23,739,913	28,709,421	31,069,842	29,145,205	23,597,275	24,444,649
	8,568,158	8,506,984	7,122,785	10,516,855	11,508,496	10,733,638	10,724,985	9,410,754	11,167,491	11,874,985	10,919,255	9,017,842	9,596,435
	63,605,702	62,097,624	44,326,046	51,131,901	62,502,805	55,734,259	50,991,834	46,036,870	60,722,884	67,469,231	69,645,630	53,871,693	51,989,280
	37,091,017	35,962,097	25,738,965	30,600,217	36,450,203	32,886,272	29,791,875	26,414,408	35,435,511	38,831,603	39,618,498	30,595,115	29,046,871
OCAHONTAS	294,966,918	283,261,152	220,616,678	249,486,163	275,239,008	251,669,838	247,353,079	215,125,368	256,701,304	272,691,199	260,405,186	213,168,951	217,894,332
	88,243,450	87,429,479	73,574,359	83,961,917	90,724,738	88,796,050	87,211,089	82,601,035	90,444,291	93,914,726	89,166,854	83,662,015	88,949,352
ny	14,462,104	13,788,905	11,384,054	13,031,315	13,947,551	13,515,833	13,388,753	13,203,653	15,423,493	15,348,346	14,412,614	13,756,756	14,706,840
	16,847,831	16,464,805	12,688,308	15,017,712	15,298,864	14,308,800	14,771,951	13,459,146	13,420,107	15,257,262	15,592,541	15,756,756	16,000,257
	8,067,131	8,205,360	7,357,955	8,262,713	9,140,307	9,269,600	8,787,838	8,756,928	9,347,679	9,826,172	9,443,915	9,146,445	10,038,477
	7,868,971	7,672,218	6,614,973	7,480,213	9,151,779	9,150,774	8,595,234	8,161,406	9,007,417	9,418,482	8,869,758	8,352,846	9,333,706

REVENUE TON MILES PER MILE OF ROAD

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	195
EASTERN DISTRICT	4,299	4,126	3,295	3,714	3,989	3,685	3,707	3,202	3,735	3,970	3,7
Pennsylvania Railroad	6,071	5,711	4,434	4,933	5,417	4,965	4,990	4,221	5,010	5,362	5,0
New York Central	4,055	3,907	3,202	3,642	3,814	3,513	3,548	3,086	3,590	3,553	3,2
Baltimore and Ohio	4,884	4,690	3,911	4,452	4,902	4,464	4,537	3,839	4,768	5,173	4,9
Nickel Plate Road	5,079	5,043	4,222	4,798	5,260	4,914	4,908	4,319	5,127	5,450	5,0
POCAHONTAS REGION	7,982	7,754	5,381	6,224	7,599	6,803	6,235	5,612	7,405	8,441	8,7
Chesapeake and Ohio	7,327	7,054	5,029	5,981	7,125	6,428	5,839	5,151	6,905	7,567	7,7
EASTERN DISTRICT PLUS POCAHONTAS	4,774	4,597	3,573	4,049	4,472	4,101	4,045	3,526	4,231	4,569	4,4
SOUTHERN REGION	2,311	2,299	1,948	2,225	2,409	2,379	2,339	2,217	2,432	2,512	2,3
Southern Railway Company	2,231	2,151	1,838	2,054	2,212	2,146	2,130	2,099	2,453	2,444	2,2
Louisville and Nashville	3,540	3,460	2,654	3,143	3,211	3,020	3,118	2,843	2,836	3,225	2,7
Seaboard Air Line	1,943	1,976	1,775	1,993	2,205	2,272	2,155	2,155	2,300	2,419	2,3
Atlantic Coast Line	1,412	1,379	1,197	1,372	1,673	1,701	1,602	1,527	1,704	1,780	1,6

Source: I.C.C. Transport Statistics in the United States.

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REVENUE TON MILES PER MILE OF ROAD

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	4,299	4,126	3,295	3,714	3,989	3,685	3,707	3,202	3,735	3,970	3,748	3,147	3,283
	6,071	5,711	4,434	4,933	5,417	4,965	4,990	4,221	5,010	5,362	5,097	4,183	4,388
	4,055	3,907	3,202	3,642	3,814	3,513	3,548	3,036	3,590	3,553	3,252	2,861	3,066
	4,884	4,690	3,911	4,452	4,902	4,464	4,537	3,839	4,768	5,173	4,902	3,988	4,135
	5,079	5,043	4,222	4,798	5,260	4,914	4,908	4,319	5,127	5,450	5,011	4,139	4,422
	7,982	7,754	5,381	6,224	7,599	6,803	6,235	5,612	7,405	8,441	8,718	6,746	6,512
	7,327	7,054	5,029	5,981	7,125	6,428	5,839	5,151	6,905	7,567	7,720	5,973	5,671
OCAHONTAS	4,774	4,597	3,573	4,049	4,472	4,101	4,045	3,526	4,231	4,569	4,422	3,637	3,723
	2,311	2,299	1,948	2,225	2,409	2,379	2,339	2,217	2,432	2,512	2,391	2,231	2,376
ny	2,231	2,151	1,838	2,054	2,212	2,146	2,130	2,099	2,453	2,414	2,298	2,467	2,347
	3,540	3,460	2,654	3,143	3,211	3,020	3,118	2,843	2,836	3,225	2,737	2,415	2,809
	1,943	1,976	1,775	1,993	2,205	2,272	2,155	2,155	2,300	2,419	2,326	2,206	2,421
	1,412	1,379	1,197	1,372	1,673	1,701	1,602	1,527	1,704	1,780	1,676	1,574	1,774

Statistics in the United States.

GROSS TON MILES PER TRAIN HOUR

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956
EASTERN DISTRICT	36,148	36,977	40,160	40,824	42,668	45,315	47,438	48,869	49,029	49,880
Pennsylvania Railroad	36,861	38,224	43,110	43,628	45,543	49,499	51,474	54,741	53,196	52,918
New York Central	38,176	37,868	41,245	41,494	42,854	45,744	48,846	50,258	49,864	50,191
Baltimore and Ohio	31,775	32,924	36,279	36,269	40,609	44,121	46,252	48,181	48,720	49,952
Nickel Plate Road	48,612	49,826	52,970	46,795	47,025	48,652	49,374	51,847	50,753	51,773
POCAHONTAS REGION	57,983	55,832	57,309	59,456	64,683	67,704	66,749	67,753	71,430	74,048
Chesapeake and Ohio	56,568	53,493	55,577	58,118	64,287	69,306	68,411	65,938	69,244	71,947
EASTERN DISTRICT PLUS POCAHONTAS	38,931	39,593	42,435	43,343	45,863	48,483	50,233	51,559	52,480	53,752
SOUTHERN REGION	32,023	33,305	35,882	38,069	39,938	42,360	45,298	47,835	50,285	51,150
Southern Railway	27,912	29,577	34,076	35,806	37,177	40,417	45,193	48,960	52,466	54,014
Louisville and Nashville	27,914	28,785	30,668	34,805	37,431	41,197	44,542	47,085	48,461	49,618
Seaboard Air Line	33,088	35,465	37,446	40,054	44,026	48,351	50,444	52,308	53,607	52,271
Atlantic Coast Line	27,272	27,591	29,588	31,350	34,111	37,310	38,095	39,873	42,091	44,182

Source: I.C.C. Transport Statistics in the United States.

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CARD 26

Exhibit 1
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GROSS TON MILES PER TRAIN HOUR

(Thousands)

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
	36,148	36,977	40,160	40,824	42,668	45,315	47,438	48,869	49,029	49,880	51,343	52,693	53,856
	36,861	38,224	43,110	43,628	45,543	49,499	51,474	54,741	53,196	52,918	53,639	55,896	55,770
	38,176	37,868	41,245	41,494	42,854	45,744	48,846	50,258	49,864	50,191	51,814	53,517	57,100
	31,775	32,924	36,279	36,269	40,609	44,121	46,252	48,181	48,720	49,952	51,372	54,742	55,229
	48,612	49,826	52,970	46,795	47,025	48,652	49,374	51,847	50,753	51,773	54,218	59,458	59,325
	57,983	55,832	57,309	59,456	64,683	67,704	66,749	67,753	71,430	74,048	80,602	80,944	80,895
	56,568	53,493	55,577	58,118	64,287	69,306	68,411	65,938	69,244	71,947	77,992	78,043	75,882
POCAHONTAS	38,931	39,593	42,435	43,343	45,863	48,483	50,233	51,559	52,480	53,752	56,161	57,103	57,908
	32,023	33,305	35,882	38,069	39,938	42,360	45,298	47,835	50,285	51,150	52,682	54,437	57,187
	27,912	29,577	34,076	35,806	37,177	40,417	45,193	48,960	52,466	54,014	53,194	53,844	58,410
	27,914	28,785	30,568	34,805	37,431	41,197	44,542	47,085	48,461	49,618	50,817	52,275	54,664
	33,088	35,465	37,446	40,054	44,026	48,351	50,444	52,308	53,607	52,271	54,008	55,960	58,815
	27,272	27,591	29,588	31,350	34,111	37,310	38,095	39,873	42,091	44,182	45,846	48,225	49,731

ASSOCIATION OF AMERICAN RAILROADS
Bureau of Railway Economics
Washington 6, D. C.

SERIES Q - MPW - 27

APRIL 28, 1960

INDEXES OF
RAILROAD MATERIAL PRICES AND WAGE RATES
(Railways of Class I)

1. Annual indexes of charge-out prices and wage rates
(Average 1947-1949=100)

District and Group	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959
UNITED STATES:										
Fuel (coal and oil)	100.7	108.9	106.9	108.4	108.7	108.6	114.9	124.0	114.7	117.3
Material & supplies (other than fuel)	109.0	123.0	127.1	130.8	134.0	137.0	146.4	154.5	157.1	160.4
All materials (including fuel)	105.7	117.5	119.1	122.0	124.2	126.1	134.2	142.6	141.4	144.5
Wage rates (all employees)	*120.5	*134.1	*140.8	144.2	148.4	150.0	162.4	174.4	187.9	195.3
Material prices & wage rates combined	116.1	129.1	134.3	137.5	141.1	142.8	153.9	164.9	174.0	180.8
EASTERN DISTRICT (INCL.POCA. REGION):										
Fuel (coal and oil)	105.1	110.1	111.9	116.2	112.1	111.3	118.3	125.7	114.8	117.2
Material & supplies (other than fuel)	108.6	122.0	125.8	129.3	131.4	134.3	144.0	151.4	153.1	155.9
All material (including fuel)	107.2	117.5	120.5	124.3	124.5	126.1	134.9	142.4	139.8	142.5
Wage rates (all employees)	120.0	133.8	140.3	143.8	148.0	149.7	161.9	173.9	187.5	194.9
Material prices & wage rates combined	116.4	129.2	134.8	138.3	141.4	143.1	154.3	165.1	174.1	180.1
SOUTHERN REGION:										
Fuel (coal and oil)	111.1	115.1	115.4	117.9	119.3	118.2	122.7	128.2	121.8	125.0
Material & supplies (other th fuel)	109.5	123.9	128.5	134.5	138.8	142.2	153.0	162.0	165.8	168.9
All material (including fuel)	110.1	120.6	123.6	128.4	131.7	133.8	142.8	150.7	151.6	154.7
Wage rates (all employees)	121.1	134.8	141.9	145.7	150.0	152.2	165.2	178.4	192.6	200.3
Material prices & wage rates combined	117.7	130.4	136.2	140.3	144.3	146.5	158.3	169.8	179.9	186.0
WESTERN DISTRICT:										
Fuel (coal and oil)	93.8	106.2	99.9	98.2	101.5	102.1	108.3	119.3	111.1	113.4
Material & supplies (other than fuel)	109.1	123.5	128.0	130.4	133.8	136.8	146.2	154.2	157.5	161.3
All materials (including fuel)	102.8	116.4	116.6	117.3	120.4	122.5	130.7	139.6	139.2	142.4
Wage rates (all employees)	120.8	134.5	141.2	144.2	148.5	149.7	162.1	173.8	187.2	194.5
Material prices & wage rates combined	115.2	128.9	133.6	135.9	139.8	141.3	152.4	163.2	172.3	178.3

* - Includes retroactive pay increases.

ASSOCIATION OF AMERICAN RAILROADS
Bureau of Railway Economics
Washington 6, D. C.

SERIES Q - MPW - 27

APRIL 28, 1960

2. Quarterly indexes of spot prices of railroad fuel, material and supplies

(Average mid-year 1947-1949 = 100)

District and Group	July 1950	July 1951	July 1952	July 1953	July 1954	Jan. 1955	Apr. 1955	July 1955	Oct. 1955	Jan. 1956	Apr. 1956	July 1956	Oct. 1956	Jan. 1957	Apr. 1957	July 1957	Oct. 1957	Jan. 1958	Apr. 1958	July 1958	Oct. 1958	Jan. 1959	Apr. 1959	July 1959	Oct. 1959	Jan. 1960	Apr. 1960
UNITED STATES:																											
Fuel (coal & oil)	104.1	112.1	108.0	110.6	109.1	111.1	110.8	109.2	110.1	112.7	116.4	117.3	119.0	124.1	129.6	127.5	123.5	121.4	115.8	116.7	116.8	121.7	124.7	116.7	114.8	117.0	113.4
Forest products	102.7	127.1	127.1	125.9	122.3	123.7	124.1	124.7	127.2	130.7	133.1	133.3	132.9	133.5	132.4	131.4	129.9	128.0	128.7	136.2	127.4	128.4	132.8	134.7	134.6	136.2	136.2
Iron & steel prod.	114.9	126.9	127.4	143.5	143.1	146.7	147.1	147.7	157.6	158.4	159.9	160.1	173.3	174.4	177.4	183.5	185.7	185.6	185.8	185.6	191.1	192.2	192.2	192.2	192.5	193.4	193.8
Miscellaneous prod.	104.9	121.1	120.3	121.5	123.1	124.3	127.5	127.5	131.8	133.2	135.3	133.3	133.8	134.4	135.2	135.5	134.5	134.0	133.5	133.1	133.6	134.4	136.8	137.2	137.1	137.8	137.8
Total, excl.Fuel	109.0	124.4	124.2	131.1	131.2	133.4	135.2	135.4	141.6	143.2	145.1	144.3	149.5	150.3	151.7	154.1	154.2	153.6	153.5	152.9	155.4	156.3	158.1	158.6	158.6	159.5	159.6
Total, incl.Fuel	107.1	119.7	118.0	123.4	122.9	125.1	126.2	125.8	130.2	132.0	134.5	134.3	138.3	140.5	143.2	144.0	142.9	141.9	139.9	138.7	141.6	143.9	146.0	143.7	143.2	144.4	143.5
EASTERN DISTRICT: (inc. Poca. Reg.)																											
Fuel (coal & oil)	108.3	113.9	114.9	118.5	111.5	114.5	114.4	112.1	113.9	117.7	120.9	121.3	122.7	127.3	133.9	129.3	124.6	122.0	116.0	113.4	117.8	123.6	126.7	116.7	114.1	116.5	113.0
Forest products	102.5	122.8	125.0	125.1	118.7	119.6	119.1	118.7	121.5	126.5	129.9	129.6	129.7	131.5	130.3	128.7	128.2	127.2	126.5	123.7	123.9	127.6	131.9	132.4	132.7	135.6	135.1
Iron & steel prod.	114.9	126.6	127.4	143.5	142.9	146.7	147.1	147.8	157.2	158.0	160.9	160.6	174.0	175.0	177.1	182.9	185.2	184.8	184.8	184.8	190.2	190.8	190.8	190.8	191.5	192.5	192.7
Miscellaneous prod.	103.1	119.5	119.5	118.3	119.0	120.0	123.8	124.5	128.6	129.9	131.9	131.2	130.1	130.5	130.6	130.5	129.5	128.9	128.2	127.6	128.2	129.3	131.2	132.1	131.9	132.6	132.2
Total, excl.Fuel	108.4	123.0	123.6	129.3	128.7	130.7	132.7	133.3	139.3	140.8	143.4	142.9	147.3	148.1	148.8	150.6	150.8	150.2	149.7	149.1	151.4	152.5	154.0	154.6	154.8	155.8	155.5
Total, incl.Fuel	108.3	119.6	120.3	125.5	122.9	125.3	126.6	126.3	130.8	133.2	135.9	135.6	139.1	141.2	143.9	143.6	142.0	140.8	138.5	137.2	140.2	142.9	144.9	141.9	141.2	142.6	141.3
SOUTHERN REGION:																											
Fuel (coal & oil)	114.0	117.4	117.3	120.4	120.8	122.1	121.6	118.7	118.8	122.7	124.8	124.7	126.8	127.2	131.5	134.5	128.9	128.3	121.6	119.7	125.7	133.6	135.2	121.9	120.5	122.1	119.2
Forest products	103.5	127.2	126.7	131.3	127.5	128.4	129.1	128.7	130.4	134.2	135.5	136.9	137.5	139.0	139.7	140.5	138.4	138.9	135.9	135.5	135.7	136.2	137.3	139.3	138.9	140.0	140.5
Iron & steel prod.	117.3	129.6	129.7	148.8	147.8	151.2	151.5	152.0	162.7	164.3	164.6	165.6	178.9	179.9	183.5	190.5	192.0	191.6	191.8	191.4	196.6	198.4	198.2	198.1	198.2	199.0	199.5
Miscellaneous prod.	104.8	121.8	123.0	125.9	129.9	131.9	134.8	135.7	141.3	144.1	146.7	144.3	144.5	145.1	147.1	147.1	146.8	146.4	145.5	145.7	146.0	146.6	149.6	150.0	149.6	150.3	151.0
Total, excl.Fuel	109.7	125.9	126.4	135.9	136.6	139.0	140.4	140.9	147.9	150.3	151.9	151.4	156.6	157.5	160.0	162.9	163.0	162.7	162.1	161.9	164.1	165.2	166.6	167.1	166.8	167.6	168.[illegible]
Total, incl.Fuel	111.2	122.9	123.1	130.5	131.1	133.3	134.2	133.8	138.7	141.6	143.2	142.9	147.3	148.0	151.0	153.9	152.4	152.0	149.6	149.0	152.3	155.3	156.7	153.3	152.9	153.8	155.[illegible]
WESTERN DISTRICT:																											
Fuel (coal & oil)	97.0	108.7	98.8	100.2	102.1	103.2	103.0	102.5	103.0	104.2	108.8	110.2	111.6	118.3	122.8	121.5	118.9	117.0	111.9	108.3	111.6	114.6	117.6	113.0	111.8	114.0	110.3
Forest products	102.2	130.5	128.7	124.1	122.5	124.6	125.4	127.3	130.3	132.1	134.3	133.9	132.9	132.6	131.0	129.4	128.1	124.5	127.6	125.5	125.8	126.5	133.1	136.0	135.4	136.4	136.3
Iron & steel prod.	114.2	126.8	127.2	142.4	142.6	146.3	146.9	147.5	157.4	157.9	158.7	159.4	172.2	173.0	176.5	182.9	185.6	185.5	185.6	185.8	191.9	192.7	193.1	193.1	193.6	194.3	194.6
Miscellaneous prod.	106.3	121.5	119.8	121.2	122.2	122.7	125.9	125.6	130.4	132.1	133.8	132.0	132.9	134.2	135.0	135.3	134.3	133.8	133.7	133.3	133.7	134.3	136.9	137.2	137.2	137.8	137.6
Total, excl.Fuel	109.2	125.0	124.2	130.4	130.8	132.7	134.6	135.0	141.6	142.8	144.2	143.6	148.9	149.8	151.3	153.7	154.1	153.4	153.7	153.2	155.9	156.5	158.8	159.4	159.4	160.1	160.1
Total, incl.Fuel	104.3	118.5	114.1	118.3	119.1	120.8	122.0	122.0	126.3	127.5	130.1	130.2	134.1	137.0	139.5	140.6	140.0	138.9	137.5	136.0	139.1	140.4	142.8	141.7	141.4	142.6	141.[illegible]

Note: Based on prices reported as of first day of months shown.

RELATIVE IMPORTANCE OF OFFICIAL-SOUTHERN TRAFFIC TO TOTAL TRAFFIC

	(1) Total Freight Revenue 7/1/58-6/30/59	(2) Official-Southern Freight Revenue North of Gateways 7/1/58-6/30/59	% Col.(2) of Col.(1)
NEW ENGLAND REGION			
Bangor & Aroostook R.R.	$ 12,340,116	$ 203,308	1.6
Boston & Maine R.R.	60,790,501	3,680,750	6.1
Canadian Pacific (lines in Me.)	7,259,167	271,828	3.7
Central Vermont Ry.	9,202,000	159,252	1.7
Maine Central R.R.	22,151,887	1,001,803	4.5
New York Connecting R.R.	4,216,739)	6,022,701	7.1
New York, New Haven & Hartford R.R.	80,819,357)		
Rutland Ry.	4,428,567	110,942	2.5
GREAT LAKES REGION			
Ann Arbor R.R.	8,669,695	27,002	0.3
Delaware & Hudson R.R.	43,561,166	2,016,469	4.6
Delaware, Lackawanna & Western R.R.	56,082,710	981,253	1.7
Detroit & Toledo Shore Line R.R.	7,105,823	694,122	9.8
Erie R.R.	139,154,301	5,803,531	4.2
Grand Trunk Western R.R.	48,425,766	1,827,477	3.8
Lehigh & Hudson River Ry.	3,335,118	118,720	3.6
Lehigh & New England R.R.	6,456,028	72,234	1.1
Lehigh Valley R.R.	51,933,209	1,408,348	2.7
Monongahela Ry.	4,663,133	10,447	0.2
New York Central R.R.	523,333,470	27,196,643	5.2
New York, Chicago & St. Louis R.R.	145,843,235	6,488,902	4.4
New York, Susquehanna & Western R.R.	3,796,020	136,654	3.6
Pittsburgh & Lake Erie R.R.	34,269,505	637,624	1.9
Pittsburgh & West Virginia Ry.	8,485,270	188,196	2.2
CENTRAL EASTERN REGION			
Wabash R.R.	102,577,911	2,284,420	2.2
Akron, Canton & Youngstown R.R.	5,721,669	358,532	6.3
Baltimore & Ohio R.R.	356,541,576	27,175,922	7.6
Bessemer & Lake Erie R.R.	25,705,487	111,257	0.4
Central R.R. of New Jersey	44,589,000	1,656,283	3.7
Chicago & Eastern Illinois R.R.	31,796,464	4,529,325	14.2
Chicago & Illinois Midland Ry.	6,382,276	89,526	1.4
Detroit, Toledo & Ironton R.R.	20,750,900	1,104,255	5.3
Elgin, Joliet & Eastern Ry.	40,172,656	565,421	1.4
Illinois Terminal R.R.	10,053,909	737,887	7.3
Long Island R.R.	12,989,416	582,947	4.5
Missouri-Illinois R.R.	5,290,291	90,861	1.7
Monon R.R.	18,298,878	4,811,363	26.3
Pennsylvania R.R. Co.	684,056,569	46,008,333	6.7
Penna.-Reading Seashore Lines	6,872,237	1,152,179	16.8
Reading Company	95,757,696	3,435,431	3.6
Staten Island Rapid Transit Ry.	2,302,014	69,489	3.0
Western Maryland Ry.	47,770,966	1,086,822	2.3
TOTAL EASTERN DISTRICT	$2,799,735,959	$154,908,459	5.5%

	(1) Total Freight Revenue 7/1/58-6/30/59	(2) Official-Southern Freight Revenue North of Gateways 7/1/58-6/30/59	% Col.(2) of Col.(1)
POCOHONTAS REGION			
Chesapeake & Ohio Ry.	$342,321,332	$23,775,885	6.9
Norfolk & Western Ry.	197,577,798)		
Virginian Ry.	46,514,154)	15,953,735	6.5
Richmond,Fredericksburg & Potomac R.R.	14,890,190	9,857,204	66.2
TOTAL POCOHONTAS REGION	$601,303,474	$49,586,824	8.2%
TOTAL EASTERN DISTRICT INCLUDING POCOHONTAS REGION	$3,401,039,433	$204,495,283	6.0%

	Total Freight Revenue 7/1/58-6/30/59	Official-Southern Freight Revenue South of Gateways 7/1/58-6/30/59	% Col.(2) of Col.(1)
SOUTHERN REGION			
Alabama Great Southern R.R.	$ 14,439,445	$ 3,048,927	21.1
Alabama, Tennessee & Northern R.R.	3,333,816	347,064	10.4
Atlanta & St. Andrews Bay Ry.	4,023,573	693,414	17.2
Atlantic Coast Line R.R.	126,830,103	35,293,924	27.8
Carolina & Northwestern Ry.	3,299,035	491,864	14.9
Central of Georgia Ry.	39,531,549	7,109,726	18.0
Charleston & Western Carolina Ry.	6,807,348	1,824,284	26.8
Cincinnati,New Orleans & Tex.Pac.Ry.	35,250,123	21,715,889	61.6
Clinchfield R.R.	21,604,812	7,469,228	34.6
Florida East Coast Ry.	26,528,225	7,972,031	30.1
Georgia R.R.	6,900,073	1,141,320	16.5
Georgia & Florida R.R.	3,452,868	1,547,110	44.8
Georgia Southern & Florida Ry.	8,932,272	1,848,878	20.7
Gulf, Mobile & Ohio R.R.	73,984,416	8,365,517	11.3
Illinois Central R.R.	224,147,979	18,181,696	8.1
Louisville & Nashville R.R.) Nashville, Chatta.& St.Louis R.R.)	208,996,038	35,358,073	16.9
New Orleans & Northeastern R.R.	10,158,993	1,764,438	17.4
Norfolk Southern Ry.	9,687,831	879,069	9.1
Piedmont & Northern Ry.	5,499,652	1,377,194	25.0
Savannah & Atlanta Ry.	3,817,382	513,452	13.4
Seaboard Air Line R.R.	133,422,827	38,632,999	29.0
Southern Ry.	235,976,073	62,913,136	26.7
Tennessee Central Ry.	4,023,803	636,299	15.8
Western Ry. of Alabama	3,315,918)		
Atlanta & West Point R.R.	2,829,844)	575,147	9.4
TOTAL SOUTHERN REGION	$1,213,964,154	$259,700,679	21.4%

Source: Col.(1)-Monthly R&E Reports to ICC, Acct. 101.
(2)-Exhibit 4 to V. S. No. 36.

Appendix D, Section H, p. 24:

VERIFIED STATEMENT NO. 37
OF DONALD G. WOODEN

Cars of Unconsigned Coal Held at South Fork Yard
Situation as of September 27, 1954

From Maryland Shaft #1 Mine

No. Cars.	Date Received	Date Billed Out	Elapsed Car Days
8	9/21/54	9/24/54	24
14	9/22/54	9/24/54	28
10	9/22/54	Still on hand 9/27/54	50
Total 32			102
		Average Days Per Car	3.2

EUREKA #37

No. Cars.	Date Received	Date Billed Out	Elapsed Car Days
1	9/20/54	On hand-9/27	7
3	9/20/54	9/23/54	9
1	9/22/54	9/23/54	1
8	9/22/54	On hand-9/27	40
7	9/24/54	On hand-9/27	21
Total 20			78
		Average Days Per Car	3.9

EUREKA #40

No. Cars.	Date Received	Date Billed Out	Elapsed Car Days
1	9/10/54	9/24/54	14
2	9/14/54	On hand-9/27	26
5	9/14/54	9/24/54	50
2	9/15/54	9/24/54	18
10	9/15/54	On hand-9/27	120
4	9/16/54	"	44
1	9/17/54	"	10
1	9/21/54	"	6
3	9/21/54	9/24/54	9
7	9/22/54	On hand-9/27	35
Total 36			332
		Average Days Per Car	9.2

The 88 cars of unconsigned coal listed on the foregoing statements had to be switched out of the loaded car yards of the mines involved along with the ordered out coal. Upon arrival at South Fork Yard the unconsigned coal had to be switched out of the other cars, placed on hold tracks, and as disposal orders for individual cars were received such cars had to be gotten out of the accumulation in which located and classified for outbound movement. It can be appreciated that some cars were handled and rehandled many times.

As a further reflection of what is demanded of the railroads in the way of car supply to provide for the transportation of coal, I identify at this

Appendix D, Section H, p. 25:

time Exhibit No. 323 (AFM-6). Here is demonstrated statistically that, notwithstanding the greater proportionate ownership of coal (hopper) cars than any other class of car on the Pennsylvania Railroad, the number of shipments

originated per year per coal car owned by and available to the Pennsylvania Railroad is considerably less than the number of shipments originating per year per car of any other class of car.

Exhibit No. 323 (AFM-6) was prepared, insofar as car ownership is concerned, by averaging the figures for January and December, 1952, as reported in A.A.R. Form CS-15A statements, to which were added the cars owned by the Berwind White Coal Mining Company, since they are used in the shipment of coal originating on the Pennsylvania Railroad, and increased as well by 110 cars leased by the Pennsylvania Railroad for use in the movement of closed top freight.

The shipments originating on the Pennsylvania Railroad in 1952 were allocated to the various types of car equipment on the basis of the relationship as determined by the Interstate Commerce Commission, Bureau of Transport Economics and Statistics, from carload waybill analysis as set forth in their Statement No. 5354, issued at Washington in December, 1953. There was only one classification of traffic not reported in Statement 5354 that originated on the Pennsylvania Railroad, namely Class No. 683—Asbestos Articles NOS, of which the Pennsylvania Railroad originated 63 cars and which we have classified as forwarded in box cars. The relationships computed from Statement 5354 (any percentage less than one was disregarded) were applied to the carloads of the same commodities originated on the Pennsylvania Railroad to ascertain the number of cars by types of cars in which transported. The results appear under the headings shown in Exhibit No. 323 (AFM-6).

Appendix D, Section H, p. 26:

We have omitted any attempt to compute the number of shipments per car when moved in refrigerator or tank cars because the P.R.R. does not own any of these classes of cars, and since it would be impracticable to determine

what the car assignment would have been for the volume of traffic offered. We have not specifically treated of stock cars in this analysis because this is a specialized movement subject to humanitarian, legal and particular railroad regulations which make any comparison with bituminous coal inappropriate and valueless.

In an analysis of this exhibit it makes no difference whether Col. 2, Line 19 is used for open-top hopper cars for coal (and coke) in comparing with Cols. 4, 5 and 7, Line 21, for other equipment or whether Col. 2, Line 21, is selected for the use of open top hopper cars. Either comparison shows that the Pennsylvania Railroad while providing an adequate supply of coal cars does not realize therefrom a return of revenue shipments in the same proportion as is experienced with other car types.

From the exhibit the total of turn-around time, idle time at shipping points, in storage, held for or under load may be determined.

(1)	Shipments Per Car Per Year (2)	Number of Days Between Shipments (3)
Open Top Hopper Car Traffic:		
Bituminous Coal	6.5	56
All Commodities	10.4	35
Gondola Car Traffic	12.6	29
Box Car Traffic	13.4	27
Flat Car Traffic	15.4	24

Col. (2): From Line 15, Col. 2, Exh. 323 (AFM 6) for the "6.5" figures; all others from Col. 2, Line 21, same exhibit.
Col. (3): 365 divided by Col. (2).

Appendix D, Section H, p. 27:

Again the less use of open-top hopper cars particularly for bituminous coal is demonstrated by the above statement.

Coal traffic particularly, and bituminous coal especially, enjoys on the whole, a greater fluidity in the way of car sup-

ply than commodities generally. It has been demonstrated elsewhere in my testimony that coal producers have a great advantage in the way of loading cars and holding them in the origin fields free from demurrage, as well as favorable conditions from the demurrage standpoint at tidewater and lake ports. These provisions have had a direct influence on the determination of the number of cars built and maintained by the carriers for the coal trade. Coal cars constitute the greatest number of any particular class of car owned by the Pennsylvania Railroad. One of the adverse effects of such circumstances is set forth in an exhibit which I now identify as Exhibit No. 324 (AFM-7).

Exhibit No. 324 (AFM-7) is a statement showing separately for the years 1944 to 1953, inclusive, the surpluses and shortages of hopper cars on the Pennsylvania Railroad with certain relationships to the United States. Except as otherwise noted or as apparent from the columnar headings the data are the average daily figures, computed, however, in two ways. From Columns 8 to 22, inclusive, the daily average is obtained by dividing the total surpluses and shortages by the number of days on which such surpluses and shortages occurred. Columns 26 to 33, inclusive, show daily averages calculated on a 365 day basis. Shown also on the exhibit is the number of weeks that surpluses and shortages of hopper cars existed in each year, and the percentages these weeks are of the 52 weeks constituting a year's period. The maximum minimum and average surpluses and shortages are related to the Pennsylvania Railroad ownership of hopper cars. Compared therewith, at Columns

Appendix D, Section H, Page 28:

12-13 and 22-23, are the daily average number of P.R.R. cars other than hopper cars, surplus and short, and their percents of total ownership of other cars. Given as well are the number of hopper cars for all the railroads of the United States and the Pennsylvania Railroad proportion

of such ownership. Also shown are the number of cars of bituminous coal originated on the Pennsylvania Railroad and the number of cars of bituminous coal originated in the United States as a whole, as well as the ratio of the Pennsylvania Railroad to the country as a whole.

To ascertain what the situation was before the War and before the depression, I developed the following figures for the year 1929, which was very good from the standpoint of coal production: The Pennsylvania owned 96,452 hopper (coal cars), and the average surplus was 15,053 cars, or 15.61% of its ownership. There were no shortages of equipment during that year.

The following facts indicated by this exhibit are of importance in these proceedings:

1. Where surpluses of hopper cars are reported the percentages of such surpluses to the total hopper car ownership on the Pennsylvania Railroad is remarkably greater than similar ratios for other P.R.R. types of equipment. An example—In the year 1946 the average surplus ratio (Column 13) to P.R.R. hopper car ownership was 41.08% compared with 8.23% (Column 15) for other P.R.R. car equipment. The same is true for the other years when a surplus was shown.

2. When shortages of cars are reported the percentages of such shortages to the total ownership of the Pennsylvania Railroad is consistently very small (the highest in 1950 only .98%—Column 21). Compared with shortages of all other P.R.R. cars coal equipment shortages were greater in only three years of the ten-year period, but at no time as much as one percentage point greater.

Appendix D, Section H, Page 29:

3. When comparison is made between the Pennsylvania Railroad surpluses and shortages and those prevalent in the United States we have a somewhat similar relationship.

It is to be remembered that the surpluses and shortages in these instances (Columns 26-33) were spread over the entire year, not averaged simply for the days on which surpluses and shortages occurred.

4. Note that the Pennsylvania Railroad's ratio of hopper cars owned to the total of the United States ranges from 13.25% in 1953 to 15.75% in 1944 (Column 34), whereas the number of cars of bituminous coal originated on the Pennsylvania Railroad compared with the United States as a whole ranges from a low of 9.19% in 1953 to a high of 12.12% in 1946 (Column 37).

If columns 35, 36 and 37 of Exhibit No. 324 (AFM-7) were followed by others representing the sum of the cars of bituminous, anthracite and coke originated on the P.R.R. and the United States and by still other columns covering Products of Mines, we would have the following percentage relationships:

Year	Per Cent. P.R.R. of United States Number of Cars Originated		Per Cent. P.R.R. Ownership Hopper Cars of United States (Col. 34, Exh. 324 (AFM-7)
	Bit., Anth., Coke	Products of Mines	
1944	11.15	8.73	15.75
1945	11.13	8.75	15.63
1946	11.81	9.25	15.50
1947	11.77	8.81	15.34
1948	11.05	8.27	14.80
1949	10.50	7.70	14.25
1950	10.25	7.66	14.27
1951	10.17	7.45	14.32
1952	10.09	7.19	13.80
1953	10.18	7.14	13.25

• • •

Appendix D, (Pages 69-70), Section H, Page 30:

Regardless of how the comparison is made the P.R.R. ratio of hopper car ownership to that of the United States is greater than the coal and coke originated on its line or of Products of Mines, which, of course, includes in addition such commodities as ore, gravel, sand, etc.

Since the car data for the United States showing hopper cars separately are not readily available for 1929 and 1936, we have been unable to show the ratios for those two years.

Along with Exhibit No. 324 (AFM-7) consideration should be given to the showing hereinbefore made in the matter of "no-bill" or unconsigned cars loaded with bituminous coal, for which the railroad received no demurrage. In other words, in the one instance the railroad must have available and on hand without revenue return empty cars made idle through no fault of its own, and on the other hand provide storage for coal in its cars, likewise without revenue return.

Mr. R. C. Klein, witness for the Reading Company, has explained in his testimony the concessions made to the coal industry by the carriers, with Interstate Commerce Commission approval, in connection with the assessment of demurrage at tidewater and lake ports during the demurrage periods from February 1, 1953 to January 31, 1954.

Closely associated with the foregoing waiving of demurrage charges at tidewater and lake ports, with the lack of assessment of demurrage charges in the origin fields, with the greater number of coal cars required because of these conditions, is the assumption of per diem at tidewater and lake ports due to the time foreign cars are held under load with bituminous coal by the coal trade.

Appendix D, Section H, Page 31:

Based upon the months of February, March and April, 1953, the statement below shows such detention for the various Pennsylvania Railroad port cities handling bituminous coal:

Location	No. For Cars	Car Days Held	Avg. Days Delay per Car
South Amboy	2956	22,345	7.6
Philadelphia	1760	19,096	10.9
Baltimore	2600	11,574	4.5
Sodus Point	5119	20,790	4.1
Total	12435	73,805	5.9

At the present per diem rate of $2.40 per car per day, the 12,435 foreign cars detained an average of 5.9 days per car, would require the payment of $176,078 for car rental.

At the same ports, during the same months of 1953, Pennsylvania Railroad owned equipment loaded bituminous coal was detained as follows:

Location	No. Cars	Car Days Held	Av. Days Delay per Car
South Amboy	7270	60,083	8.3
Philadelphia	4366	51,428	11.8
Baltimore	3621	18,937	5.2
Sodus Point	8473	36,448	4.3
Total	23730	166,896	7.0

It is quite evident, therefore, that the handling of tide-water coal and coal transshipped at Lake Ontario Ports entails an unusually high detention of equipment.

VERIFIED STATEMENT NO. 38
OF ROBERT L. CORNELIUS

My name is Robert L. Cornelius. I am Assistant Comptroller, Atlantic Coast Line Railroad, Jacksonville, Florida. Prior to my appointment to this position, I was Assistant Director of Research, Association of Southeastern Railroads. I have had in excess of twelve years' experience in transportation and statistical work, of which the past ten years' experience has been primarily involved in and closely associated with statistical analysis and cost-finding in the railroad field. My duties with the Association of Southeastern Railroads required the preparation of exhibits and testimony for presentation before the Interstate Commerce Commission and the various public service and public utility commissions in states in the South. My present position involves similar duties on behalf of the Atlantic Coast Line Railroad Company.

This statement deals with the construction of a scale of divisional prorating factors and assumes, as the Commission found in its prior order in this Investigation, that uniform cost levels are applicable to the handling of the North-South traffic in each of the two territories.[1] Also, as was prescribed for present divisions, an equal factor scale, i.e., the same scale used by the North and the South, is assumed to be appropriate for purposes of this discussion. Other witnesses will deal with the determination and measurement of any differences in the cost of handling the Official-Southern traffic.

[2]

The construction of a scale of prorating factors to be used to divide the joint revenue from North-South traffic is extremely important, notwithstanding that the same scale

[1] Official territory and Southern territory will be referred to herein often as the North and the South, respectively.

applies to the miles performed in each territory. In a scale having a straightline progression such as that prescribed in Docket 29885, the magnitude of the factor, or integer, in the first mileage block determines to a large degree the distribution of the revenue whenever a disparity in length of haul exists between two participating groups of carriers. To illustrate, assume average hauls of 350 miles in the North and 500 miles in the South, the approximate average hauls on the North-South traffic subject to the Docket 29885 divisions scale. The present prescribed scale would divide each $100 of joint revenue as follows:

	I.C.C. Docket 29885 Scale			
	Haul	Integer Value	Percent	Revenue Division
North	350	137	44%	$ 44
South	500	174	56	56
Total	850	311	100%	$100

If, however, thirty-seven (37) integers are eliminated from the prescribed scale, with the progression of the scale remaining unchanged, each $100 of joint revenue would divide as follows:

	I.C.C. Docket 29885 Scale Minus 37 Integers			
	Haul	Integer Value	Percent	Revenue Division
North	350	100	42%	$ 42
South	500	137	58	58
Total	850	237	100%	$100

Thus, at these hauls, the present scale gives the North $44 out of each $100 to be divided, while a scale having 37 integers less in the first mile-

[3]

age block would give the North $42. In effect, at hauls of 350 North, 500 South, the presence or exclusion of 37 integers in the present scale of divisional integers controls the distribution of $2.00 out of every $100 of joint revenue, and

the presence of the 37 integers favors the territory having the shorter haul, in this instance the North.

The magnitude of the integer value in the first mileage block is even more important to individual hauls. As illustration, consider the plight of the Florida East Coast Railway. Because of its geographical location, it only participates in the North-South traffic when the haul in the South is greater than 589 miles, the shortline distance between Jacksonville, Fla., and Roanoke, Va., or more often greater than 622 miles, the shortline distance between Jacksonville, Fla., and Richmond, Va. When the F.E.C. participates in this traffic from or to Miami, Fla., the haul in the South is at least 953 miles, or 985 miles, depending on whether the gateway is Roanoke or Richmond.

On the other hand, hauls in the North on movements in which the Florida East Coast participates may often be relatively short. For example, the distance from Richmond, Va., to Washington, D.C., on the Richmond, Fredericksburg and Potomac Railroad is 110 miles; from Roanoke, Va., to Cincinnati, Ohio, on the Norfolk and Western, 424 miles; and from Richmond, Va., to New York City on the R.F.&P. and Pennsylvania R.R., 340 miles. As shown by the South's traffic study on movements in which the F.E.C. participates, the haul in the North averages 363 miles and in the South 1,011 miles.

[4]

At these hauls, under the present prescribed scale, every $100 of revenue is divided as follows:

	I.C.C. Docket 29885 Scale			
	Haul	Integer (Interpolated)	Percent	Revenue Division
North	363	140.12	32.08%	$ 32
South	1,011	296.64	67.92	68
Total	1,374	436.76	100.00%	$100

Again, however, the elimination of 37 integers from the percent scale would divide each $100 of revenue as follows:

	I.C.C. Docket 29885 Scale Minus 37 Integers			
	Haul	Integer (Interpolated)	Percent	Revenue Division
North	363	103.12	28.43%	$ 28
South	1,011	259.64	71.57	72
Total	1,374	362.76	100.00%	$100

It is evident that whenever such a disparity of haul exists, 37 integers in the first mileage block of the Docket 29885 scale determine the distribution of $4.00 out of every $100 of joint revenue, and its inclusion favors the group of carriers having the shorter haul.

[5]

That the presence of an integer value greater than justified on the basis of costs in the first mileage block of the Docket 29885 divisional scale does markedly affect the carriers that participate in the long hauls, such as the F.E.C., is more evident when its effect on the rate of return is measured. Assuming equal costs, the northern and southern railroads share in the cost of performing hauls of 363 miles North of the gateway and 1,011 miles South, as follows:

	Official-Southern Average F.D. Costs[1]				
	Miles	Operating Expenses Rents and Taxes	Return at 4%	Total Cost	Distribution
	(1)	(2)	(3)	(4)	(5)
North	363	$131.29	$ 28.76	$160.05	29.26%
South	1,011	314.96	71.98	386.94	70.74
Total ..	1,374	$446.25	$100.74	$546.99	100.00%

On the basis of relative costs, each $546.99 of joint revenue would divide $160.05 North and $386.94 South and produce a four percent rate of return for each of the carriers participating in the haul.

[1] Official-Southern average costs have been used to observe an equality of costs as between the North and the South.

The Docket 29885 scale would divide this $546.99 of joint revenue $175.47 North and $371.52 South, computed as follows:

	I.C.C. Docket 29885 Scale			
	Haul	Interger (Interpolated)	Percent	Revenue Division
North	363	140.12	32.08%	$175.47
South	1,011	296.64	67.92	371.52
Total	1,374	436.76	100.00%	$546.99

[6]

This in turn would give a 6.14 percent rate of return to the carriers in the North and 3.14 percent return to the South, in lieu of a 4 percent return to which each group of carriers is entitled by their proportionate costs. The following illustrates the effect:

	Docket 29885 Division of Revenue	Operating Expenses Rents & Taxes	Return [Col. (1) Minus Col. (2)]	Rate of Return
North	$175.47	$131.29	$ 44.18	6.14%
South	371.52	314.96	56.56	3.14%
Total	$546.99	$446.25	$100.74	

Railroads that participate principally in the long hauls fail to receive full cost proportions of the through revenue, which results in a depressing impact on rate of return. This has a most pronounced effect upon the Florida East Coast Railway, participating only in the longer hauls and benefits in favor of the relatively shorter haul carriers in the North.

It is, therefore, extremely important to have the scale of divisional integers correctly constructed in order to accomplish equality of divisions. It will be developed later in this statement that the present Docket 29885 scale of divisional integers does in fact contain an integer allowance in the first mileage block which exceeds an allowance constructed on costs by 37 integers: (1) six of which are attributable to integer values reflecting mileages at upper limit of each block; (2) 31 of which are due to the use of a rate

scale progression in the construction of the divisional integer scale. Each of these propositions will be dealt with separately.

[7]

I. Application of Scale to Mileage Blocks

In the construction of a scale of integers, consideration must be given to a linehaul element and a terminal element. As will be seen in Part II hereof, the Commission recognized the terminal service by the deduction of one terminal allowance from the Appendix 18, Docket 28300 rate scale. Recognition was given, of course, to the linehaul element in the progression of the scale itself (12.06 integers for each 50 miles of linehaul service.)

It is not sufficient, however, merely to recognize the existence of terminal and linehaul elements as components of a divisional integer scale, but each must be weighted into the scale in a manner which preserves or establishes a proper relationship between them. Whether the starting point in construction is with the terminal or with the linehaul element (progression of scale), the terminal component must contain the equivalent of a predetermined number of miles of linehaul service. How many miles are proper will be considered under the subject of, "Rate Scale Progression." How many miles of linehaul are allowable in the first mileage block is of primary consideration at this point.

Once the progression of the scale has been established—for instance the 12.06 per each 50 miles in the present prescribed scale—and the mileage block construction has been established—multiples of 50-miles each as in the present prescribed scale—the problem is how much allow-

[8]

ance for linehaul should be included in the 0-50 mile block of the scale. The prescribed scale now allows a full 50 miles of service within each mileage block irrespective of actual miles of service performed.

This method gives credit for miles of service not actually performed on every carload having an actual haul less than the upper limit of the mileage block. A carload of traffic actually receiving a full fifty miles of linehaul in one territory would receive credit for service performed. However, if a second car had but one mile of linehaul service, it would also be assigned an integer reflecting a full 50 miles of service. The two cars combined would have received, in effect, credit for a total of 100 miles of linehaul service or an average of 50 miles per car, compared to an actual total of 51 miles or an average of 25.5 miles per car. To reflect service actually performed, the first mileage block should reflect 25.5 miles of linehaul service in lieu of 50 miles.

While this illustration is limited to only two cars, it would be expected that any sizeable sample of cars would produce the same average, that is, the cars distributed throughout the mileage block with about as many having hauls above as below 25.5 miles—the arithmetic mean or midpoint of the 1-50 mile mileage block. By the same token, for subsequent mileage blocks the weighted average haul would be expected to be 75.5 for the second block, 125.5 for the third, etc.

[9]

As shown by Appendix A hereto, this assumption is borne out in actual practice. Based on the North's traffic study (underlying Witness Butler's Verified Statement No. 1), the weighted average haul within each mileage block north and south of the gateway, respectively, coincides, for all practical purposes, with the arithmetic mean or midpoint of each block. For ready inspection, a portion of that appendix is reproduced below:

[10]

Weighted Average Hauls by Mileage Block vs. Mileage Block Mid-Points—North-South Traffic

Mileage Block (1)	Average Haul (2)	Arithmetic Mean or Mid-Point (3)	Deviation (Diff. Bet. Mileage Block Mid-Point and Average Haul) (Col. 3 Minus Col. 2) (4)
	—NORTH OF GATEWAY—		
50	29.53	25.50	— 4.03
100	74.17	75.50	+ 1.33
150	124.95	125.50	+ .55
200	174.07	175.50	+ 1.43
250	228.07	225.50	— 2.57
300	273.60	275.50	+ 1.90
350	327.60	325.50	— 2.47
400	372.86	375.50	+ 2.64
etc.	etc.	etc	etc.
	Net difference—all mileage blocks		+14.41
	Average net difference (14.41+24 mileage blocks)		+ .60
	Total difference above or below mid-point		62.03
	Average difference (62.03+24 mileage blocks)		± 2.58
	—SOUTH OF GATEWAY—		
50	30.22	25.50	— 4.72
100	78.74	75.50	— 3.24
150	127.62	125.50	— 2.12
200	173.88	175.50	+ 1.62
250	222.86	225.50	+ 2.64
300	279.53	275.50	— 4.03
350	324.58	325.50	+ .92
400	375.12	375.50	+ .38
etc.	etc.	etc.	etc.
	Net difference—all mileage blocks		+ 1.26
	Average net difference		+ .05
	Total difference above or below mid-point		83.90
	Average difference		± 3.50

[11]

From this table and Appendix A, it will be noted that the actual weighted average hauls north of the gateway on the average fall within 2.58 miles above or below the arithmetic mid-point of each mileage block, and the individual differences range from .44 to 7.14 miles above or below. Furthermore, as between mileage blocks, excesses of mileages above the arithmetic mid-point offset almost exactly the deficiencies below the mid-point, as evidenced by an average net difference of +.60 miles per mileage block north of the gateway. South of the gateway, the actual weighted average hauls fall within 3.50 miles above or below the arithmetic mid-point of each mileage block. Here also, throughout the mileage block scale, actual hauls exceed the mid-point miles by about the same amount that they fall short of the mid-point, as indicated by an average net difference per block of +.05 miles.

As shown in Appendix B, the same picture is portrayed if the South's traffic study is substituted for that of the North. Based on South's traffic study, the weighted average hauls north of the gateway fall on the average within 2.65 miles above or below the arithmetic mid-point of each mileage block and south of the gateway within 3.67 miles.

In the final analysis, the extent to which any disparities within individual mileage blocks might distort the results produced by a scale of divisional integers founded on mid-point miles, would depend on the mileage block distribution of the total revenue to be divided.

[12]

It will be noted from Appendix A that most (in fact, 80 percent) of the North-South revenue is accounted for by hauls between 100 and 650 miles north of the gateway and between 250 and 850 miles south of the gateway. In a scale of divisional integers the factors for these mileage blocks will, of course, have the greatest influence in the division

of the North-South revenue. Weighing each of the differences between actual average hauls and arithmetic mid-points by the distribution of total revenue, produces a weighted average difference of ±2.11 miles north of the gateway and ±2.61 miles south of the gateway, in lieu of unweighted average differences of ±2.58 miles and ±3.50 miles respectively. This would indicate that there is even less disparity between actual average hauls and the arithmetic mid-point miles where the revenue to be divided is considered than would be indicated by a simple inspection of differences throughout the mileage block scale.

Conversely, the wide divergence between the weighted average haul in each mileage block and the maximum miles of each block is pointed out in Appendix A. Both north and south of the gateway, the mileage block mileages exceed the actual average hauls within each block by 25.10 miles on the average in the North and 24.55 miles in the South.

Another way of looking at this is by comparing the overall effective average haul with the actual average haul of the North-South traffic. The effective average haul is developed from car-miles which credit each car with miles at the extreme end of each 50-mile block. Based on the South's traffic study, the effective average haul north of the gateway

[13]

is 396 short-line miles compared to an actual average haul of 372 short-line miles. South of the gateway the effective average haul is 545 short-line miles compared to the actual average haul of 522 short-line miles. In other words, the effective average haul exceeds the actual average haul by 24 short-line miles north of the gateway and 23 short-line miles south of the gateway.

This proves that the arithmetic mean or mid-point is a reliable and fair measure of the miles of service rendered in each mileage block. It is possible, however, to measure more precisely the closeness of relationship between the

arithmetic mid-point and weighted average haul by more refined statistical measures. One measure of relationship between two series of values is the *coefficient of correlation.* This is used to measure the degree of change in one series of variables associated on the average with a change in another series. The results of this computation always fall within the range of 0 and 1—zero indicating absence of relationship, and 1 perfect relationship. Application of this measure to determine the degree of relationship between a scale of actual average hauls by mileage blocks and a scale of arithmetic mean or mid-point hauls resulted in a coefficient of correlation of .999965 north of the gateway, and .999931 south of the gateway, indicating extremely high degree of relationship between the two scales.

The second measure of relationship which aids in describing the relationship between two series of variables is the *standard error of estimate.* This is used to measure in absolute terms the range above and below

[14]

the scale of arithmetic means or mid-points within which the actual mileage block average hauls fall. Application of this measure reveals that north of the gateway, in 68 percent of the mileage blocks the average hauls would fall within 3.03 miles of the airthmetic mid-point, in 95.5 percent within 6.06 miles and 99.7 percent within 9.09 miles. South of the gateway in 68 percent of the cases the actual average hauls would fall within 4.51 miles of the arithmetic mid-point; in 95 percent within 9.02 miles; and in 99.7 percent within 13.53 miles.

Thus the existence of an extremely close relationship between mileage block mid-point and actual average haul is borne out by both visual inspection and statistical measurement. This doubly confirms that miles at the mid-point rather than miles at upper extreme of each mileage block properly reflect linehaul service in a scale of divisional integers. The use of the upper extreme of the mileage block to reflect linehaul service into a scale of divisional integers

adds 24.5 (50-25.5) miles not performed. The 24.5 excess mileage allowance is, of course, incorporated in the first mileage block as each additional mileage block is and should be credited with a full 50 additional miles. As the presently prescribed scale of divisional integers allows 12.06 integers for each 50 or .2412 for each mile of service, the reflection of linehaul service at the upper limit of the mileage block results in an excess of 6 integers (24.5 times .2412) in the first mileage block. It follows, of course, that the factor in each subsequent mileage block is six integers too high. This excess, in reality, has the same effect in application of the scale, but is in addition to the excessive terminal allowance which will be dealt with next.

[15]

II. Construction of Integer Scale Based upon Rate Scale Progression

An analysis of the scale of prorating factors prescribed in Docket 29885 indicates a close similarity to the Docket 28300, Appendix 18, Class 100 rate scale. As shown by Chart 1, the Docket 29885, Column 1 scale was apparently constructed by the subtraction of 26 integers (ostensibly a one terminal allowance in the Class Rate Scale)[1] from the rate per cwt. at 50 miles and from the rate per cwt. for 1600 miles, respectively. The resultant value (65 cents per cwt.) at 50 miles became the integer value for the 50-mile block as the base integer of the scale. The overall progression in the rate scale between 50 miles and 1600

[1] Derived as follows from Docket 28300 Appendix 18, Class Rate Scale:

	Cents per cwt.
a. Rate for 10 miles	64
b. Rate for 5 miles	58
c. Difference (a.—b.)	6
d. Two terminal factor (b.—c.)	52
e. One terminal factor (d.÷2)	26

miles was incorporated into the integer scale by adding 12.06 integers [2] for each subsequent 50 miles beyond the 50-mile block.

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[2] Derived as follows:

Item	Mileage Block	
	50 Mile	1600 Mile
(1)	(2)	(3)
a. Appendix 18 rate (cents per cwt.) ..	91	465
b. One terminal factor (see [1] above)	26	26
c. Difference (a.—b.)	65	439
d. Total linehaul increment between 50 miles and 1600 miles (Item C, Col. 3 minus Col. 2)		374
e. Increment per 50 miles (Item d.÷31)		12.06

Chart 1

Docket 29985 Divisional Integer Scale vs. Docket 28300 Appendix 18 Class 100 Rate Scale

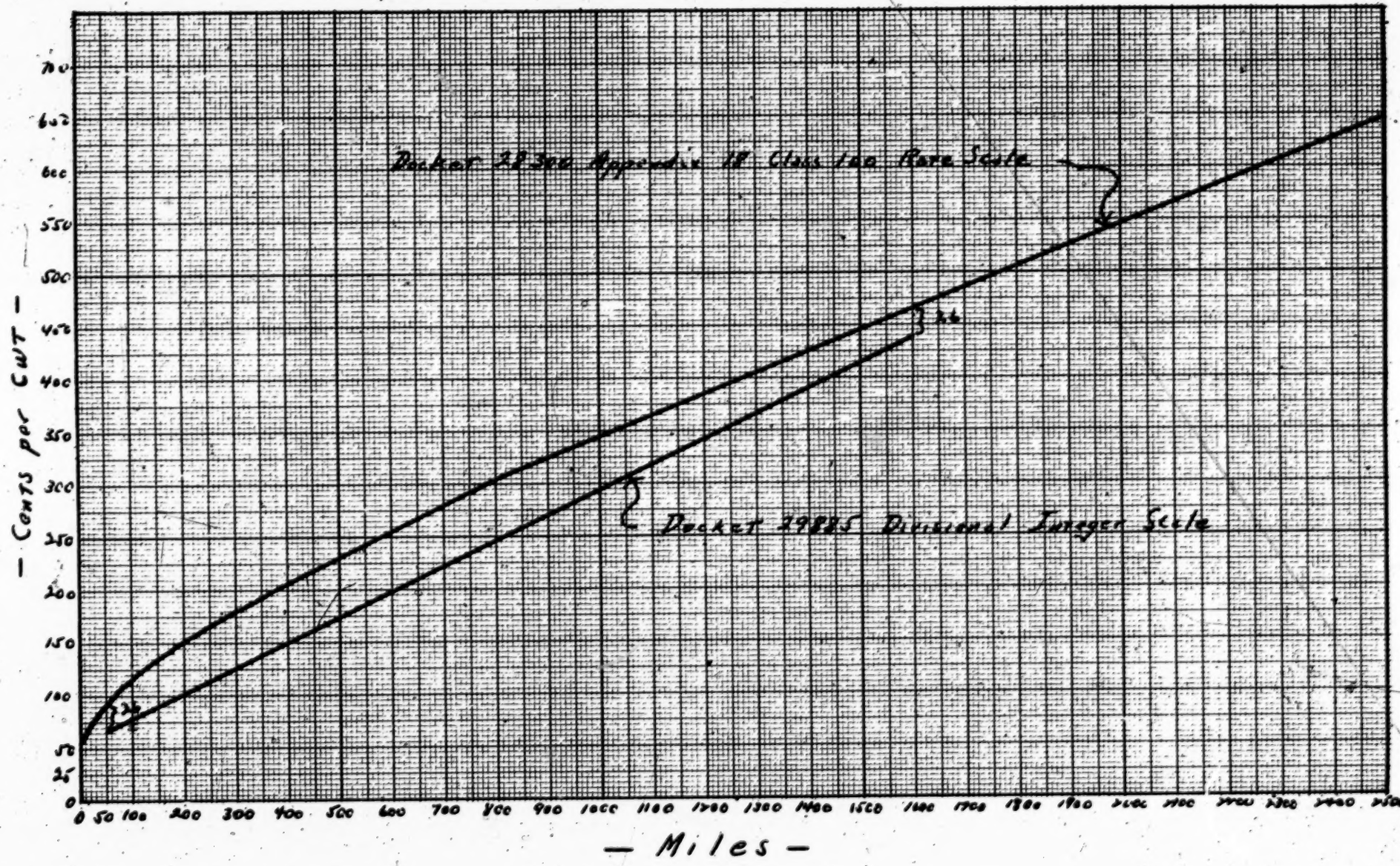
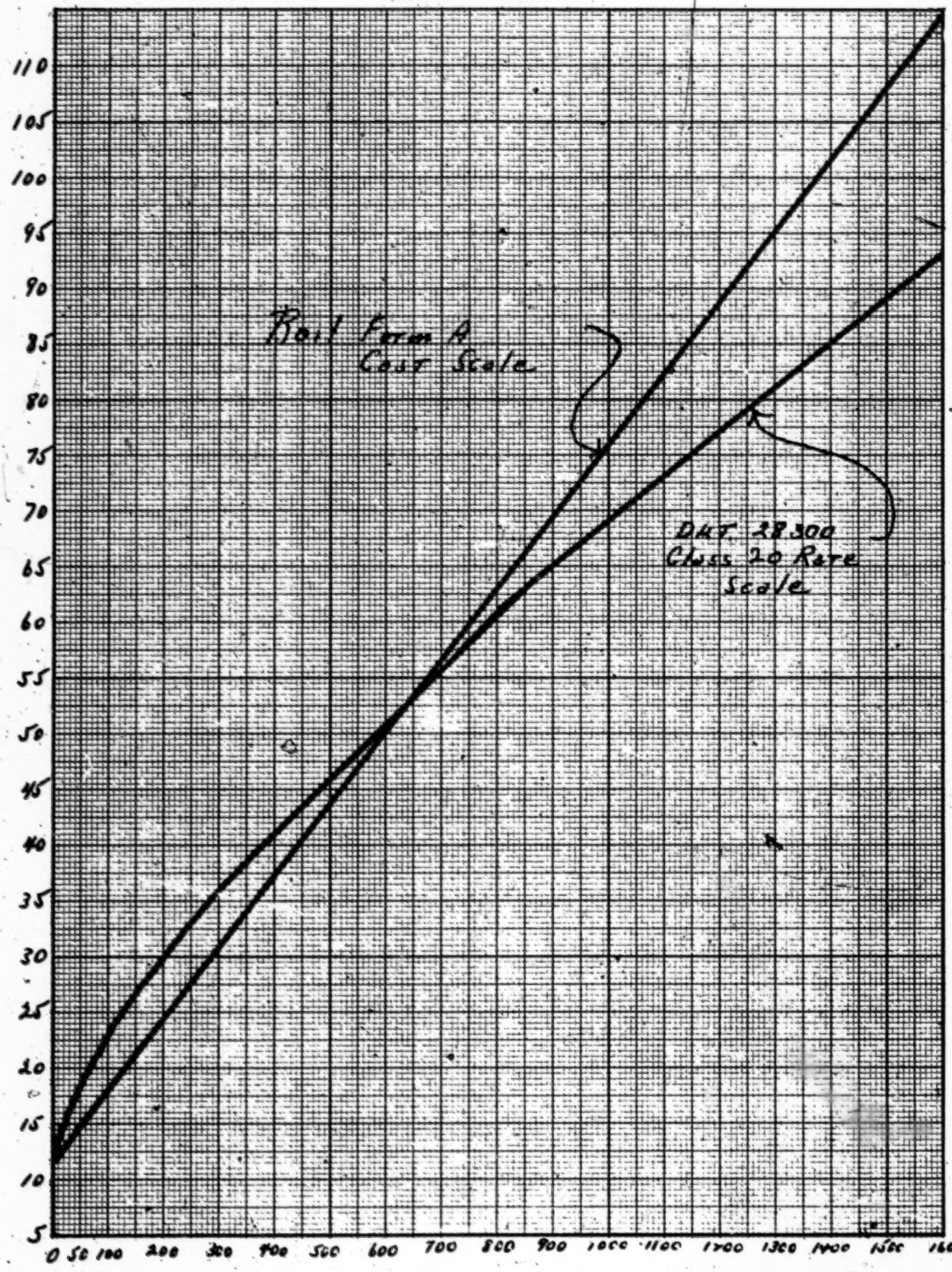


Chart 2

Docket 28300 Class Rate Scale vs. Rail Form A Cost Scale



SOURCE: V.S. 38, OPP. P. 16

[16]

As borne out by Chart 2, the Docket 28300, Appendix 18, class rate scale has very little relationship to a rail carload cost scale,[1] the reason being that costs of service do not control the contours of rate scales. The Commission recognized this in Docket 28300 as follows:

> "Costs alone do not determine the maximum limits of rates. Neither do they control the contours of rate scales or fix the relations between rates or between rate scales. Other factors along with costs must be considered and given due weight in these aspects of rate making." (262 I.C.C. 693)

While cost of service may have been a consideration in prescribing rate scales, "other factors" considered have caused the resulting rate scales to lose their identity with cost scales, particularly at the longer hauls. Most important of the "other factors" has been the depression of the scale at the longer hauls to enable traffic to move at longer distances. The Commission has held that even though the rate for each haul should contain both a cost and profit factor it was necessary to make rates which would yield less profit in the longer hauls and more profits in the shorter hauls because the shorter hauls could better pay the higher rate of return.

At the time of the Class Rate Investigation, 1939, the Commission's analysis of the construction of various class rate scales previously pre-

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[1] The costs reflected in Chart 2 represent a combination of the Regional Rail Form A applications made by the I.C.C. Cost Section for the year 1956 and hereafter will be referred to as *Official-Southern average* costs. The regional applications for Eastern District and Southern Region which comprise a part of the Official-Southern composite are the same as used by Witness Heywood in Exhibit B to V.S. No. 3 at pages 13 and 14.

[17]

scribed by them showed the rate of progression was usually high in the first 75 miles, giving consideration to the expensive way-train service; beyond 75 miles the rate of progression was somewhat lower, giving consideration to the lower cost through-train movement; and in the longer hauls a "still lower rate of progression for the purpose of permitting traffic to move long distances." (262 I.C.C. 642)

Witness E. S. Hobbs, in his Exhibit No. 5 in the Docket 28300 Class Rate Investigation (published as I.C.C. Bureau of Transport Economics and Statistics, Statement No. 4031) attributed the changing rate of progression in rate scales to additional "other factors" such as economic policy requiring lowered rate of progression in the long hauls "to enable the shipper-manufacturer or shipper-producer to compete in a distant market with those located adjacent to the market area," and to carrier competition for through longhaul business with carriers of same and other kinds of transport. From a comparison of cost scales with rate scales he concluded that:

> "Freight rate scales in general, as previously noted, comprise, in addition to an initial curve, two or more different straight-line progressions usually beginning at 800 miles and occasionally also at 300 miles for which no ground is apparent in an analysis of costs." (I.C.C. Statement No. 4031, page 20)

A comparison of the Docket 28300 Appendix 18 class rate scale with a rail cost scale as shown in Chart 2 reveals that the progression in the class rate scale cannot be explained by an analysis of costs. The class rate scale has a progression that is curvilinear up to 360 miles, straight-line to 800 and another straight-line beyond, while the cost scale pro-

[18]

gresses in straight-line beyond 35 short-line miles[1] because

[1] Average haul in way-trains in Official-Southern regions, combined.

linehaul costs beyond the way-train service progress uniformly with distance. The Appendix 18 first class rate scale does then have built into it "other factors" which are commercial considerations designed to attract traffic, and which have nothing to do with relative service performed under a joint rate. That rail costs do in fact progress in a straight line as distance progresses has been established in studies of the Cost Finding Section, as discussed in Appendix G hereto.

A proper criterion for establishment of divisions of joint revenue is the relative service performed in providing the joint transportation, and cost of providing that service is a measure of service performed. The Commission recognized that cost of service is a prime consideration in determining divisions in *New England Divisions* (66 I.C.C. 199) and again at the time of prescribing the Docket 29885 scale. (See 287 I.C.C. 524-5). Witness L. E. Butler of the Eastern lines, a witness for respondents in this proceeding also advocated costs as being the proper standard for divisions. He stated at page 1 of his Exhibit E-487 in I.C.C. Docket No. 31503 as follows:

> "Based upon many years of experience in divisions matters I am of the opinion that relative costs of service here afford the fairest common standard by which to weigh the relative contribution of the participating groups of carriers in the performance of the joint transportation."

Also attached to that same Exhibit E-487, as Appendix C, was a

[19]

mileage scale of fully distributed costs for carload freight service prepared by Witness Heywood. Witness Butler described the scale as follows at pages 11 and 13 of his Exhibit E-487 in Docket 31503:

> "To illustrate what I think is a more sound use of relative service costs in the determination of divisional

prorating factors, I have set forth in Appendix C, attached hereto, mileage scales of fully-distributed costs for carload freight service for the Eastern and Western Districts as prepared by Witness Heywood. (Exhibit E-504, p. 38)

* * *

"This scale of relative costs is illustrative only, and I am not to be understood as testifying that these are necessarily the costs which the Eastern lines will ultimately urge as the most significant for Commission consideration. These scales of relative costs illustrate how the Eastern lines would like to have the Commission proceed in arriving at fair scales of divisional prorating factors."

The composite cost scale of Witness Heywood, to which Witness Butler referred and which appeared at page 38 of Exhibit E-504 in C.C.C. Docket 31503, was in the same form as page 17 of Exhibit B to Witness Heywood's Verified Statement No. 3 in this proceeding.

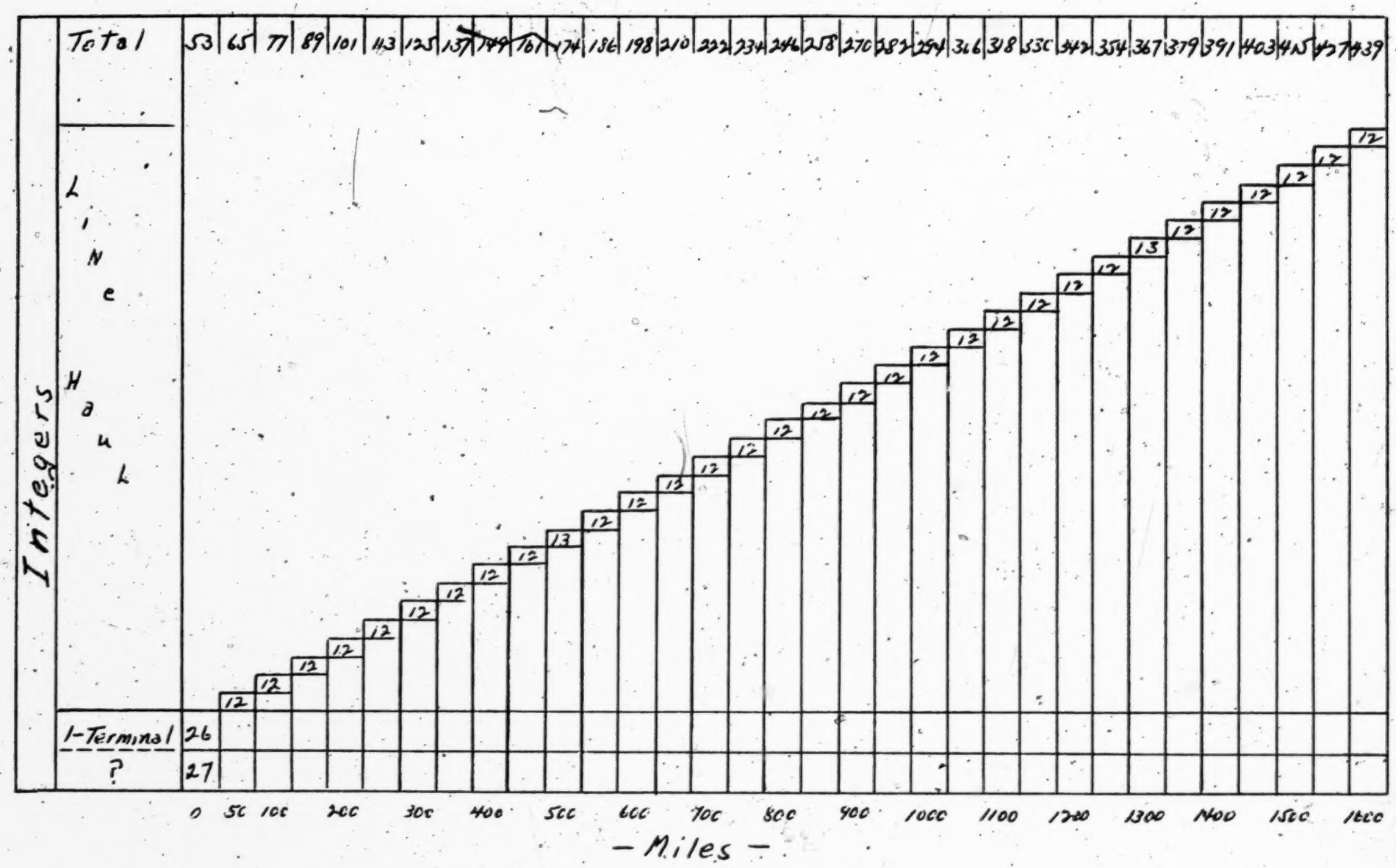
In Docket 28277, the Official-WTL Divisions Case, the Eastern lines criticized the use of a rate scale progression in a scale of divisional integers and advocated scales of prorating factors based on relative costs. At page 95 of Exceptions to Examiner's Report (first report) counsel for Eastern lines states:

"Since the proportionate contribution of the two groups of carriers to the performance of the transportation should furnish the primary consideration in the determination of a reasonable divisional basis, and since that contribution of effort or expense can ordinarily be best measured by relative costs of service, it is of major importance that there be taken into account the progressions which relative costs of service would produce in a scale of divisional factors predicated thereon."

Chart 3

Analysis of ICC Docket No. 29885 Divisional Integer Scale

Column I Scale



[20]

In their Exceptions to Examiner's second report in the same case, Eastern lines' counsel further stated:

> "'The Commission's objective should be to ascertain the relative amounts of service rendered by each group of lines as reflected in their relative service costs and to let that standard govern the distribution of the revenues. Scales of pro-rating factors based upon relative costs automatically make appropriate provision, on an average basis, for both the terminal and linehaul services rendered.'' (page 54)

Turning now to the Docket 29885 scale of prorating factors, it will be recalled that the 50-mile factor was arrived at by the deduction of 26 integers from the Class 100 rate per cwt. for 50 miles. If the 26 integers is accepted as a proper allowance for one terminal, then the 50-mile factor in the divisional scale would leave 27 integers unexplained.[1] This is illustrated graphically by Chart 3. A portion of this excess might be justified by the differential in way-train cost over through-train cost. However, Official-Southern Form A average costs for the year 1956 indicate that way-train costs per mile are 1.22 times the through-train costs per mile and that the average haul in way trains at either end of the haul is 18 miles (27 miles in the South and 14 miles in the North). If the 12.06 linehaul increment for each 50 miles in the divisional scale is attributable to through-train service, then the allow-

[21]

ance for excess way-train cost in the 50-mile factor would

[1] Computed as follows:

Factor for 50 miles	65
One terminal	26
Net	39
Less: 50 miles of linehaul	12
Balance	27

account for only 1 of the 27 unexplained integers.[1]

There remain therefore, 26 integers not accounted for by cost considerations which must be attributable to the derivation of the prorating scale from a rate scale which reflects a depressed progression.

The establishment of 26 integers as the terminal allowance in the Docket 29885 scale itself is statistically disproportionate to the through-train linehaul progression of 12.06 integers per each 50 miles. Conversely, if the 26 integers is a proper terminal allowance then the 12.06 increment for each 50 miles is an improper through-train linehaul progression. An appropriate statistical relationship would be a 21 integer terminal with a 12.06 linehaul progression or 26 terminal and 15.05 linehaul. Either of these reflects the relationship between the terminal and linehaul costs shown in the following table.

	One Terminal	50 Miles of through train cost	Ratios-50 Miles of through train cost to 1 terminal
Rail Form A Costs (Off.-Sou. average)	5.55¢	3.21¢	.58
Terminal equal to 26	26.0	15.05	.58
50 Mile Linehaul equal to 12.06	20.8	12.06	.58

Stated in another way, measured by Official-Southern Rail Form A costs, one terminal represents 86.4 miles of through-train linehaul service.

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[1] Computed as follows:

1. Increment for 50 miles in through trains	12.06
2. Increment per mile in through trains (Item 1 ÷ 50)	.2412
3. Increment for 18 miles in through trains (Item 2 x 18 miles)	4.3416
4. Increment for 18 miles in way-trains (Item 3 x 1.22)	5.2968
5. Excess 18 miles in way over 18 miles in through (Item 4 minus Item 3)	.9552

[22]

When the starting point is the 12.06 linehaul progression the terminal factor would be 86.4/50 times the linehaul increment or 20.8 rounded to 21. Conversely when the starting point is a terminal of 26 the linehaul progression would be 50/86.4 of the terminal or 15.05.

By way of contrast, the Docket 29885 scale of prorating factors allows the equivalent of 215.6 miles (52 ÷ .2412) of through-train service in the present terminal factor. If we disregard the 26 unexplained integers, the remaining 26 integer terminal would allow the equivalent of 107.8 miles of through-train service. This exceeds the terminal allowance as measured by Form A cost relationships for Eastern District, Pocahontas Region, and Southern Region combined, as shown above, or individually as follows:

	Based on Form A Costs for:		
	Eastern District	Pocahontas Region	Southern Region
a) 50 miles of through-train linehaul when terminal equal 26 ..	12.74	14.82	17.94
b) Terminal when 50 miles of through-train linehaul equals 12.06 ..	24.8	21.2	17.4
c) Equivalent miles of through-train service in one terminal	102.7	88.0	72.1

It follows then that based on Official-Southern Rail Form A cost relationships, the integer value in the first 50-mile block (and each subsequent block) of the present divisional scale is 37 integers too high if we accept the linehaul progression of the scale as being proper. The 37 integers are computed as follows:

	Integer
1. Excess terminal (26-21)	5
2. Excess unexplained by costs	26
3. Excess from use of extreme and of 50-mile block in lieu of mid-point mileage	6
4. Total excess	37

Accordingly, the Docket 29885 Divisional Scale can be revised to reflect equal costs for the handling of the involved traffic by the deduction of 37 integers from the scale as follows:

Mile	Docket 29885 Scale	(Basis A) Revised Scale
50	65	28
100	77	40
150	89	52
200	101	64
250	113	76
1600	439	402

See Appendix D hereto.

If, on the other hand, we start with the 26-integer terminal factor, it is necessary to add 1.2 integers for the excess of 18 miles of way-train over 18 miles of through-train cost plus 7.7 for 25.5 miles of through linehaul service to produce the factor of 35 for the first mileage block. The scale should then progress uniformly by 15.05 integers for each subsequent mileage block as follows:

[24]

Mile	Docket 29885 Scale	(Basis B) Revised Scale
50	65	35
100	77	50
150	89	65
200	101	80
250	113	95
1600	439	501

See Appendix E hereto.

Either method of construction builds cost relationships into the scale which on application would produce revenue

division based on equality of costs. Its application for either short or long haul carrier will effect a division of the joint revenue in direct proportion to the relative service performed by each as measured by the cost of service.

Again, this presentation has been premised on the assumption that equality of cost levels prevail between the two participating groups of carriers. However, should there be found to exist a substantial differential, the fundamental method of constructing the divisional integer scale discussed herein would still apply, subject to such difference in the terminal costs or the linehaul costs as may be established with respect to the costs of handling the interterritorial traffic to which the divisional scale is applicable.

[25]

Conclusion

The present scale of divisional prorating factors prescribed in Docket 29885 is not constructed on the basis of cost comparisons. A scale of integers based on costs, assuming equality of the level of costs in Official and Southern territories, may be constructed by:

(1) Subtracting 37 integers from each factor in the present scale; or

(2) Starting with 26 integers as terminal, add 1 for way train, add 8 for 25.5 miles of linehaul, producing 35 for the 1-50 mile block, and add 15.05 for each succeeding 50-mile block; or

(3) Starting with unit costs and building a scale directly from costs. On the basis of equal costs for the handling of the involved traffic, Official-Southern average unit costs may be used as set forth in my Appendix F.

All three approaches produce equal factor scales that relate linehaul and terminal services.

As shown by the South's traffic study, 44.75 percent of the revenue (excluding arbitraries) from the North-South traffic accrues to the North under present Docket 29885 divisions. Based on equal costs, the North

[26]

would receive 43.07 percent of the total. This really credits the North not with equal but with 7.06 percent higher costs.[1]

On traffic moving by the Florida East Coast and other Southern carriers for 1,011 miles in the South which is the average haul on traffic handled by the F.E.C. to or from points 363 miles North of the gateway,

[27]

present divisions credit the northern carriers with 14.20

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[1] Computed as follows:

	Average S.L. Miles	Equal Rail Form A Costs	Divisions based on: Equal Rail Form A Costs	Docket 29885 Scale
	(1)	(2)	(3)	(4)
a. North	372	$163.22	43.07%	44.75%
b. South	522	215.75	56.93	55.25
c. Total	894	$378.97	100.00%	100.00%
d. Ratio North revenue to cost (line a, col. 4 ÷ col. 3)				103.90%
e. Ratio South revenue to cost (line b, col. 4 ÷ col. 3)				97.05
f. Inflation in North's share above equal cost proportion. [(line d ÷ line e) — 100.00%]				7.06%*

*Alternative method of computation:

Let X = inflation necessary in North's costs to produce North's revenue proportion.

$$\text{then: } \frac{163.22\,X}{163.22\,X + 215.75} = .4475$$

$$X = 107.06\%$$

percent higher costs.[1] The use of the I.C.C. Docket 29885 scale for division of the North-South revenue will not reflect costs unless 37 integers are eliminated, or the rate of progression of the scale is increased to reflect appropriate and established cost relationships.

In conclusion, the I.C.C. Docket 29885 scale contains integers in the terminal allowance that cannot be accounted for by cost considerations. In showing this in my several examples and alternative scales which do reflect a relationship between line-haul and terminal based on costs, I am not to be understood as making a proposal for any specific scale of prorating factors. It is my understanding that a specific proposal will be made at a later stage.

		Divisions based on:		Ratio
	Average S.L. Miles	Rail Form At Costs	Dkt. 29885 Scale*	Revenue to Cost (Col. 3 ÷ Col. 2)
	(1)	(2)	(3)	(4)
a. North	363	29.26%	32.08%	109.64%
b. South	1011	70.74	67.92	96.01
c. Total	1374	100.00%	100.00%	
d. Inflation in North's share above "equal cost" proportion [(line a ÷ line b) — 100.00%]				14.20%

[1] Computed as follows:

* North integer interpolated 140.12; South 296.64; Total 436.76.

Appendix A

COMPARISON OF WEIGHTED AVERAGE HAULS OF NORTH-SOUTH TRAFFIC WITH MILEAGE BLOCK AND MID-POINT MILES

(Based on South's Traffic Study)

Mileage Block S.L. Miles	Average Haul S.L. Miles	Difference between Mileage Block Miles and Average Haul (Col. 1-Col. 2)	Total Revenue by Mileage Block (000)	Arithmetic Mid-Point of Mileage Block	Difference between Arithmetic Mid-Point and Average Haul (Col. 5-Col. 2)	Mileage Block S.L. Miles	Average Haul S.L. Miles	Difference between Mileage Block Miles and Average Haul (Col.1-Col. 2)	Total Revenue by Mileage Block (000)	Arithmetic Mid-Point of Mileage Block	Difference between Arithmetic Mid-Point and Average Haul (Col. 5-Col.2)
(1)	(2)	(3)	(4)	(5)	(6)	(1)	(2)	(3)	(4)	(5)	(6)
		North of the Gateway						South of the Gateway			
50	29.53	+ 20.47	$3,150	25.50	— 4.03	50	30.22	+ 19.78	801	25.50	— 4.72
100	74.17	+ 25.83	1,863	75.50	+ 1.33	100	78.74	+ 21.26	2,157	75.50	— 3.24
150	124.95	+ 25.05	5,603	125.50	+ .55	150	127.62	+ 22.38	2,498	125.50	— 2.12
200	174.07	+ 25.93	5,069	175.50	+ 1.43	200	173.88	+ 26.12	3,154	175.50	+ 1.62
250	228.07	+ 21.93	7,491	225.50	— 2.57	250	222.86	+ 27.14	2,740	225.50	+ 2.64
300	273.60	+ 26.40	11,017	275.50	+ 1.90	300	279.53	+ 20.47	4,062	275.50	— 4.03
350	327.97	+ 22.03	8,917	325.50	— 2.47	350	324.58	+ 25.42	6,457	325.50	+ .92
400	372.86	+ 27.14	4,579	375.50	+ 2.64	400	375.12	+ 24.88	4,725	375.50	+ .38
450	425.06	+ 24.94	5,762	425.50	+ .44	450	425.80	+ 24.20	4,471	425.50	— .30
500	472.68	+ 27.32	3,993	475.50	+ 2.82	500	478.36	+ 21.64	7,578	475.50	— 2.86
550	528.83	+ 21.17	3,802	525.50	— 3.33	550	531.82	+ 18.18	4,857	525.50	— 6.32
600	574.82	+ 25.18	4,196	575.50	+ .68	600	571.68	+ 28.32	4,788	575.50	+ 3.82
650	622.90	+ 27.10	2,562	625.50	+ 2.60	650	626.04	+ 23.96	5,396	625.50	— .54
700	677.17	+ 22.83	1,876	675.50	— 1.67	700	678.18	+ 21.82	3,518	675.50	— 2.68
750	723.79	+ 26.21	2,260	725.50	+ 1.71	750	721.76	+ 28.24	4,462	725.50	+ 3.74
800	768.95	+ 31.05	1,077	775.50	+ 6.55	800	773.85	+ 26.15	4,100	775.50	+ 1.65
850	827.25	+ 22.75	917	825.50	— 1.75	850	823.50	+ 26.50	4,720	825.50	+ 2.00
900	878.88	+ 21.12	783	875.50	— 3.38	900	882.10	+ 17.90	1,086	875.50	— 6.60
950	918.36	+ 31.64	383	925.50	+ 7.14	950	926.57	+ 23.43	1,784	925.50	— 1.07
1000	971.78	+ 28.22	711	975.50	+ 3.72	1000	973.12	+ 26.88	2,705	975.50	+ 2.38
1050	1028.26	+ 21.74	916	1025.50	— 2.76	1050	1021.20	+ 28.80	780	1025.50	+ 4.30
1100	1072.79	+ 27.21	686	1075.50	+ 2.71	1100	1082.34	+ 17.66	584	1075.50	— 6.84
1150	1127.35	+ 22.65	330	1125.50	— 1.85	1150	1120.15	+ 29.85	664	1125.50	+ 5.35
1200	1173.50	+ 26.50	275	1175.50	+ 2.00	1200	1161.72	+ 38.28	689	1175.50	+13.78
Net difference ...		+602.41			+14.41	Net difference ...		+589.26			+ 1.26
Average net difference		+ 25.10			+ .60	Average net difference		+ 24.55			+ .05
Total difference ..		+602.41			62.03	Total difference .		+589.26			83.90
Average difference		+ 25.10			± 2.58	Average difference		+ 24.55			± 3.50

Appendix B

COMPARISON OF WEIGHTED AVERAGE HAULS OF NORTH-SOUTH TRAFFIC WITH MILEAGE BLOCK AND MID-POINT MILES

(Based on South's Traffic Study)

Mileage Block S.L. Miles	Average Haul S.L. Miles	Difference between Mileage Block Miles and Average Haul (Col. 1-Col. 2)	Total Revenue by Mileage Block (000)	Arithmetic Mid-Point of Mileage Block	Difference between Arithmetic Mid-Point and Average Haul (Col. 5-Col. 2)	Mileage Block S.L. Miles	Average Haul S.L. Miles	Difference between Mileage Block Miles and Average Haul (Col.1-Col. 2)	Total Revenue by Mileage Block (000)	Arithmetic Mid-Point of Mileage Block	Difference between Arithmetic Mid-Point and Average Haul (Col. 5-Col.2)
(1)	(2)	(3)	(4)	(5)	(6)	(1)	(2)	(3)	(4)	(5)	(6)
		North of the Gateway						South of the Gateway			
50	27.40	+ 22.60	$15,545	25.50	— 1.90	50	30.11	+ 19.89	3,855	25.50	— 4.61
100	73.14	+ 26.86	11,549	75.50	+ 2.36	100	80.52	+ 19.48	11,205	75.50	— 5.02
150	125.58	+ 24.42	29,523	125.50	— .08	150	128.30	+ 21.70	11,576	125.50	— 2.80
200	173.52	+ 26.48	27,781	175.50	+ 1.98	200	172.33	+ 27.67	16,560	175.50	+ 3.17
250	230.38	+ 19.62	46,101	225.50	— 4.88	250	223.91	+ 26.09	14,089	225.50	+ 1.59
300	276.14	+ 23.86	75,614	275.50	— .64	300	277.88	+ 22.12	24,918	275.50	— 2.38
350	329.99	+ 20.01	56,999	325.50	— 4.49	350	323.14	+ 26.86	33,345	325.50	+ 2.36
400	372.34	+ 27.66	36,505	375.50	+ 3.16	400	376.74	+ 23.26	32,806	375.50	— 1.24
450	426.92	+ 23.08	33,738	425.50	— 1.42	450	427.56	+ 22.44	23,303	425.50	— 2.06
500	472.76	+ 27.24	24,263	475.50	+ 2.74	500	479.06	+ 20.94	54.981	475.50	— 3.56
550	529.10	+ 20.90	26,868	525.50	— 3.60	550	532.59	+ 17.41	30,535	525.50	— 7.09
600	573.89	+ 26.11	26,507	575.50	+ 1.61	600	572.97	+ 27.03	34,301	575.50	+ 2.53
650	625.64	+ 24.36	44,502	625.50	— .14	650	627.65	+ 22.35	35,803	625.50	— 2.15
700	676.08	+ 23.92	12,640	675.50	— .58	700	677. 78	+ 22.22	28,057	675.50	— 2.28
750	721.77	+ 28.23	11,882	725.50	+ 3.73	750	725.39	+ 24.61	28,012	725.50	+ .11
800	771.29	+ 28.71	6,311	775.50	+ 4.21	800	775.05	+ 24.95	25,305	775.50	+ .45
850	825.86	+ 24.14	7,048	825.50	— .36	850	826.10	+ 23.90	31,331	825.50	— .60
900	879.64	+ 20.36	6,082	875.50	— 4.14	900	880.41	+ 19.59	7,607	875.50	— 4.91
950	920.24	+ 29.76	3,352	925.50	+ 5.26	950	927.24	+ 22.76	13,302	925.50	— 1.74
1000	977.15	+ 22.85	5,305	975.50	— 1.65	1000	972.89	+ 27.11	18.944	975.50	+ 2.61
1050	1032.29	+ 17.71	6,647	1025.50	— 6.79	1050	1021.54	+ 28.46	4,064	1025.50	+ 3.96
1100	1073.73	+ 26.27	3,207	1075.50	+ 1.77	1100	1081.60	+ 18.40	2,766	1075.50	— 6.10
1150	1122.25	+ 27.75	2,020	1125.50	+ 3.25	1150	1116.77	+ 33.23	4,565	1125.50	+ 8.73
1200	1172.66	+ 27.34	1,637	1175.50	+ 2.84	1200	1159.59	+ 40.41	3,489	1175.50	+15.91
Net difference ...		+590.24			+ 2.24	Net difference ...		+582.88			— 5.12
Average net difference		+ 24.59			+ .09	Average net difference		+ 24.29			— .21
Total difference .		+590.24			63.58	Total difference .		+582.88			87.96
Average difference		+ 24.59			± 2.65	Average difference		+ 24.29			± 3.67

Appendix D, Sheet 1 and 2

DIVISIONAL INTEGER SCALE

Basis A*

Mileage Block	Integer
50	28
100	40
150	52
200	64
250	76
300	88
350	100
400	112
450	124
500	136
550	149
600	161
650	173
700	185
750	197
800	209
850	221
900	233
950	245
1000	257
1050	269
1100	281
1150	293
1200	305
1250	317
1300	329
1350	342
1400	354
1450	366
1500	378
1550	390
1600	402

* Developed on basis of Official-Southern average cost relationship for composite car of North-South traffic incorporating 12.06 integers for through train linehaul progression reflecting costs at arithmetic mid-point of each mileage block.

Appendix D, Sheet 2 of 2

Development of Integer Values Based on Official-Southern Average Costs at Mileage Block Arithmetic Mid-Points

1.	Terminal per cwt. origin or destination	5.54980¢
2.	Way train per cwt. mile increased for circuity	.07822
3.	Through train per cwt. mile increased for circuity	.06423
4.	18 S.L. miles in way trains	1.40796
5.	7.5 S.L. miles in through trains	.48173
6.	Total 25.5 S.L. miles	1.88969
7.	50.0 miles in through trains	3.21150
8.	Ratio line 7 to line 1	.57867
9.	Ratio line 7 to line 6	1.69949
10.	Integer value 50.0 S.L. miles through train	12.06
11.	Terminal value (line 10 + line 8)	20.84
12.	Line haul value at 25.5 S.L. miles (line 10 + line 9)	7.10
13.	Total integer value at 50 miles	27.94

Appendix E, Sheet 1 of 2

DIVISIONAL INTEGER SCALE

Basis B*

Mileage Block	Integer
50	35
100	50
150	65
200	80
250	95
300	110
350	125
400	140
450	155
500	170
550	185
600	200
650	215
700	231
750	246
800	261
850	276
900	291
950	306
1000	321
1050	336
1100	351
1150	366
1200	381
1250	396
1300	411
1350	426
1400	441
1450	456
1500	471
1550	486
1600	501

* Developed on basis of Official-Southern average cost relationship for composite car of North-South traffic incorporating 26 integers for terminal with linehaul progression reflecting cost at arithmetic mid-point of each mileage block.

Appendix E, Sheet 2 of 2

Development of Integer Values Based on Official-Southern Average Costs at Mileage Block Arithmetic Mid-Points

1.	Terminal per cwt. origin or destination	5.54980¢
2.	Way train per cwt. mile increased for circuity	.07822
3.	Through train per cwt. mile increased for circuity ..	.06423
4.	18 S.L. miles in way trains	1.40796
5.	7.5 S.L. miles in through trains	.48173
6.	Total 25.5 S.L. miles	1.88969
7.	50.0 miles in through trains	3.21150
8.	Ratio line 7 to line 1	.57867
9.	Ratio line 6 to line 1	.34050
10.	Integer value—one terminal	26.00
11.	Integer value of first 25.5 S.L. miles (line 10+line 9)	8.85
12.	Integer value of each additional 50 S.L. miles (line 10 + line 8)	15.05
13.	Total integer value at 50 miles (line 10 + line 11)..	34.85

Appendix F, Sheet 1 of 2

Rail Carload Cost Scale

(Official-Southern Average Year 1956)

Miles	Cost per Cwt.*
0	5.550¢
50	7.439
100	10.651
150	13.862
200	17.074
250	20.285
300	23.497
350	26.708
400	29.920
450	33.131
500	36.343
550	39.554
600	42.766
650	45.977
700	49.189
750	52.400
800	55.612
850	58.823
900	62.035
950	65.246
1000	68.458
1050	71.669
1100	74.881
1150	78.092
1200	81.304
1250	84.515
1300	87.727
1350	90.938
1400	94.150
1450	97.361
1500	100.573
1550	103.784
1600	106.996

* Includes one terminal and 18 miles of way train service at origin or destination. The linehaul component reflects cost at mid-point of mileage block.

Appendix F, Sheet 2 of 2

Official-Southern Average Rail Form A Unit Costs:[1]

	Unit Cost
1. One terminal per cwt.	5.54980¢
2. Way train per cwt. mile*	.07822¢
3. Through train per cwt. mile*	.06423¢

* Including circuity of 13%.

Appendix G, Page 1 of 5

STRAIGHT LINE PROGRESSION OF THROUGH TRAIN LINE-HAUL COSTS

Prior to the institution of the Cost Finding Section of the Interstate Commerce Commission, it was not definitely known just how rail line-haul costs progressed in relation to distance. It was often presumed, however, that the line-haul cost per mile was lower in the longer distances than for the shorter distances. This presumption was undoubtedly fostered by the lack of refinement in railroad cost accounting. This was recognized by the Commission in its report in the *Southern Class Rate* Investigation in the year 1925, wherein it was stated that "cost accounting [was] not a science which [had] been developed or applied extensively in railroad practice." (100 I.C.C. 631)

Only four years earlier the I.C.C. Bureau of Statistics had made an attempt to develop a recognized method for developing costs which could be used in rate cases to show costs separately for initiating and terminating a shipment and for moving a shipment a given distance between ter-

[1] Developed by combining I.C.C. cost sections Rail Form A applications for Eastern District, Pocahontas region and Southern Region for year 1956. Unit costs are after weighing for distribution of N-S traffic by type of car based on North's traffic study.

minals.[1] It is understandable then in reply to frequent criticisms of distance scales on the ground that "cost of service is not dependent on distance," the Commission did no more than to point out in the Southern Class Rate Investigation that:

> "This is true when service is reviewed in detail, for other factors affect cost, such as grades, curves, cost of construction, weather conditions, and density of traffic. A longer haul may actually be cheaper, because of the type of train used, than a shorter haul over the

> same line. Broadly speaking, however, cost of service undoubtedly does increase as distance increases . . ." (100 I.C.C. 611-2)

When service is reviewed in detail these other factors do affect costs and tend to produce different cost levels as between engine districts which are generally 100 miles in length. As a shipment moves over a series of engine districts having different cost characteristics, the cost per mile may well vary and produce an uneven progression of cost with distance, depending on the engine districts in which an individual shipment originates and terminates and the route over which it travels. Each through train in each engine district in which a car moves will consist of cars having previous hauls of varying lengths, and if all shipments and routings are considered, the cost in through trains will progress on the average in a straight line.

In the *Consolidated Southwestern Cases* (1927), it was recognized that costs are made up of two factors: (1) terminal cost and (2) line-haul cost, and that the terminal factor remains constant whatever the haul while the haul line is somewhat higher for the shorter hauls than for the

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[1] I.C.C. Bureau of Statistics, "A Tentative Formula for the Separation of Frieght Operating Expenses Between Terminal and Line Services," October 10, 1921, mimeographed.

longer hauls. However, such a line-haul progression was attributable to the fact that "the service for 75 miles is usually in way trains, the most expensive freight trains operated by carriers" and that "through train service [is] considered less expensive per mile than local train service." (123 I.C.C. 203)

It was not until the establishment of the Cost Finding Section in the Bureau of Statistics, however, that any comprehensive studies were undertaken to support definitely any findings as to the progression

of line-haul cost. One of the first projects of the Cost Finding Section was the development of a detailed formula for the determination of territorial rail costs. The most comprehensive study developed, known as Rail Form A, was introduced in the Docket 28300 *Class Rate Investigation*, 1939, and later published as Senate Document No. 63, 78th Congress 1st Session.

Among other things this formula groups together for each transportation service the out-of-pocket costs which are associated with a common service unit that occasions the expense. Accordingly, the following out-of-pocket expenses are associated with gross-ton-miles:

1. Maintenance of running tracks, excluding train switching.

2. Maintenance of locomotives in running service.

3. Train operation expenses such as fuel, lubricants, water, crew wages, etc., excluding the portions chargeable to train switching.

As originally developed, the formula did not provide for a separate determination of gross-ton-mile cost for way and through trains. As since revised, the formula provides for a separate determination of a cost per gross-ton-mile for way and through trains, the way train cost being the more costly.

The formula next provides for a conversion of the cost per gross-ton-mile to a cost per car-mile, giving consideration to the tare weight of the car and weight of the load.

Out-of-pocket expenses considered to be directly variable with car-miles are:

1. Running portion of freight train car expenses.

2. Freight train supplies and expenses related to distance.

Appendix G, Page 4 of 5

These costs per car-mile plus the gross-ton-mile costs (expressed in terms of costs per car-mile separately for way and for through trains) make up the costs variable with distance.

That these costs for through trains do progress in a straight line as distance increases was shown by train studies made available to the Commission in Docket 28190, *New Automobiles in Interstate Commerce* (259 I.C.C. 475). Appendix 8 of the Commission's report in that proceeding contains the costs on both an out-of-pocket and a fully distributed basis for 175 separate movements for distances from 18 to 3021 miles. If these costs were plotted graphically in relation to distance they would show, as the Cost Section found, that on the average through train costs are associated with distance by a straight-line relationship. (259 I.C.C. 475) Further, the straight line would closely conform to the cost scale line portrayed in Chart 2 in the text of this statement, and likewise, the slope of the straight line would be steeper than that of the Appendix 18 Class Rate scale also shown on Chart 2.

It is understandable that such studies should produce a straight-line progression of through train costs from an anaylsis of each of the components of the line-haul cost group.

Maintenance of running expenses include roadway maintenance; the cost of repairing tunnels, bridges, trestles,

culverts, etc.; laying of rails and ties in repair of tracks, etc.

The miles of track repaired and facilities maintained determine the aggregate amount of dollars spent on maintenance, and the use made of the tracks and facilities determines the amount of maintenance required. It is therefore proper to associate the cost of maintenance

with the service unit which reflects this use, in this instance the gross-ton-mile.

Maintenance of locomotives in running service arises from the use made of the locomotive. Mileage run is a measure of use. Again, therefore, the revenue unit should be charged with the cost of locomotive in direct relation to miles travelled.

Train expenses such as wages of crew, the cost of fuel, water, etc., also vary with miles. For any given train crew wages are dependent on miles run. Train fuel, enginehouse expenses, water, lubricants, etc., are incurred through use of the locomotive. Here also, mileage is a measure of use and mile for mile this cost should be no different except for differences in operating conditions, etc., which may be occasioned in any mile throughout the haul.

The running portion of freight train car expenses are based on miles the car runs and are properly distributed to the revenue unit on the basis of car-miles.

Since the inception of the Cost Finding Section, cost accounting has become more refined, and assumptions made as to the nature of line-haul costs have been replaced by factual evidence establishing that through train line-haul costs progress in a straight line as distance increases.

VERIFIED STATEMENT NO. 39
OF JOHN P. COLE

[25]

The seven-day study figures for box cars are averages within the several territories and, if the proportion of special purpose box car loaded miles is higher in one territory than in another, the system average empty return for general purpose box cars would be changed because of the high empty mileage of these special purpose box cars. The following illustration demonstrates the effect that differences in proportions of special purpose box cars have upon the territorial average empty return ratio for all cars:—

Type	Loaded Miles	Empty Miles	Percent Empty of Loaded Miles
	NORTH		
Box (Special)	750	750	100
Box (General)	5,000	1,500	30
System Average Box	5,750	2,250	39
	SOUTH		
Box (Special)	200	200	100
Box (General)	5,000	1,500	30
System Average Box	5,200	1,700	33

The above table demonstrates that a seemingly small difference in the proportion of special box car miles in the north (750 out of 5,750, or 13%) than in the south (200 ont of 5,200, or 4%) has an important effect in increasing the system box car empty return ratio for the north. Starting with the assumption of equal empty return ratios, the difference in proportion of

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[28]

In their pricing of the costs for the North-South traffic the Southern carriers apply to the auto parts traffic included in the traffic study 100 percent empty movement in both

Official and Southern territories. In order to arrive at empty return ratios which will have application to general purpose box cars, the empty and loaded miles for auto parts traffic in box cars must be eliminated in both territories from the seven-day study figures.

If general purpose box car empty return ratio is 30 in both territories and the empty return ratio on auto parts cars is 100, it cannot be denied that in pricing out the involved traffic a general purpose ratio of 30 should be used on all general purpose box cars and the special purpose ratio of 100 should be used on all special purpose cars in the traffic study. It would make no more sense to use the 39 as the empty return ratio in the North and the 33 as the empty return ratio in the South which ratios are taken from the Commission's seven-day study on each box car in the traffic study than it would to use 40 in the North and 79 in the South as the empty return ratios for each flat car whether TOFC or not. The seven-day study has moved progressively toward additional refinement in the types of equipment, but the 1956-1957 study is simply not sufficiently refined on box cars in order that the empty return ratios developed for such cars can be used indiscriminately in the development of box car costs on interterritorial North-South traffic.

On January 13, 1960, at the hearings in this proceeding (Tr. R-845-849) the Official Territory carriers were requested to join with the Southern carriers in compiling data which would provide information for determination of the empty return ratios separated as between box cars available for general loading and special device and assigned service box cars not suitable for return loading.

[29]

This request would have required only the furnishing of box car numbers and related loaded and empty car miles for the study days. The Official Territory carriers refused to participate in this study or otherwise to cooperate in the request. However, data is available from which a reliable

estimate can be made of the effect of the 100 percent empty miles of the assigned service or special purpose box cars have upon the empty return ratio for all box cars.

There is a very definite correlation between the percentage of vehicle parts to total traffic and the empty return ratios for various carriers. The greater a carrier's or groups of carriers' participation in vehicle parts traffic the higher the empty return ratio. This is shown by the following:—

OFFICIAL TERRITORY	Box Car Empty Return Ratio[2]	Percent Vehicle Parts 623 to Total Box Car Traffic[3]
Roads Serving Detroit Having Heavy Proportion of Vehicle Parts to Total Box Car Traffic[1]	49%	14.5%
Other Official	34%	4.2%
Total Official	39%	6.8%
SOUTHERN REGION	33%	2.6%

Thus, it may be seen that the Detroit roads which participate most heavily in the auto parts traffic have an extremely high empty return ratio for box cars. It may also be seen that Official Territory railroads taken as a whole and having a relatively higher participation than

[30]

Southern Territory roads in auto parts traffic have a correspondingly higher empty return ratio. I have undertaken, in Appendix C hereto, to establish statistically the approximate effect upon the empty return ratios of the vehicle parts traffic. It is seen that under Basis I the empty return ratio for box cars in Official Territory is 34.66 and in Southern Territory is 30.88. Under Basis II the adjusted empty

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1. NYC, Wabash, C&O, DTI, and GTW.
2. ICC Seven-Day Study.
3. Percent of carloads of Vehicle Parts 623 handled in box cars and percent carloads of all traffic handled in box cars from ICC Statement No. TC-3, 1956, applied to total carloads handled, vehicle parts and total carloads all traffic, respectively from Freight Commodity Statistics, Year. 1956.

return ratio for box cars in Official Territory is 34.96 and in Southern Territory is 30.90.

Another factor causing the higher empty return ratios on box cars in Official Territory, particularly on the Detroit roads, is the influence of Canadian box car traffic which affects the Official roads to a very substantial but the Southern roads to a very limited extent. Detroit is an important gateway for Canadian traffic in that the New York Central, the Wabash, the Canadian National (Grand Trunk Western) and the Chesapeake & Ohio, use that gateway for handling Canadian traffic into and out of Canada. This is an important factor, since the volume of traffic moving between the U.S. and Canada in box cars during 1956 was more than twice the present volume of North-South box car traffic.

Appendix D hereto shows the volume and directional flow of box car traffic between the two countries. The basic data used in compiling this study was taken from Canadian commodity statistics. Tonnage received and delivered for each commodity was converted to carloads by use of average load factors derived from a waybill analysis for 1956 published by the Board of Transport Commissioners for Canada. Distribution of the carloads to box cars was made on basis of the I.C.C. one percent waybill sample.

* * *

[32]

As corroborative evidence that the Canadian traffic has a very heavy impact on the empty box car ratio, the seven-day study reflects 294,949 empty box car miles and 230,293 loaded box car miles, an empty ratio of 128 percent for Canadian National Lines in New England, which is almost exclusively a bridge carrier. Obviously a considerable part of the empty movement over this line represents cars which moved loaded into the U.S. over other routes.

I have shown in Appendix E results of computation on the Basis I formula for individual roads which adjusts the seven-day study to reflect an empty return ratio for box cars after the elimination of the loaded and empty miles

for auto parts traffic. It should be noted that the influence of Canadian traffic has not been taken into consideration in this Appendix.

Bearing in mind that the special device adjustment is merely illustrative and that the use of special device cars for other commodities is of relatfvely greater importance in the highly industralized east than in the south it is my conclusion that, as far as North-South traffic is concerned, the empty ratio for box cars is no greater in Official Territory than in the south. In my judgment a fair ratio for either territory would be 30 percent.

* * *

[34]

The South has relatively little participation in refrigerator meat car traffic. Our traffic study shows that relatively few cars of fresh meat move between the North and South. Only 1,642 cars of fresh meat (215) move between North and South, as compared to 80,379 refrigerator cars in the study. Thus, fresh meat comprises only about 2 percent of the total refrigerator cars moving between the North and South. Therefore, meat movements can contribute only relatively few empty miles on North-South traffic. That the South's total participation in meat traffic is relatively less than Official Territory participation, is shown by the following table taken from the Commission One Percent Waybill Study TC No. 3:—

[35]

	Official Originations and Terminations (Cars)	Southern Originations and Terminations (Cars)
Fresh Meats (215)	212,000	20,000
Total Refrigerator Car Commodities	1,107,700	282,500
Percent Fresh Meat Cars of Total Refrigerator Cars	19.1%	7.1%

The Southern Territory carriers' participation is far less relatively and actually than the Official Territory carriers'

participation in that traffic. To the extent the meat traffic moving between the North and South is creating empty mileages, the carriers participating in the movement should participate in the costs. However, the Southern Territory carriers should not be called upon to share in the costs for the handling of empty cars which have not moved, or do not move, traffic in which they could or can participate in a share of the revenue.

The proper approach for empty return ratios on refrigerator cars, as in case of box cars, is to apply separately the empty return ratios of 100% for such special movements as fresh meats (215) and bananas originating at New Orleans on the Illinois Central, and to develop an appropriate empty return ratio for the general movement of refrigerator car traffic which are not influenced in different degress in the respective territories by the empty return ratios for specialized commodities.

The refrigerator cars which handle the North-South traffic, other than fresh meats and bananas referred to above, are summarized below by car ownerships:—

[36]

Car Company	Car Miles	Percent of Total	Percent of Total Excluding Other
(1)	(2)	(3)	(4)
Fruit Growers Express (FGE)	38,421,000	43.3	52.6
Western Fruit Express (WFE)	18,753,000	21.1	25.7
Burlington Refrigerator Express (BRE)	5,009,000	5.6	6.9
Atchison, Topeka & Santa Fe (SFRD)	3,652,000	4.1	5.0
Merchants Dispatch Transportation (MDT)	3,443,000	3.9	4.7
Northern Refrigerator Car Line (NRC)	1,902,000	2.1	2.6
Pacific Fruit Express (PFE)	1,825,000	2.1	2.5
All Others	15,808,000	17.8	—
Total	88,813,000	100.0	100.0

As it may be seen, Fruit Growers Express cars participated in over 38,421,000 of the general refrigerator car miles on North-South traffic. This is more than twice the number of car miles participated in by Western Fruit Express cars, the second largest handler of North-South refrigerator car traffic, and almost eight times the number of car miles participated in by Burlington Refrigerator Express which ranked third in total refrigerator car miles in North-South traffic. The above listed car companies handled more than 80 percent of the North-South traffic moving in refrigerator cars. Therefore, the empty return ratio of those companies are representative of North-South traffic.

Unlike the situation as to box and other per diem cars for which no loaded and empty mileage statistics are regularly maintained, empty return ratios for these car ownerships are available based on the actual records of loaded and empty miles for the full year and are thus not subject to the unknown amount of sampling error in the seven-day study.

Upon request of Fruit Growers Express, empty and loaded refrigerator car miles were furnished for the year 1956 separated by carriers. The information furnished is shown in Appendix F for Class I carriers. The empty to loaded ratio for Official Territory for the Fruit Growers

[37]

Express cars for 1956 is 75. In Appendix G is shown the empty and loaded miles for the Southern carriers for the other car-owning companies listed in the table above other than Fruit Growers Express. This information was obtained from replies to questionnaires directed to the accounting departments of the Southern carriers. The composite for the Southern Class 1 carriers is as follows:

Car-Owning Company	Loaded Miles	Empty Miles	Ratio Empty to Loaded	Weighted Ratio
(1)	(2)	(3)	(4)	(5)*
Fruit Growers Express	62,145,054	56,744,160	90.35	47.5
Pacific Fruit Express	35,161,348	24,459,858	69.56	17.9
Western Fruit Express	29,116,175	25,734,476	88.39	6.1
Northern Refrigerator Car Line	19,345,217	17,235,219	89.09	4.5
Atchison, Topeka & Santa Fe	14,274,414	10,210,147	71.33	3.4
Merchants Dispatch Transportation	10,998,811	8,929,974	81.19	2.1
Burlington Refrigerator Express	7,023,989	6,309,170	89.82	2.2
Total	178,065,008	149,623,004		83.7
Empty to loaded ratio—		84.0		

In this instance the empty return is 84 whether such ratio is developed by weighting individual car company's participation in the Official-Southern traffic or whether the car miles loaded and empty are aggregated for all car companies and an empty return ratio developed from the total. There can be no question but that the above ratio of 84 based on records for the full year is a more accurate measure of the ratio of empty to loaded car miles for the South on North-South traffic than the 76 developed in the system average seven-day study. For example the figure of 90 for Fruit Growers Express not only represents the entire year of 1956 but also the Fruit Growers Express empty ratio is consistently within that range for years subsequent to 1956.

[39]

* * *

Unquestionably the difference between the system average figures and the empty ratio for FGE cars of Official Territory carriers is caused by heavy empty miles

* This is obtained by multiplying Column 4 this table by Column 4 from table on page 36.

in Official Territory on traffic moving solely within Official Territory and between Official Territory and territories not involved in this proceeding. A great part of the difference is occasioned by the heavy empty mileage (empty to loaded ratio of 98) on meat refrigerator cars moving within Official Territory and between that territory and Western District.

Therefore, I conclude that it is improper to use the ratios developed in the Commission's 1956-1957 seven-day study on the North-South traffic here involved because of the distortions caused by transportation conditions existing within the various territories which contribute to the averages for a territory but which do not accurately reflect the conditions on traffic moving between the two territories. As I have stated, I am of the opinion that the empty to loaded ratio which should be used for box cars (other than auto parts) in each territory is 30 and that the empty to loaded ratio which should be used for refrigerator cars (other than bananas and meat) in the North is 75 and in the South is 84.

[40]

III

CAR COSTS

This portion of my statement deals with car repair expenses, depreciation on cars and return on investment in cars. These costs will be referred to collectively as car costs.

Rail Form A type of car cost scales present no problem in dealing with car costs for refrigerator and tank cars. For these so-called mileage cars, the car costs calculated on a system average basis are not used but, instead, the nationally applicable mileage rate for the particular type of car is substituted.

It is the car costs for the remaining type of cars, which are the so-called per diem cars, that present the cost problem in this divisions proceeding. There is a national per diem rate curently applicable to such cars. How-

ever, Rail Form A as applied by Witness Heywood does not employ the same unit cost in each territory although Official-Southern traffic moves in the same cars in each territory. Instead, a system average figure was developed by Witness Heywood for each group of roads and the resulting very different unit costs are applied North and South of the gateways.

Appendix I, attached, shows the distribution of Official-Southern traffic by type of car. As shown, 15 percent of the cars are mileage cars and the remaining 85 percent are per diem cars.

Car costs make up an important part of the difference between the unadjusted Rail Form A costs of Official and Southern carriers. Built

[41]

into the Rail Form A comparisons for a box car with a 28.9 ton load moving 350 miles with one terminal are the following car costs:*

Eastern District	$17.91
Eastern District plus Pocahontas	16.20
Southern Region	12.22

Thus, Rail Form A unadjusted average costs include car costs for Eastern District which are $5.69 or 46 percent higher than for Southern Region, and for Eastern District plus Pocahontas $3.98 or 32 percent higher than for Southern Region. This relationship would apply not only for box cars but also for gondola, hopper, flat and stock cars, since the same average Rail Form A unadjusted car costs per car and per car mile are applied by Witness Heywood to each of the per diem cars. The foregoing difference in car costs would not apply for refrigerator and tank cars since the uniform nation-wide mileage rate appropriate for such cars is substituted for system average car costs in develop-

* This table assumes equal empty return ratios. Use of the unadjusted empty return ratios from the seven-day study of system average box cars compounds the effect of different car costs.

ing costs for refrigerator and tank cars.** Thus, a refrigerator car mile or a tank car mile is assigned the same car cost per mile irrespective of territory or carrier.

* * *

[43]

(1) The Cars Used in Handling Official-Southern Traffic as Contrasted with the System Car Fleet

A basic reason why application of Rail Form A by territories produces the higher car unit costs in the North than in the South and why a territorial application of Rail Form A produces results which are inappropriate for use in this proceeding is because an application of Rail Form A is not an application to the cars in which North-South traffic moves but an application to the conglomerate mixture of all types of cars owned by each group of roads, many of which are not used to any appreciable extent in handling North-South traffic. The following table based upon the Southern Territory carriers' traffic study shows the following distribution of Official-Southern traffic moving in per diem cars:

[44]

Distribution of Official-Southern Traffic Moving in Per Diem Cars by Type of Car

Type of Car	Cars Originated or Terminated	Car-Miles		
		North	South	Both Territories
Covered Hopper	41,116	16,043,708	26,732,997	42,776,705
Box	667,358	285,785,368	376,309,921	662,095,289
Gondola	73,745	28,988,300	35,806,875	64,795,175
Open Hopper	7,100	1,941,995	2,877,550	4,819,545
Flat	29,605	14,268,479	14,996,852	29,265,331
Stock	3,971	2,077,381	1,398,264	3,475,645
Total Per Diem Cars	822,895	349,105,231	458,122,459	807,277,690

** This is true even where a railroad owns a refrigerator car moving over its own lines. The Northern lines use the national mileage rate for all refrigerator cars, for example, including Illinois Central cars moving over the Illinois Central.

Percent Distribution of Official-Southern Traffic Moving in Per Diem Cars by Type of Car

Type of Car	Percent of Cars Originated or Terminated	Percent of Car Miles		
		North	South	Territories Both
Covered Hopper	5.0	4.6	5.9	5.4
Box	81.0	81.8	82.1	82.0
Gondola	9.0	8.3	7.8	8.0
Open Hopper	0.9	0.6	0.6	0.6
Flat	3.6	4.1	3.3	3.6
Stock	0.5	0.6	0.3	0.4
	100.0	100.0	100.0	100.0

As shown, over 80 percent of the per diem cars handling Official-Southern traffic are box cars and less than one percent of the Official-Southern traffic moves in hopper cars. As to all types of cars, the Official-Southern traffic moves in the same car from origin to destination, so that the consist of the car fleet employed in handling Official-Southern traffic is the same in both North and South.

[45]

The system average car costs developed by Witness Heywood do not measure the cost of the box cars handling Official-Southern traffic but, instead, the composite effect of the car fleet owned by the respective groups of roads. The Commission's Transport Statistics in the United States for the year 1956 shows the system ownership of per diem cars by Southern and Official carriers as follows:

Type of Car Per Diem Cars	Official Territory (Eastern District Plus Pocahontas)	Official Territory Percent of Total	Southern Territory	Percent of Total
Box	300,100	36.9	100,191	37.9
Flat	12,310	1.5	6,461	2.4
Stock	5,359	.7	1,514	.6
Gondola	142,358	17.5	40,228	15.2
Open Hopper	329,271	40.4	86,712	32.8
Covered Hopper	20,580	2.5	9,974	3.8
Rack	2,233	.3	19,270	7.3
Other	1,975	.2	86	—
Total	814,186	100.0	264,436	100.0

The Commission's seven-day study shows the car miles of cars within Official and Southern Territories as follows:

Per Diem Cars	Official Territory (Eastern District Plus Pocahontas)	Percent of Total	Southern Territory	Percent of Total
Box	88,715,813	44.8	36,898,919	54.0
Flat	4,544,918	2.3	4,465,611	6.5
Stock	3,266,027	1.6	304,602	.5
Gondola	17,156,095	8.7	7,357,766	10.8
Open Hopper	79,288,985	40.0	16,141,974	23.6
Covered Hopper	4,309,178	2.2	2,834,885	4.1
Other	793,192	.4	308,117	.5
Total	198,074,208	100.0	68,311,874	100.0

[46]

In contrast to the 82 percent of the car miles on per diem cars of the North-South traffic consisting of box car miles, Rail Form A car costs for Official Territory are developed from a car fleet which consists in far greater degree of other types of cars, particularly open top cars (open hopper or gondola cars). Moreover, the consist of the car fleet in the system averages are different for Official and for Southern territories, whereas the Official-Southern traffic involved in this proceeding moves in an identical car fleet.

The importance of the differences in consists of car fleets underlying the system averages and the consist of cars handling the Official-Southern traffic arises from the fact that different types of cars have different characteristics. One significant difference as between types of cars is in their degree of utilization, as shown in the following table:

Car Type	Car Miles Per Year
Box	19,635
Gondola	9,503
Hopper, Open	11,827
Hopper, Covered	13,816
Stock	16,953
Flat	18,996

Source: Commission seven-day study for 1956-1957, and Transport Statistics in the United States, 1956.

Such differences in utilization would have a strong effect on the unit costs per car mile for the different types of cars, and the system average cost for all types of cars would reflect the utilization of the average car, not the box cars primarily handling the Official-Southern traffic.

[47]

It should also be noted that Rail Form A separates car repair costs between mileage and time for all cars on a national 70-30 basis and car return and depreciation between mileage and time for all cars on a national 45-55 basis. Since the same percentage separations would not apply to cars with widely different degrees of utilization, the separation factors used in Rail Form A can be validly applied only on a national basis.

The difference in consist of car fleets is further aggravated by the fact that the age of the Official Territory rail carriers' car fleets in 1956 was considerably greater than that of the Southern carriers, particularly because of the age of open hopper cars. The following table makes this comparison:

	Percent Owned Cars in Excess of 25 Years Old	
	Open Hopper Cars	All Freight Cars
Eastern District	48.60	41.711
Official Territory	40.04	38.52
Southern Region	27.68	29.74

Particularly significant is the fact that 94 percent of the Pennsylvania Railroad's open hopper cars were in excess of 25 years old in 1956. Unquestionably, the repair costs on the older open hopper cars in Official Territory are contributing heavily to the car costs in that territory. However, since so few open hopper cars are involved in the movement of the North-South traffic herein, the high repair costs on these cars should not be used to develop the car costs applicable on North-South traffic. Open hopper cars are used to the greatest extent for the transporta-

tion of coal, and the car costs on a total of 329,721 open hopper cars in Official Territory strongly influence application of Rail Form A to Official Territory.

[48]

A Rail Form A application to the carriers in the North, which develops the same car costs for all per diem cars irrespective of consist, utilization, or age reflects to a substantial extent the expenses incurred for the handling of open hopper cars within the North. It is improper to apply such costs to Official-Southern traffic which moves only to an insignificant extent in open hopper cars. Car costs for application to the Official-Southern traffic should reflect the same consists of cars North and South and should further reflect the fact that the Official-Southern traffic moves predominantly in box cars.

(2) The Distorting Effect of Per Diem Debits and Credits.

In Rail Form A as applied by Witness Heywood, the total car cost for each group of roads is first developed and then net per diem debits or credits are added or subtracted.

The Rail Form A car costs include depreciation computed in relation to original cost. Return is computed at 4% (after allowance for federal income taxes) on net original cost. This is the equivalent of approximately 6% of the net original cost.

The per diem rate which is debited or credited under Rail Form A is determined on a very different base under a formula established by the Commission. Depreciation is computed in relation to reproduction cost new. Return is computed at 6% of reproduction cost new less depreciation.

With the great inflation experience in the last two decades, the per diem formula, using the reproduction cost base, produces costs of car ownership for depreciation and

return which far exceed the Rail Form A costs using the original cost base,

* * *

[53]

which is 41 percent higher. This relationship is inherent in the use of inconsistent bases as applied to roads with a per diem credit position (as Carrier A) when compared with a road having a per diem debit position (as Carrier B).

The foregoing example is not as extreme as some of the results produced by application of Witness Heywood's Rail Form A is determined on a very different base under duces *negative* unit costs for return on cars over the Clinchfield. That is, an application of Rail Form A with the per diem credits gives that carrier a negative return car cost. There can be no question but that a Clinchfield box car moving over the Clinchfield accrues a car cost including repairs, depreciation and return. However, because of per diem credits generated by Clinchfield hopper cars while off line and because Rail Form A averages box and hopper car costs, the absurd result of a negative return on box cars is produced on the Clinchfield.

As stated, the reason the Rail Form A formula produces different results from the per diem formula is because of the different bases used in each formula. At the time of Rail Form A's development (for application to 1939 operations) per diem credits presented no such problem because the reproduction cost less depreciation was not significantly different from original cost less depreciation. However, with inflation in the war and post-war period, the costs of replacing cars was and is far in excess of those costs of the cars they replace. And the longer a car remains in service the more the disparity becomes between original cost and reproduction cost.

[54]

There is no rational basis for permitting the paper profits reflected in per diem credits, generated largely by

use of L&N and Clinchfield hopper cars on Eastern District roads, to influence the relative car costs to be applied to Official-Southern traffic which does not move in hopper cars.

Witness Heywood compounds the error of his car cost theory where he uses Eastern District car costs alone without consideration of Pocahontas Region. This method disregards the per diem credits on the Pocahontas lines and considers only per diem debits on the Eastern District roads. The Official Territory carriers as a whole are only slight per diem creditors, as compared with Southern Region, as will be seen in the following table:

	Per Diem Net Debits and Credits (Year 1956)	
Southern Region	Net Credit	$23,987,115
Eastern District	Net Debit	24,568,808
Pocahontas Region	Net Credit	27,974,634
Official Territory	Net Credit	3,405,826

It should be noted that the use of Eastern District costs alone would lose the offsetting net per diem credit influence of the Pocahontas roads and although the Eastern District per diem debit is largely the result of the use of Pocahontas and other foreign line hopper cars for the transportation of coal which is not involved in this proceeding.

Because per diem debts and credits, computed on a different base, markedly affect system average cost for a reason that has nothing whatever to do with the relative costs of handling Official-Southern traffic, the traffic involved in this proceeding should be priced out using car

[55]

costs not distorted by per diem debits and credits. Use of a national basis of car costs avoids this distortion, since per diem debits and credits are substantially offsetting on a national basis.

* * *

[62]

V.
MISCELLANEOUS DATA BEARING ON COSTS

(1) Factors Underlying Difference Between Northern and Southern Unadjusted Rail Form A Costs.

The Northern lines rely on unadjusted Rail Form A costs without showing the components of those costs that give rise to higher system average costs in the North. For example, the 1956 Rail Form A unadjusted cost for a 28.9 ton load in a box car having one terminal handling and 350 short line miles for Official (Eastern District plus Pocahontas) is $158.01. The comparable unadjusted Rail Form A cost for Southern Region is $135.29. These two figures are used to claim 17% higher costs in the North.

In Mr. Remington's application of adjusted costs to the Official-Southern traffic, it is shown that no such higher cost level applies in the handling of the Official-Southern traffic. My purpose here is to identify, on the system average basis, the source of the differences in Official and Southern costs. The following table, based on analysis of the Cost Finding Section Rail Form A working papers, shows separately the factors which occasion the difference of $22.72 between the box car cost of $158.01 for Official and $135.29 for Southern Region.

	Item	Dollars of / Difference Between Official and Southern Region
1.	Differences in Empty Return Ratios	$ 3.11
2.	Differences in Car Costs	3.93
3.	Differences in Switching Costs	11.98
4.	Switching and Terminal Companies	2.19
5.	Platform Costs	2.62
	Total	$23.83

As shown, these five items of difference account for $23.83, which is more than the entire $22.72 difference between the Official and Southern costs. In other words, except for these several items, all other rail costs, including all transportation and maintenance of way accounts, overheads, constant costs, and passenger deficits (even with suburban service deficits included in the North) are, in the aggregate, no higher in the North than in the South.

For this reason, it is important that the particular segments of cost underlying the unadjusted Rail Form A costs which cause the higher level of average costs be given special scrutiny in this proceeding. Empty return ratios, car costs and Switching and Terminal Companies are discussed in previous sections of this statement. Mr. Remington is treating with platform costs and the adjustments in car count which effect switching costs per car.

* * *

APPENDIX C

DEVELOPMENT OF EMPTY BOX-CAR RATIOS BY TERRITORIES AFTER EXCLUSION OF VEHICLE PARTS NOS

CLASS I RAILROADS IN THE UNITED STATES - YEAR 1956

Basis No. 1: Effect on over-all empty ratio projected on basis of computed increase of seven-tenths of one percent for each percentage point increase in vehicle parts	Apportionment Factor (2)	United States (3)	Official Territory (4)	Southern Region (5)
One-Percent Waybill Sample-Commodity Group 623, Vehicle Parts NOS				
1. Carloads originated and terminated		9 860	7 881	46
2. Short-line car-miles		3 731 179	xxx	xx
3. Short-line car-miles expanded for circuity (Line 2 x 1.13)		4 216 232	xxx	xx
4. Car-miles per car originated and terminated (Line 3 divided by Line 1)		428	xxx	xx
5. Intraterritorial short-line miles directly assigned		1 500 902	1 259 039	3 04
6. Directly assigned car-miles expanded for circuity (Line 5 x 1.13)		1 696 019	1 422 714	3 44
7. Percentage distribution of line 8		100.00	83.89	.20
8. Ratio - directly assigned car-miles to total car-miles		40.23	xxx	xx
9. Total Revenue		$2 192 427	xxx	xx
10. Intraterritorial revenue directly assigned		952 470	820 935	3 65
11. Percentage distribution of line 10		100.00	86.19	.38
12. Ratio-directly assigned to total (Line 10 divided by Line 9)		43.44%	xxx	xx
Development of Loaded Box-Car Miles - Vehicle Parts NOS - Year 1956				
13. Carloads originated and terminated - freight commodity statistics		1 092 192	xxx	xx
14. Total loaded car-miles (Line 13 x Line 4)		467 458 176	xxx	xx
15. Intraterritorial portion of loaded car-miles (Line 14 x Line 8)	Line 7	188 058 424	157 762 212	376 11
16. Interterritorial portion of loaded car-miles (Line 14 minus Line 13)	Line 22	279 399 752	74 655 614	36 266 08
17. Total revenue - freight commodity statistics		$243 703 598	$130 212 468	$19 329 69
18. Intraterritorial portion of freight revenue (Line 12 x Line 17)	Line 11	105 864 843	91 244 908	402 28
19. Interterritorial portion of freight revenue (Line 17 minus Line 18)		137 838 755	38 967 560	18 927 40
20. Equating factors for interterritorial traffic		xxx	1.00	1.00
21. Equated revenues - interterritorial traffic (Line 19 x Line 20)		145 833 134	38 967 560	18 927 40
22. Percentage distribution - Line 21		100.00	26.72	12.98
23. Total loaded car-miles (Line 15 Plus Line 16)		467 458 176	232 417 826	36 642 20
24. Percent of loaded car-miles in box cars		xxx	87.66	92.26
25. Loaded car-miles in box cars (Line 23 x Line 24)		412 490 233	203 736 466	33 806 26
Adjustment of Seven-day Study to Exclude Vehicle Parts From Box-Car Ratios				
26. Loaded box-car miles - 7-day test		199 180 498	63 856 046	27 847 67
27. Empty box-car miles - 7-day test		71 716 680	24 859 767	9 051 28
28. Loaded box-car miles - vehicle parts - reduced to 7-day equivalent (Line 25 x .019126)		7 889 288	3 896 664	646 57
29. Ratio-vehicle parts loaded car-miles to total car-miles in box cars (Line 28 divided by Line 26)		3.96%	6.10%	2.39
30. Increase in empty ratio per percentage point increase in vehicle parts traffic		.7	.7	.7
31. Percentage points added to empty ratio by vehicle parts traffic (Line 29 x Line 30)		2.77	4.27	1.67
32. Ratio-empty car-miles to loaded car-mile in box cars - all traffic (Line 26 divided by Line 26)		36.01%	38.93%	32.56
33. Adjusted empty return ratio for box cars (Line 32 minus Line 31)		33.24%	34.66%	30.89
Basis No.2: Effect on Over-All Empty Ratio Computed by Elimination of Vehicle Parts Loaded Car-Miles and an Equal Amount of Empty Car-Miles				
34. Empty box-car miles - vehicle parts - seven day equivalent (same as Line 28)		7 889 288	3 896 664	646 57
35. Loaded box-car miles, adjusted to exclude vehicle parts (Line 26 minus Line 28)		191 291 210	59 959 382	27 201 09
36. Empty box-car miles adjusted to exclude vehicle parts (Line 27 minus Line 34)		63 827 392	20 963 103	8 404 62
37. Ratio - empty to loaded car-miles, after adjustment		33.37%	34.96%	30.90
38. Net reduction in empty ratio for box cars (Line 32 minus Line 37)		2.64%	3.97%	1.66

* To compensate for longer hauls and lower average revenue per car-mile

APPENDIX C

DEVELOPMENT OF EMPTY BOX-CAR RATIOS BY TERRITORIES AFTER EXCLUSION OF VEHICLE PARTS NOS

CLASS I RAILROADS IN THE UNITED STATES - YEAR 1956

Effect on over-all empty ratio projected on basis of computed increase of seven-tenths of one percent.. for each percentage point increase in vehicle parts	Apportionment Factor	United States	Official Territory	Southern Region	Western District
(1)	(2)	(3)	(4)	(5)	(6)
ommodity Group 623, Vehicle Parts NOS					
terminated		9 860	7 881	464	1 515
		3 731 179	xxx	xxx	xxx
anded for circuity (Line 2 x 1.13)		4 216 232	xxx	xxx	xxx
ated and terminated (Line 3 divided by Line 1)		.428	xxx	xxx	xxx
ine miles directly assigned		1 500 902	1 259 039	3 045	238 818
les expanded for circuity (Line 5 x 1.13)		1 696 019	1 422 714	3 441	269 864
of line 8		100.00	83.89	.20	15.91
d car-miles to total car-miles		40.23	xxx	xxx	xxx
		$2 192 427	xxx	xxx	xxx
directly assigned		952 470	820 935	3 657	127 878
of line 10		100.00	86.19	.38	13.43
to total (Line 10 divided by Line 9)		43.44%	xxx	xxx	xxx
Miles - Vehicle Parts NOS - Year 1956					
terminated - freight commodity statistics		1 092 192	xxx	xxx	xxx
Line 13 x Line 4)		467 458 176	xxx	xxx	xxx
of loaded car-miles (Line 14 x Line 8)	Line 7	188 058 424	157 762 212	376 117	29 920 095
of loaded car-miles (Line 14 minus Line 13)	Line 22	279 399 752	74 655 614	36 266 088	168 478 050
commodity statistics		$243 703 598	$130 212 468	$19 329 691	$94 161 439
of freight revenue (Line 12 x Line 17)	Line 11	105 864 843	91 244 908	402 286	14 217 649
of freight revenue (Line 17 minus Line 18)		137 838 755	38 967 560	18 927 405	79 943 790
erterritorial traffic		xxx	1.00	1.00	1.10*
territorial traffic (Line 19 x Line 20)		145 833 134	38 967 560	18 927 405	87 938 169
- Line 21		100.00	26.72	12.98	60.30
Line 15 Plus Line 16)		467 458 176	232 417 826	36 642 205	198 398 145
les in box cars		xxx	87.66	92.26	88.18
cars (Line 23 x Line 24)		412 490 233	203 736 466	33 806 283	174 947 484
to Exclude Vehicle Parts From Box-Car Ratios					
-day test		199 180 498	63 856 046	27 847 673	107 476 779
day test		71 716 680	24 859 767	9 051 246	37 805 667
ehicle parts - reduced to 7-day equivalent (Line 25 x .019126)		7 889 288	3 896 664	646 579	3 346 045
ed car-miles to total car-miles in box cars (Line 28 divided by Line 26)		3.96%	6.10%	2.32%	3.11%
per percentage point increase in vehicle parts traffic		.7	.7	.7	.7
to empty ratio by vehicle parts traffic (Line 29 x Line 30)		2.77	4.27	1.62	2.18
loaded car-mile in box cars - all traffic (Line 28 divided by Line 26)		36.01%	38.93%	32.50%	35.18%
tio for box cars (Line 32 minus Line 31)		33.24%	34.66%	30.88%	33.00%
ffect on Over-All Empty Ratio Computed by limination of Vehicle Parts Loaded Car-Miles nd an Equal Amount of Empty Car-Miles					
hicle parts - seven day equivalent (same as Line 28)		7 889 288	3 896 664	646 579	3 346 045
justed to exclude vehicle parts (Line 26 minus Line 28)		191 291 210	59 959 382	27 201 094	104 130 734
ted to exclude vehicle parts (Line 27 minus Line 34)		63 827 392	20 963 103	8 404 667	34 459 622
ar-miles, after adjustment		33.37%	34.96%	30.90%	33.09%
tio for box cars (Line 32 minus Line 37)		2.64%	3.97%	1.60%	2.09%
o compensate for longer hauls and lower rerage revenue per car-mile					

VERIFIED STATEMENT NO. 40
OF J. J. REMINGTON

[11]

The unit costs developed by Witness Heywood differ from those which the Cost Finding Section develops in several respects:

[12]

(1) * * *

(2) Witness Heywood, when applying cost to traffic excludes passenger and LCL deficits. The Cost Finding Section includes these deficits in its fully distributed costs.

(3) * * *

(4) Witness Heywood uses as his return base book investment on road and equipment plus cash and materials and supplies, less recorded accrued depreciation and amortization. The Cost Finding Section uses as its return base elements of value for road property and equipment, plus working capital and present value of land and rights, less accrued depreciation and normal amortization. He uses 6% for his rate of return, rather than the 4% used by the Commission. This treatment of return and property base does not make any significant difference as between Official and Southern Region carriers.

The Cost Finding Section of the Interstate Commerce Commission applies the Official Territory Lines' cost to traffic moving in Official Territory when it prices out the burden study traffic, and also uses Southern Region Lines'

[13]

costs in Southern Territory. The Southern Region Lines costs it uses are the same as those underlying page 13 of Exhibit B of Mr. Heywood's Verified Statement No. 3.

Table 6 below is based on the Official Territory Lines' and Southern Region Lines' unit costs of the Cost Finding Section for the same year as that used by Witness Heywood (1956), applying those unit costs to the traffic study for comparison with the revenue of North-South traffic.

TABLE 6

Costs and Revenues

Applying Cost Section Unit Costs[1] to Southern Lines' Traffic Study

	Percents
South of Gateway:	
Revenues	55.36
Costs	53.36
Difference	— 2.00
North of Gateway:	
Revenues	44.64
Costs	46.64
Difference	+ 2.00

[1] Cost Section Official Territory unit costs to all services north of gateway and Southern Region unit costs to all services south of gateway.

Table 6 is to be compared with Table 5. Table 5 uses Witness Heywood's adjusted Rail Form A unit Costs, while Table 6 uses the Cost Finding Section's unadjusted Rail Form A costs.

In order to provide a common base for the cost applications which follow in this statement, we have used the Cost Finding Section application of Rail Form A as the base for adjusting Rail Form A to fit Official-Southern traffic. We thus start from the same base as does the Cost Finding Section in applying costs to traffic in its burden studies.

• • •

Exhibit C, p. 9:

In Docket 28300, the Cost Section obtained the data necessary for correction of the car count by special questionnaire (Exhibit 11, pages 28-29). Special questionnaires are no longer necessary because the Waybill Section of the Commission's Bureau of Transport Economics and Statistics regularly obtains the essential facts in reconciling its 1% waybill sample with the freight commodity statistics. The waybill sample reports each car of tidewater coal, for example, as a car originated and terminated and not as a car originated and delivered to connections as in the freight commodity statistics. This difference in definitions is recognized in the Bureau's Statement No. 543, *Waybill Statistics-Their History and Uses*, page 21:

> "Because the 1-percent sample is drawn from terminated waybills, the results must be interpreted in the light of existing waybilling practices. For example, there are differences between certain established waybilling practices of the railroads and the reporting rules under which the Commission's freight commodity statistics are compiled. These differences affect comparisons between the waybill data and these statistics. The most important variations involve tidewater and rail-lake-rail hauls. In these cases the railroads issue separate waybills for each rail movement, whereas only one origination and one termination are reported in the freight commodity statistics."

• • •

[14]

The primary difference between the type of cars is in their utilization. It is reasonable to assume that the differences in the cost per day or per year for repairing cars is insignificant as between the several types of cars, and this assumption is in accordance with Witness Symes' testimony in this case (at transcript page R-213). Any differences in depreciation or return costs per day or per year

would depend upon differences in investment per car for the various types of cars and my check of the investment per car for cars purchased by the important Northern and Southern roads does not show any significant difference in investment per car by type of car.

Significant differences between the types of car are shown when the utilization by type of car is analyzed from the Commission's statistics. This comparison is shown in Table A below:

TABLE A

Car Utilization by Type of Car

Type of Car	Cars Owned U.S.	7-Day Study Car-Miles (000)	Percent of Total Car-Miles Col. (3)	Annual Car-Miles (000) (3) x (4)	Car-Miles per car owned per year; (5) divided by (2)
(1)	(2)	(3)	(4)	(5)	(6)
1. Box	727,659	270,897	45.240	14,287,386	19,635
2. Gondola	277,802	50,054	8.359	2,639,882	9,503
3. Open Hopper	503,442	112,889	18.853	5,954,025	11,827
4. Covered Hopper	46,952	12,299	2.054	648,680	13,816
5. Stock	36,830	11,841	1.977	624,363	16,953
6. Flat, Incl. Rack	85,340	20,155	3.366	1,063,027	12,456
7. Other	2,347	2,227	.372	117,482	[1]
8. Subtotal Per Diem Cars	1,680,372	—	—	25,334,855	15,178
9. Refrigerator	—	73,348	—	3,868,395	—
10. Tank	—	45,092	—	2,378,073	—
11. Total	—	598,801	100.000%	31,581,314	—

Sources:

Column (2)—Transport Statistics in the United States—1956, Table 22, column j.

Column (3)—Cost Finding Section Statement No. 6-57, Percent of Empty to Loaded Freight Car-Miles by Class of Equipment and Performance Factors for Way, Through and All Trains Combined, Table 2 for United States.

Column (5), line 11—Transport Statistics in the United States—1956, Table 162 All Districts.

[1]. There is no definition of "Other Cars" in the questionnaire underlying the Cost Finding Section 7-Day Study. The amounts are too small to significantly affect any other type of car.

* * *

[19]

It is to be emphasized that any differences in the separation of the U. S. car costs by type of car would have no appreciable effect on the relative costs of Official-Southern traffic produced by the application of adjusted Rail Form A costs to our traffic study. The separation of U. S. car costs by type of car is a desirable refinement, and makes the application of car costs consistent with the use of U. S. tare weights by type of car. What is important is that a common car cost be applied to each car of Official-Southern traffic, moving as it does in the same car in both North and South. This avoids the serious distortions in the cost relationships resulting from the use of sytem average car costs, as discussed by Witness Cole.

* * *

[21]

Table 11 below shows the cost-revenue results when the unit costs of the territorial group in which a carrier is classified is applied to the services of that carrier, whether north or south of the gateway.

TABLE 11

Costs and Revenues

Territorial Adjusted Unit Costs Applied as the Traffic Relates to the Roads in Each Territory, and Short Line Railroad Adjusted Unit Costs.

	Percents
South of Gateway:	
Revenues	55.36
Costs	55.45
Difference	+ .09
North of Gateway:	
Revenues	44.64
Costs	44.55
Difference	— .09

Table 11 is to be compared with Table 7. When adjusted territorial average costs are used as shown in Table 11, the Northern Lines' cost claim on additional revenues from North-South traffic disappears.

All of the costs shown in this statement are fully distributed costs. Exhibits D and E of Witness DeButts' Verified Statement No. 14 shows that the suburban service portion of the passenger deficit for Eastern District Lines is $44,969,450. This money covers only operating expenses, rents and taxes. The Northern roads in their presentation to the Senate Committee, entitled *The Rail Suburban Service Problem,* at page 8 described "Item III" (from which the $44,969,450 is taken) as "the estimated net railway operating income deficit in suburban service." Rail Form A includes as a cost return on investment. On page 18 of the Northern roads presentation to the Senate Committee, it is

[22]

pointed out that for the Pennsylvania Railroad:

> "The total ledger valuation at New York is $93 million and in Philadelphia $78.8 million, or a grand total of $171.8 million for the particuar facilities and equipment reflected on the table. A minimum fair return on these ledger values would exceed $10 million annually, . . ."[1]

By relating the return on investment for suburban service on the PRR to the suburban service expense deficit, an estimate of the total return after Federal Income Taxes that should be related to suburban services for the eight "Eastern Territory Suburban Railroads" is $36,500,000. This specialized deficit and related return on investment is not properly chargeable against the freight shippers and connections, and thus this money must be excluded from the constant costs of Eastern District Lines in Table 10 above. The resulting cost percentage is compared with the revenue proportions in Table 12 below.

TABLE 12

Costs and Revenues

Official Territory Lines' Adjusted Unit Costs Applied to the Services North of Gateway and Southern Region Lines' Adjusted Unit Costs Applied to the Services South of Gateway.

(Excluding Suburban Service Deficits)

	Percents
South of Gateway:	
Revenues	55.36
Costs	55.76
Difference	+ .40
North of Gateway:	
Revenues	44.64
Costs	44.24
Difference	— .40

[1] The Rail Form A ratio for Eastern District to include income tax expense in a return at 4% is 1,56191 for 1956. Thus the total return would be 6.25% (1.56191 x 4%). 6.25% of $171.8 million is $10.7 million.

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VERIFIED STATEMENT NO. 40A
OF J. J. REMINGTON

[6]

Witness Seigler, in his Verified Statement No. 42, describes the switching studies made on a representative sample of Official-Southern traffic. I have worked closely with Dr. Deming in the random selection of the cars to be studied and Witness Seigler in summarizing the results of these extensive studies. The studies described by Witness Seigler produce engine minutes per car at origin or destination in the South specifically related to the North-South traffic. As Witness Seigler and others in this proceeding have testified, there is a substantial movement of volume traffic within the South which depresses the system average switching minutes per car. Use of the switching minutes per car for Official-Southern traffic developed by Witness Seigler automatically eliminates this effect of volume traffic on the switching costs of the Southern roads.

In order to apply switching minutes per car for Official Territory which likewise eliminate the influence of volume commodities, I have followed the method used by the Cost Finding Section in the burden studies to eliminate the influence of lower minutes per car which are imputed to the origination of coal and coke and to the origination and termination of iron ore and anthracite coal to washers. Only in the case of anthracite coal to washers is the Cost Finding Section adjustment based on a study of the switching services. It is, to say the least, doubtful whether the engine minutes per car based upon the experience of Pocahontas Lines may properly be imputed to the orgination of

[7]

coal on Eastern District lines. Nevertheless, we have followed the procedure of the Cost Finding Section, including the assignment of lower-than-average minutes per car to such coal traffic, and have used the resulting higher-than-

average adjusted minutes per car for traffic other than volume commodities. These adjusted minutes per car for Official Territory produced by this method are 27.65 minutes for box cars, and 30.72 minutes for other cars.

These resulting minutes per car for Official Territory, as applied to Official-Southern traffic, are averages which eliminate the influence of volume commodities but, in other respects, represent average switching at large cities and small cities, yard switching and train switching. The Cost Finding Section has found a correlation between size of cities and switching minutes per car, and an appropriate question here is whether the Official-Southern traffic originates or terminates at large cities or small towns in Official Territory to a greater or lesser extent than average traffic. Analysis of the Official-Southern traffic in relation to the size of the cities served shows that the switching minutes set forth above and used in our further adjusted costs overstate the services performed in Official Territory on Official-Southern traffic, both in absolute terms and in relation to the minutes per car used for the Southern roads. The results of this analysis, using the Cost Finding Section's factors for switching by size of cities, are set forth and explained in Exhibit H, attached.

* * *

OFFICIAL - SOUTHERN TRAFFIC

FULL COST PROPORTIONS BASED ON ROUTE OF MOVEMENT MILES BY SUBSAMPLE

	COST NORTH				COST SOUTH				TOTAL COST	PERCENT	
	TERMINAL	LINE HAUL		TOTAL	TERMINAL	LINE HAUL		TOTAL			
SUB		WAY	THRU			WAY	THRU			NORTH	SOU
0	33,613,981	5,232,054	128,624,749	167,470,784	21,555,031	10,583,295	159,752,646	191,890,972	359,361,756	46.60	53.
1	33,550,598	5,207,795	125,893,268	164,651,661	21,494,584	10,553,895	157,990,129	190,038,608	354,690,269	46.42	53.
2	33,325,433	5,238,874	128,613,523	167,177,830	21,370,178	10,590,126	160,159,322	192,119,626	359,297,456	46.53	53.
3	33,827,643	5,282,154	131,031,970	170,141,767	21,699,595	10,689,127	161,381,122	193,769,844	363,911,611	46.75	53.
4	33,453,296	5,160,669	128,082,620	166,696,605	21,431,996	10,418,056	158,617,728	190,467,780	357,164,385	46.67	53.
5	33,476,855	5,173,535	127,604,337	166,254,726	21,457,431	10,497,546	157,272,899	189,227,875	355,482,602	46.77	53.
6	33,894,679	5,242,479	128,778,848	167,916,005	21,717,790	10,592,129	156,346,526	188,656,445	356,572,450	47.09	52.
7	33,602,517	5,210,952	130,734,681	169,548,150	21,546,929	10,557,339	158,798,495	190,902,763	360,450,913	47.04	52.
8	34,000,932	5,240,251	130,357,573	169,598,756	21,792,896	10,613,356	159,941,155	192,347,407	361,946,163	46.86	53.
9	33,279,852	5,135,783	127,635,691	166,051,325	21,328,803	10,401,738	154,799,360	186,529,902	352,581,227	47.10	52.
TOT	33,564,609	5,211,818	127,902,913	166,679,340	21,520,444	10,548,593	158,279,225	190,348,262	357,027,601	46.69	53.
STDERR	76,809	14,030	576,002	630,979	49,322	27,906	627,294	669,465	1,163,079	.08	

NOTE: Except for the separation of way and through train costs and miles, the above is the application of Cost Finding Section unadjusted Official Territory Lines' unit costs to all services north of gateways and Southern Region Lines' unit costs to all services south of gateways. All unit costs are applied to the Southern Lines' traffic study.

OFFICIAL - SOUTHERN TRAFFIC

FULL COST PROPORTIONS BASED ON ROUTE OF MOVEMENT MILES BY SUBSAMPLE

SUB	TERMINAL	COST NORTH LINE HAUL WAY	COST NORTH LINE HAUL THRU	COST NORTH TOTAL	COST NORTH TERMINAL	COST SOUTH LINE HAUL WAY	COST SOUTH LINE HAUL THRU	COST SOUTH TOTAL	TOTAL COST	PERCENTS NORTH	PERCENTS SOUTH
0	32,701,821		132,099,629	164,801,449	21,991,880		173,560,092	195,551,971	360,353,421	45.73	54.27
1	32,626,133		129,396,841	162,022,974	21,906,022		171,650,874	193,556,896	355,579,870	45.57	54.43
2	32,430,185		132,159,220	164,589,405	21,786,210		174,069,676	195,855,886	360,445,291	45.66	54.34
3	32,905,437		134,570,242	167,475,679	22,135,661		175,362,032	197,497,693	364,973,372	45.89	54.11
4	32,538,418		131,447,336	163,985,754	21,889,024		172,466,550	194,355,574	358,341,328	45.76	54.24
5	32,568,373		130,975,320	163,543,693	21,902,973		171,096,943	192,999,916	356,543,669	45.87	54.13
6	32,979,321		132,335,285	165,314,607	22,175,008		170,156,981	192,331,989	357,646,595	46.22	53.78
7	32,701,122		134,198,385	166,899,508	22,005,784		172,785,473	194,791,257	361,690,764	46.14	53.86
8	33,081,445		133,840,417	166,921,862	22,263,217		174,032,328	196,295,546	363,217,408	45.96	54.04
9	32,360,224		131,001,900	163,362,125	21,757,431		168,402,222	190,159,653	353,521,777	46.21	53.79
OT	32,653,322		131,371,285	164,024,607	21,963,095		172,127,948	194,091,043	358,115,650	45.80	54.20
TDERR	75,617		583,100	630,994	53,057		662,576	685,568	1,185,789	.08	.08

NOTE: Except for the use of U.S. car costs by type of car, the above is the application of Cost Finding Section unadjusted Official Territory Lines' unit costs to all services north of gateways and Southern Region Lines' unit costs to all services south of gateways. All unit costs are applied to the Southern Lines' traffic study.

COSTS AND PROPORTIONS EXCLUDING SUBURBAN DEFICITS

	Cost North				Cost South				Total Cost	Percents	
	Terminal	Line-Haul Way	Line-Haul Thru	Total	Terminal	Line-Haul Way	Line-Haul Thru	Total		North	South
1. Full costs based on Official Territory Lines' & Southern Region Lines' Unit Cost (From Exhibit J, page 1, Total Line).	30,684,976	4,940,983	120,614,461	156,240,420	25,136,853	10,568,483	158,482,169	194,187,505	350,427,925	44.59	55.41
2. Suburban deficits which were included in Official Territory Lines' and Southern Region Lines' unit costs as applied in line 1 above.	481,683	92,946	2,255,946	2,830,575	28,000	21,967	327,103	377,070	3,207,645	—	—
3. Full costs based on Official Territory Lines' and Southern Region Lines' unit costs, excluding suburban deficits (underlying Table 18).	30,203,293	4,848,037	118,358,515	153,409,845	25,108,853	10,546,516	158,155,066	193,810,435	347,220,280	44.18	55.82
4. Full costs based on Territorial unit costs applied to the services of each of the railroads as the railroads are classified by the Commission (from Exhibit J, page 2, Total Line).	31,036,846	5,320,125	118,981,017	155,337,988	25,579,028	10,359,304	158,502,681	194,441,013	349,779,001	44.41	55.59
5. Suburban deficits which were included in Eastern District Lines' & Southern Region Lines' unit costs as applied in Line 4 above.	465,354	81,666	1,982,181	2,530,201	25,665	21,247	316,388	363,300	2,893,501	—	—
6. Full costs based on Territorial unit costs applied to the services of each of the railroads as the railroads are classified by the Commission, excluding suburban deficits(underlying Table 19).	30,570,492	5,238,459	116,998,836	152,807,787	25,553,363	10,338,057	158,186,293	194,077,713	346,885,500	44.05	55.95

COSTS AND PROPORTIONS EXCLUDING SUBURBAN DEFICITS
AND INCLUDING FULLY DISTRIBUTED DEFICITS ON INBOUND TRANSIT TRAFFIC

	Cost North				Cost South					Percents	
	Terminal	Line-Haul Way	Line-Haul Thru	Total	Terminal	Line-Haul Way	Line-Haul Thru	Total	Total Cost	North	South
1. Full cost based on Official Territory Lines' and Southern Region Lines' unit cost, excluding suburban deficits.	30,203,293	4,848,037	118,358,515	153,409,845	25,108,853	10,546,516	158,155,066	193,810,435	347,220,280	44.18	55.82
2. Fully distributed deficits on inbound transit traffic-Southern Region.	—	—	—	—	7,837,869	—	—	7,837,869	7,837,869	—	—
3. Full cost based on Official Territory Lines' and Southern Region Lines' unit cost, excluding suburban deficits and including fully distributed deficits on inbound transit traffic.	30,203,293	4,848,037	118,358,515	153,409,845	32,945,722	10,546,516	158,155,066	201,648,304	355,058,149	43.21	56.79
4. Full cost based on Territorial unit cost applied to the services of each of the railroads as the railroads are classified by the Commission, excluding suburban deficits.	30,570,492	5,238,459	116,998,836	152,807,787	25,553,363	10,338,057	158,186,293	194,077,713	346,855,500	44.05	55.95
5. Fully distributed deficits on inbound transit traffic-Southern Region.	—	—	—	—	7,837,869	—	—	7,837,869	7,837,869	—	—
6. Full cost based on Territorial unit cost applied to the services of each of the railroads as the railroads are classified by the Commission, excluding suburban deficits and including fully distributed deficits on inbound transit traffic.	30,570,492	5,238,459	116,998,836	152,807,787	33,391,232	10,338,057	158,186,293	201,915,582	354,723,369	43.08	56.92

VERIFIED STATEMENT NO. 41
OF E. W. BURROUGHS

[5]

The high rated nature of the Southern-Official paper movement, taken by itself, also appears from the comparison with fully distributed costs, the basis which the Northern lines seek to apply:

Commodity		South to Official		
		Revenue	Fully Distributed Cost	Ratio (%) of Revenue to Fully Distributed Cost
653	Woodpulp	$ 9,796,300	$ 6,575,000	149
657	Newsprint paper	193,600	123,300	157
659	Printing paper NOS.	1,384,200	876,100	158
661	Wrapping paper	8,856,900	6,371,900	139
663	Paper bags	7,805,400	5,824,900	134
665	Paper and paper articles	640,500	441,700	145
667	Printed matter NOS.	52,400	22,900	229
669	Paperboard and Fibreboard	34,132,400	26,459,100	129
	Total	$62,861,700	$46,694,900	135

Source: "Distribution of Rail Revenue Contribution by Commodity Groups—1956", Table 7.

The foregoing figures indicate the relationship of revenue and fully distributed costs for the Southern-Official paper traffic taken by itself. However, this is an entirely unrealistic approach in view of the integral handling of pulpwood traffic necessary to the rail haul of the paper. Pulpwood taken by itself, shows the following relationships in the Cost Finding Section figures:

Commodity		South to South		
		Revenue	Out-of-Pocket Cost	Ratio (%) of Revenue to Out-of-Pocket Cost
409	Pulpwood	$32,767,400	$42,169,800	78

These misleading figures are based on Rail Form A unadjusted costs applied to pulpwood and, in the previous tables, to paper. Pulpwood in the South moves in large cuts of cars with lower than average switching and other services per car. Actual studies made of the pulpwood movement in 1956 showed that the revenues received from pulpwood by the study roads exceeded their out-of-pocket costs of handling that commodity by about $3 million. The following table shows the contribution of pulpwood to all southern railroads based on annual contribution to study roads as developed in the 1956 studies:

VERIFIED STATEMENT NO. 42
OF MORRIS G. SEIGLER

Appendix B:

SWITCHING MINUTES PER CAR, BY SUB-SAMPLE

Sub-Sample	System Average (Col. 4, App. A)	Actual (Col. 7, App. A)	Difference (3) - (2)
(1)	(2)	(3)	(4)
0	18.4	21.6	3.2
1	17.8	23.6	5.8
2	19.1	27.9	8.8
3	17.8	32.4	14.6
4	18.3	30.1	11.8
5	18.8	33.4	14.6
6	19.3	17.6	— 1.7
7	18.8	35.6	16.8
8	18.8	19.0	0.2
9	18.8	17.7	— 1.1
Entire Sample	18.5	26.0	7.5
Standard Error	0.2	2.2	2.2

VERIFIED STATEMENT NO. 45
OF ROSS H. PRATER

[4]

Freight rates and charges are a most important factor in the operation of our company and in our ability to remain competitive with other processors of steel, because of the relatively high cost of producing steel from scrap. The cost of procuring and transporting scrap in effect determines not only the area from which we draw our raw material but also the area in which we compete in the distribution of the finished products.

This proceeding, as I understand it, seeks to readjust the present equal factor basis of dividing North-South inter-territorial revenue to allow the northern carriers at the expense of the southern carriers a greater proportion of the revenue than they now receive—the estimated effect being the loss to the southern lines of between $25,000,000 and $30,000,000 per year. We at Atlantic Steel are concerned that the loss of any such large amount of revenue as $25,000,000 per year will either subject us to increased pressure for a further boost in railroad freight rates or seriously handicap the southern lines in the maintenance and provision of the type of service and equipment necessary to our company.

VERIFIED STATEMENT NO. 47
OF H. CECIL JONES

[4]

United States Sugar Corporation is now wholly dependent upon the services and traffic policies of the Southern railroads.

My understanding is that in these proceedings the lines in Official territory are asking that their factors of the joint through interterritorial rates between the North and the South be increased to an extent which would produce about $25 Million annually for the Northern carriers and a like amount to be deducted from the Southern carriers' proportions of the revenue.

It is my opinion, after years of study of rail transportation, rates, services and schedules, that the Northern lines are not entitled to such diversion of revenue from the Southern railroads to the Northern lines.

The Sugar Company fears that any such diversion of revenue growing out of the changes in prescribed divisions will seriously affect the ability of the Southern railroads to give us the fine, dependable rail schedules, equipment and services upon which we rely.

We fear that such diversion from the Southern railroads to the Northern lines might have the effect of causing the Southern lines to file applications for an additional general increase in freight rates including rates on sugar, molasses and sugar cane pith—our products.

Any change in our present rate structure as related to competitive rates would seriously lessen and curtail our ability to compete in the distant markets, and perhaps would cause us to reduce to a serious extent, and curtail, or discontinue our long-haul movements. . . .

VERIFIED STATEMENT NO. 53
OF A. M. DOWNEY, JR.

[3]

Our Position

Information supplied to our Association indicates that the railroads in the Eastern District (including the Pocahontas Region) and otherwise referred to as Official Territory, including the Central Region, New England Region and Pocahontas Region, are again seeking to have the prescribed divisions of joint interterritorial rates between the North and the South so changed that the integers, applicable for hauls north of the gateways, be increased so as to produce an estimated increase in the operating revenues of the Northern Railroads by about $25,000,000 per annum. This, in turn, would cause a like *reduction* in the operating revenues of the railroads in the Southern Region, by $25,000,000.

Our Association joins with the Southeastern Association of Railroad and Utilities Commissioners in opposing *any* increases in the Northern Lines integers of divisions of joint interterritorial rates between the North and the South.

VERIFIED STATEMENT NO. 61
OF DEWEY C. WAYNE

Appendix A:

AGRICULTURAL PRODUCTS (As Classified Under ICC F.C.S.)

Comm. Group No.	Commodity Group Description	Between Official and Sou. Territories (Source: Sou. Lines Traffic Study—July 1958 thru June 1959) South-Bound CARLOADS	Between Official and Sou. Territories (Source: Sou. Lines Traffic Study—July 1958 thru June 1959) North-Bound CARLOADS	Within Sou. Territory (Source: I.C.C. 1% Waybill Study—T.D. 1, year 1958) CARLOADS
1	Wheat	1,291	—	2,700
2	Corn	511	23	12,000
5	Sorghum Grain	—	—	500
7	Oats	23	—	2,400
9	Barley & Rye	—	—	300
11	Rice	—	351	1,400
13	Grain, NOS	60	—	—
15	Flour, Wheat	505	63	10,600
17	Meal, Corn	60	107	1,500
19	Flour, Edible, NOS.	516	—	4,100
21	Cereal Food, NOS	4,140	60	700
23	Mill Prod., NOS	380	—	5,200
25	Hay	819	—	100
27	Straw	284	20	—
29	Tobacco, Unmfg.	1,455	4,265	25,700
31	Tobacco Waste	164	42	400
33	Cotton	43	1,268	61,500
35	Cotton Linters	256	4,914	7,300
37	Cottonseed	—	—	1,300
39	C. S. Meal	—	1,050	2,200
41	C. S. Hulls	—	—	200
43	Soybeans	41	—	4,100
45	Soy Meal	5,766	67	6,400
47	Veg. Oil, Meal, Etc. NOS	43	—	400

Comm. Group No.	Commodity Group Description	Between Official and Sou. Territories (Source: Sou. Lines Traffic Study—July 1958 thru June 1959) South-Bound	Between Official and Sou. Territories (Source: Sou. Lines Traffic Study—July 1958 thru June 1959) North-Bound	Within Sou. Territory Source: I.C.C. 1% Waybill Study—T.D. 1, year 1958)
		CARLOADS		CARLOADS
49	Apples, Fresh	59	—	100
51	Bananas	—	3,743	6,000
59	Citrus Fruits, NOS.	—	20	—
61	Oranges & Grapefruit	—	14,631	1,600
63	Peaches, Fresh	—	3,662	200
67	Watermelons	—	5,589	400
69	Fruits, Fresh, NOS.	—	110	—
71	Fruits, Dried, NOS.	20	—	—
75	Coffee	616	226	1,300
77	Cabbage	60	1,499	—
79	Celery	—	4,296	100
85	Potatoes, o/t Sweet.	433	3,858	500
87	Tomatoes	—	2,874	500
89	Vegetables, Fresh, NOS	22	9,258	400
91	Beans	—	21	200
93	Vegetables, Dried, NOS	28	—	—
95	Vegetables, Fresh, Frozen	34	—	—
97	Peanuts	—	825	2,000
103	Malt, NOS	59	56	—
107	Seeds, NOS	—	40	—
199	Prod. of Agri., NOS	254	2,165	47,600
	Total	17,942	65,103	211,900

NOS = Not Otherwise Specified

VERIFIED STATEMENT NO. 62
OF C. B. CULPEPPER

[5]

In these proceedings the Eastern Railroads seek an additional $25,000,000.00 or more annually on traffic moving between the North and the South. The entire amount would come out of net revenues of the Southern lines. Based upon Interstate Commerce Commission's Statement M-100 twenty-five million dollars is the equivalent of 18% of the net revenue of Southern lines in 1959, but would add only 9½% to the net revenue of the Eastern railroads. Divisions prescribed by the Interstate Commerce Commission are continuing and should twenty-five million dollars annually be taken from the Southern railroads and given to the Eastern railroads it would in the short period of ten years amount to one-quarter of a billion dollars. It is reasonable to assume Southern railroads would be compelled to try to recoup this very sizeable proportion of their net earnings by every means open to them, such as increased rates, curtailed service, purchase of fewer locomotives and cars, deferred maintenance of equipment and facilities and reduced employment.

The economic health of Atlanta, perhaps more so than most cities, is dependent upon adequate and dependable rail transportation. For example, the vast automobile assembly plants operated by Buick, Oldsmobile, Pontiac, Chevrolet and Ford are utterly dependent upon Atlanta's railroads as are the more than 1300 manufacturing firms here, to say nothing of the 1200 national firms who maintain warehouse facilities and distribute from Atlanta. The Atlanta Freight Bureau and its more than 500 industrial and commercial members have a vital interest in the welfare of the railroads serving Atlanta. . . .

VERIFIED STATEMENT NO. 69
OF GEORGE C. LA BREE

[5]

• • •

Minimum Divisions

It is the position of Eastern railroads that in prescribing divisions for apportioning the revenue on the interterritorial traffic here involved the Commission should prescribe a 15 percent minimum division for each group of roads that performs origin or destination terminal service, for the reason that any basis of interterritorial divisions for apportioning the revenues on the traffic here involved should be subject to such a minimum division so as to provide sufficient protection for that origin or destination terminal service.

Railroad experience has definitely proved that terminal expenses cannot be controlled as readily as can line-haul expenses, which results in a tendency for terminal costs to rise faster than do line-haul costs.

The following table reflecting fully distributed unit cost factors on the I.C.C. Basis as shown in various exhibits of Witness J. L. Heywood, fully illustrates this situation.

[6]

Fully Distributed Box Car Costs

	Eastern District	Percent of 1950	Southern Region	Percent of 1950
Year 1950				
Terminal	5.033¢	100.0	3.113¢	100.0
Line Haul	0.060342	100.0	0.049497	100.0
Year 1959				
Terminal	8.476¢	168.4	4.653¢	149.5
Line Haul	0.074343	123.2	0.056353	113.9

Fully Distributed Refrigerator Car Costs

	Eastern District	Percent of 1950	Southern Region	Percent of 1950
Year 1950				
Terminal	7.034¢	100.0	4.412¢	100.0
Line Haul	0.099958	100.0	0.090710	100.0
Year 1959				
Terminal	11.169¢	158.8	6.162¢	139.7
Line Haul	0.141870	141.9	0.114440	126.2

Thus, as the Commission will here be prescribing divisions for the future, it should afford ample protection for the higher terminal costs of the Eastern lines which, having the shorter hauls, would suffer the most unless such protection was afforded. The generally longer hauls of the Southern lines would help them to absorb their terminal costs, which are lower than those of Northern lines in any event.

For the purpose of interterritorial group divisions the relative territorial Form A Cost Scales used as factors as suggested by Witness Cornelius do not in all instances provide ample protection for the short haul service and higher terminal costs on part of the Eastern lines. For example, the scales of composite rail costs for the year of 1956 shown on page 17 of Exhibit B to Witness J. L. Heywood's Verified Statement No. 3 show costs for the Eastern District at 50 miles of 8.1 cents per 100 pounds, and for the Southern Region at 1,000 miles of

[7]

49.6 cents, at 1,100 miles of 54.2 cents, and at 1,200 miles of 58.9 cents, which would produce cost percentages north of 14 percent, 13 percent, and 12 percent, respectively. A statement showing representative movements taken from Eastern lines' traffic study (Exhibit A to V.S. No. 1) illustrating such situations is attached as Appendix B. Those percentages are too low to protect the important terminal service of the Eastern carriers.

If divisions were based upon the relative costs as adjusted by Witness Remington, without provision for a minimum, Eastern lines for their shorter hauls would be limited to even smaller proportions.

In several recent major interterritorial divisions cases the Interstate Commerce Commission has prescribed a minimum of 15 percent of the total revenue for the railroads having the short hauls in the territory they serve. See *Official-Western Trunk Line Divisions,* 269 ICC 765, 786; *Official-Southern Divisions,* 287 ICC 497, 547; *Official-Southwestern Divisions,* 287 ICC 553, 597.

Also, in line with the Commission's action in providing a minimum division of 15 percent in those cases, the Eastern railroads and Western Trunk Line railroads parties to the October 4, 1955 Agreement (Exhibit 2 in I.C.C. Docket No. 31627), when arriving at a settlement of the issues as to approximately 70 percent of the traffic involved in that case, provided for a minimum division of 15 percent.

In addition, it will be noted by referring to the attached Appendix B that the short-line mileages north of Potomac Yard, Va., to and from Baltimore, Md., stations are from 43 miles to 49 miles. Under the Southern lines' position the Eastern lines' factor for those short-line mileages would be predicated on the mid-point mileage of the 50-

[8]

mile block, i.e., 25.5 miles, in spite of the fact that the Baltimore stations are located in one of the most expensive terminal areas in the East.

Protection for the short haul service of an originating or terminating group can be accomplished by (1) designing factors that will result in 15 percent for the short hauls, or (2) by providing in the order that the percents resulting from the prescribed factors will be subject to a minimum of 15 percent. This would be fair since it would accord the same protection to Southern lines when they have a corresponding burden of short-haul service plus terminal.

VERIFIED STATEMENT NO. 73
OF F. H. CLARK

[1]

My name is F. H. Clark. My qualifications have been previously stated in Verified Statement No. 72 in this proceeding.

It is my purpose in this statement to analyze from an operating standpoint the basis for the adjustments in the Rail Form A factors for the empty return of box car equipment in Official Territory incorporated in Southern lines' studies. Without undertaking to comment upon the propriety of corresponding adjustments for Southern Region, I shall demonstrate that insofar as Official Territory is concerned, Southern lines' adjustment of the box car empty return ratio is premised upon various assumptions respecting the utilization of such equipment by Official Territory carriers which are distinctly at variance with actual operations.

It is Southern lines' contention, advocated principally by Witness Cole and reflected in the cost adjustments introduced by Witness Remington, that the average empty return ratio for box cars employed in the Rail Form A applications of Witness Heywood overstates the empty return experience of Northern lines appropriate to the involved traffic. This claim is predicated upon the several assumptions, first, that disregarding incidental gondola and flat car shipments, vehicle parts are transported within Official Territory in designated "special

[2]

device" box cars "not suitable for return loading" (p. 28) and, hence, not in general purpose box cars; secondly, that auto device cars and other assigned special device cars invariably experience a 100 percent empty return movement to points of origin (R. 1693); thirdly, that there is a much

greater utilization of such special equipment, especially that designed for vehicle parts, within Official Territory than in the South; and lastly, that after adjusting for these circumstances, the box car ratio for Official Territory would not be significantly different from that for Southern Region. It was my assignment to test the validity of these assumptions.

Witness Cole seeks to justify the adjustment made in the empty return ratio for Northern lines, which he urges as a "reliable estimate" of the influence of the assumed 100 percent empty miles of assigned or special purpose box cars upon the empty return ratio for all box cars on the ground that Northern lines refused to join with Southern lines in a special study (V.S. 39, pp. 28-29). Northern lines rejected this request because "they do not believe that the proposed study would be of any value." Some of the reasons for this opinion will appear from my statement.

The Southern roads' request was that Northern lines join them in furnishing data for the separation of box car empty return ratios "as between box cars available for general loading and special device box

[3]

cars not suitable for return loading." Their request also stated:

> "The next following form, filled in for purpose of illustration, shows that the data requested, together with the equipment register, will permit the parties to develop box car empty return ratios separately for box cars available for general loading and special device box cars not suitable for return loading."

Implicit in the request, therefore, was the idea that one could get the number of a car and then, by reference to the Equipment Register, determine that it was a "special device box car not suitable for return loading." Actually, no such thing is possible. It is erroneous to assume that special device box cars are not suitable for return loading. In fact, they are used for return loading. Moreover, the ratios

which would be obtained upon the erroneous premise of Southern lines would then have to be applied by assuming a necessary and inevitable relationship between a commodity class and a type of equipment, a relationship which does not exist. They would obviously have applied the ratio developed for "general purpose box cars" on all traffic that moved in box cars between the North and the South except vehicle parts; they would have assumed that all vehicle parts moved in special device cars and have applied to that traffic the ratio which they purported to have developed for special device cars. Each such application would have

[4]

been wrong. This is because vehicle parts cars are, in fact, used for general traffic and also because it is erroneous to assume that vehicle parts do not move in general purpose cars. These facts I shall show, later in this statement, with reference to studies which we have made on the subject. The foregoing, then, indicates the first reason for our declining to join in the study suggested by the Southern lines.

A second reason is that whereas the Commission's seven-day study embraced days that were spaced through a twelve-month period, the three-day study suggested by the Southern lines would have been for "Monday, January 25, 1960; Wednesday, February 3, 1960, and Friday, February 12, 1960," or a period covering a span of but 18 days. It is obvious that the period was not representative because of this short span. Moreover, specially equipped cars were in heavy demand during the period because there was a steel strike during the 1959 Fall period when model changeovers take place and the movements of parts was, therefore, greatly curtailed in that period and, in consequence, was heavy during the period which would have been covered by the proposed three-day study, thus resulting in a heavy demand for the cars and a consequent greater empty return movement to meet this demand than would have applied throughout the year. Of course, a study embracing days

throughout a year's period would have resulted in an intolerable delay in the disposition of this proceeding, and such a study would still have been subject to the unwarranted assumptions mentioned above.

[5]

In general, much of the empty mileage incurred by box cars, particularly those designed for general loading, is unrelated to any particular shipment or placement order. The cars gravitate toward the areas where potential demands exist or are anticipated. Under such circumstances, the empty mileage cannot reasonably be attributed to any specific use or any identifiable shipment, either prior or subsequent to the empty movement, and must be considered as a general burden of doing business. For example, when an empty general purpose box car is received by a Southern carrier from a Northern connection, or vice versa, having previously moved loaded in the opposite direction, the empty return may well be completely disassociated from the preceding trip. The empty movement could well be motivated by a desire to minimize per diem payments or, in compliance with AAR orders, aimed at providing equipment to territories in need of same, or the receiving railroad may send the car to car shortage areas of its own road in no way concerned with the origination territory of the previous load. A good illustration of empty haul not assignable to other than system operation is a car moving into storage after a loaded trip. That handling has no connection whatever with the previous load. In my opinion, therefore, it is impossible, in such instances as here under consideration, to associate empty mileage with either the prior

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or the subsequent loaded movement or to fix the occurrence or point in time at which such mileage may be said to cease to be related to the prior load and thereafter be attributed to the subsequent load.

Witness Cole, nevertheless, undertakes to show that the territorial box car empty return ratio for Official Territory is inflated by the empty mileage incurred by special device cars moving in other than North-South traffic. He contends further, that this inflation does not occur to the same degree in the Southern Region. The difference between the two territories is said to be the participation of Northern lines in auto parts traffic.

There is no doubt that numerous examples can be found of special device box cars and assigned box cars, employed in particular movements, which incur empty hauls back to the place of loading. But special device and assigned service is not peculiar to Official Territory alone. Shippers in other territories are demanding the same type of service.

On the other hand, there is a recent trend, at least in Official Territory, which I shall illustrate more fully hereafter, toward controlled utilization of special type cars aimed at eliminating empty mileage. These cars, therefore, rather than inflating the empty miles within Official Territory have a depressive effect upon the territorial empty return ratio.

But even recognizing the fact that in some cases special device cars

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are returned empty to origin in all territories, there is no justification whatsoever for the uncorroborated assumption that this is invariably true of every special device car in Official Territory, and it is this assumption which forms the foundation of the adjustments made by Southern lines' Witness Remington.

Witness Cole undertook to show, at page 29 of his Verified Statement No. 39, the existence of a correlation between system average box car empty return ratio and the proportion of total traffic represented by Commodity Group 623 Vehicle Parts. For this purpose he selected the carriers serving Detroit, New York Central, Wabash, C&O, DT&I

and GTW. Accordingly, the four Eastern lines, first named, together with the Pennsylvania and the Baltimore and Ohio, undertook to make spot checks of their transportation records to determine if, in fact, all auto parts transported in box cars required special device box cars, as assumed by Mr. Cole and, secondly, to determine whether such special device cars were limited to special service again, as assumed by Mr. Cole, or were utilized for traffic generally. The investigation on the Pennsylvania was conducted under my supervision and the results of the corresponding inquiries on the New York Central, Wabash, C&O and DT&I were likewise coordinated through my office and the results furnished to me for incorporation into the exhibits hereinafter

[8]

described. The basic data in those exhibits was abstracted to a large extent from conductors' wheel reports supplemented, where necessary by reference to other operating and auditing department records. No effort was made to cover any particular period of time on any of the study lines nor to examine the records pertaining to all trains moving on the dates selected for investigation. We simply sought sufficient illustrations to demonstrate the facts already well known to Eastern operating officers that there is not, in actuality, the sharp delineation in commodities loaded between general purpose box cars and special device cars that Witness Cole would assume. For the purpose of these exhibits, I have adopted the definitions used by Mr. Cole. Classes LC, XI, XM, XME, VA, VM and VS have been considered to be general service box cars. Classes XAP, XAR, XML, XMP, XMR and XT have been considered to be special device box cars.

My Exhibit No. 1 is a "SUMMARY OF EXAMPLES OF VEHICLE PARTS TRANSPORTED IN OTHER THAN SPECIAL DEVICE CARS (CONSTRUCTED ESPECIALLY FOR THEIR MOVEMENT)." I show here numerous movements of general purpose XM and XME box

cars, both within Official Territory and between Official Territory and Southern Region loaded with auto parts. Other examples of similar movements could be found every day of the year. It should be pointed out that the train movements shown in Exhibit 1 are those for the wheel reports in which the cars were found and do not reflect the entire movements of the particular illustrative cars or even the

[9]

entire movements of the trains. The entire movement of each car can be approximated by reference to the destination shown. Origins are not shown in most instances because the wheel reports do not contain this information. The important fact to be derived from Exhibit 1 is not the particular details of any specific shipment but, rather, the frequency with which general purpose box cars are shown to be used for loading vehicle parts. This common operating practice would render any calculation of car miles for special device cars as in the study requested by Southern lines' meaningless as a measure of the empty return experience for auto parts traffic. And since XM and XME class cars are general purpose box cars, no accurate allocation of empty miles to a particular category of traffic on whatever basis assigned could be made from the conductors' wheel reports without tracing the previous and subsequent movements of each car.

My Exhibit No. 2 is a "SUMMARY OF EXAMPLES OF THE MOVEMENT OF VEHICLE PARTS IN SPECIAL DEVICE CARS NOT SPECIFICALLY DESIGNED FOR VEHICLE PARTS TRANSPORTATION AND ACTUALLY USED FOR THE TRANSPORTATION OF MANY COMMODITIES.", Although Mr. Cole refers to special device cars as a single category, thereby implying that the characteristics of all such cars are similar, it should be noted that only certain special device cars are constructed especially for

[10]

auto parts while others are not so designed. This exhibit demonstrates that such cars are used interchangeably in that auto parts are frequently found to move in special device cars not constructed expressly for that commodity. While XML cars are included in the special device listing, they are defined in the Official Railway Equipment Register, ICC RER No. 337, as follows:

> "XML-Loader Equipped. A house car similar in design to 'XM', either fully or partially lined with steel perforated side walls or equipped with protruding interior side rails, stanchions and cross bar members for securement of certain types of lading."

On the other hand, Class XAP, XAR and XMR cars are specifically described as "Automobile Parts" and "Automobile Device" cars in the same publication.

Railroads differ in their designation of XML cars in the summary of their equipment, as reported in the Official Register. Thus, the Pennsylvania Railroad reports all XML cars as "Automobile Cars", although, in fact, many such cars are assigned to other than auto traffic or are unassigned and used for general traffic. The Erie, B&O and New York Central, on the other hand, designated class XML cars as general purpose box cars.

In view of the more diversified utility of the XML class car as contrasted, for example, with the XAP box car, it is clear that when class XML cars are used for auto parts it is not because such cars are not

[11]

suitable for other loading. My Exhibit No. 3 is a "SUMMARY OF EXAMPLES OF THE USE OF SPECIAL DEVICE CARS, ASSIGNED AND UNASSIGNED, USED FOR MISCELLANEOUS COMMODITIES." This exhibit illustrates the use of special device cars, generally, not especially designed for nor here assigned to vehicle parts.

Included are both those assigned to particular shippers and cars of like class which are not so assigned, used for the transportation of commodities other than those to which assigned or for commodities generally. At page 29, Mr. Cole has likewise assumed that cars in assigned service, irrespective of class, incur a 100 percent empty return movement. This exhibit shows, however, using the first five items as examples, shipments of tires, merchandise, plate chemicals and bakery goods in special device cars actually assigned to refrigerators and heaters. By way of further illustration, the ninth car on Exhibit 3, PRR car 606639, a class XML box car, is assigned for movement of steel products out of Glen Cliff, Tenn. on the Louisville and Nashville Railroad. This car is shown as returning loaded with tile to Chattanooga, Tenn.

My Exhibit No. 4 is a "SUMMARY OF EXAMPLES OF SPECIAL DEVICE CARS (XAP, XAR and XMR) INTENDED FOR TRANSPORTATION OF VEHICLE PARTS USED FOR THE MOVEMENT OF MISCELLANEOUS COMMODITIES." The special de-

[12]

vice cars embraced by this exhibit were constructed purposely for vehicle parts [transportation and may be considered to be true auto parts] cars. Yet, even cars of these three classes, XAP, XAR and XMR, can be and are in fact used regularly for the transportation of commodities other than auto parts. Such commodities as wallboard, merchandise, flour, lumber and roofing material are loaded into the auto parts cars and provide a revenue movement in lieu of the empty return of 100 percent which Mr. Cole assumes for all such special device cars.

The car in line No. 5, PRR 81523, a class XMR box car, was traced and provides an impressive example of the impossibility of computing an empty return ratio for such special device cars which would be meaningful in terms of commodities or categories of traffic. As shown in Exhibit 4,

this car was loaded with auto parts at South Bend, Ind. on December 4, 1959, destined to San Francisco, Calif. As of March 27, 1960 the car had not yet been returned to South Bend. During the intervening period, this class XMR car handled such diverse commodities as steel from Lebanon, Pa. to Strasburg, Va.; on the Southern Railway, merchandise loaded by the Southern to Cincinnati, Ohio; and, later, undetermined commodities which caused the car to be found on the New Haven Railroad in March, 1960. Under the study suggested by Southern lines, these loaded movements and the intervening empty

[13]

mileage would have been charged against special device cars because of the classification of this particular car. Actually, however, after the initial auto parts movement to San Francisco, the car was in general service. Any effort to allocate the empty mileage incurred by this car as between auto parts traffic and general traffic could only be accomplished on an arbitrary basis and would afford no true measure of the empty return experience of either category of traffic.

Exhibit No. 5 is entitled "SUMMARY OF EXAMPLES OF CARS LOADED WITH AUTO PARTS TO ASSEMBLY PLANTS RETURNED UNDER REVENUE LOADS FROM THOSE ASSEMBLY PLANTS." Here are shown cars loaded with auto parts to automobile assembly plants at various locations (no attempt was made to complete an all-inclusive check) that were reloaded at the same plants with revenue traffic for the original shipping points or points in the same general area. In other words, there was a 100 percent loaded movement in each direction of auto parts, exactly the contrary of Mr. Cole's assumption. This exhibit demonstrates, also, that there is frequently a round-trip movement of auto parts between the automobile production and assembly points.

My final Exhibit, No. 6, illustrates the fact that some cars classified as general purpose cars have utilization which is

substantially better than that of the average general purpose box car and which exerts a

[14]

depressive effect upon the average empty return ratio. The Pennsylvania Railroad leases 150 GAEX cars and 10 GARX cars classified as XME and RBL box cars, respectively. These cars are carefully controlled with a view to reducing empty mileage and increasing the utilization of the car. Examples of the controlled handling of such leased cars are shown in this exhibit. As a consequence of the close supervision of these cars, the ratio of empty to loaded car miles made by such cars during 1959 was only 16.1 percent, which is less than the average experience of box cars generally. It follows, therefore, that whatever the effect of other special device cars upon the average empty return ratio, the 160 leased XME cars, illustrated by Exhibit 6, clearly tend to reduce that ratio so far as the Pennsylvania Railroad is concerned. In this instance, there is no difficulty in relating the empty haul to the loaded movement because all such cars are placed at the specific request of shippers and the empty and loaded movements are carefully supervised by operating personnel.

It is my conclusion that any adjustment in the box car empty return ratio for Official Territory which is premised upon the assumptions, first, that vehicle parts traffic, commodity Class 623, moves in special device box cars rather than in general purpose box cars; and secondly, that all special device cars and all assigned box cars incur a 100 percent

[15]

empty return movement, is clearly unrealistic. It is, of course, true that many shipments of auto parts are transported in special device box cars and that many special device cars and other assigned cars incur substantial empty mileage. It is likewise true, however, that many auto parts

shipments are made in general purpose box cars and that special device and other assigned box cars are loaded with a wide variety of miscellaneous commodities. I have not undertaken to assess the degree to which these factors influence the box car empty return ratio within Official Territory. I do not believe that such an evaluation can be made upon any meaningful or accurate basis because of the indiscriminate use of general purpose and special device box cars.

VERIFIED STATEMENT NO. 75
OF FRED CARPI

[1]

My name is Fred Carpi. I am Vice President, Sales of The Pennsylvania Railroad Company, with headquarters in Philadelphia. I have had over forty years' experience in the Traffic and Operating Departments of the Pennsylvania.

Witness Luckett, in Exhibit 5 to Verified Statement No. 36, indicates that the revenue received by the Northern railroads north of the interterritorial gateways from the Official-Southern traffic here involved represents but 6.0 percent of their total revenue, whereas the revenue received on this same traffic by the Southern railroads south of the interterritorial gateways represents 21.4 percent of their total revenue, and thus infers that because of this fact the Southern lines' divisions should be given extra consideration.

Witness S. R. Goodman, at page 31 of Verified Statement No. 23, similarly states that the Southern railroads are more heavily dependent upon Official-Southern traffic than are the Northern railroads in that they obtain from it a substantially higher percentage of their total freight revenues than do the Northern lines.

These statements appear to suggest that the Commission should prescribe divisions more favorable to the Southern lines and less favorable to the Northern lines than otherwise would be deemed appropriate simply because of the difference in the relative volume of the Official-Southern traffic to the total traffic of the North and South, respectively.

[2]

This same position was taken by Transcontinental lines' witnesses in the Transcontinental Divisions Case, Docket No. 31503, who urged that because the Official-Transcontinental traffic there involved was a higher percentage of the Transcontinental lines' total traffic than of the Eastern

lines' total traffic, the divisions to be prescribed in that case should be weighted in favor of the Transcontinental lines.

Official territory is a populous and industrialized area and a considerable portion of its traffic moves intraterritorially. Nevertheless, the interterritorial traffic of Eastern lines has become an increasingly important portion of its total traffic and, as shown in Appendix A attached, amounted to approximately 23 percent of its total traffic in 1959 as compared to 19 percent of its total traffic in 1947. As also shown in Appendix A the volume of Official territory interterritorial traffic has held up much better, measured in absolute terms, than has Official territory intraterritorial traffic. Proportionally, interterritorial traffic has actually increased its share of the total over the years.

The importance of interterritorial traffic to the Eastern lines is not measured solely by its percentage of their total carloads, for the reason that the rate level on such traffic, by reason of its generally higher-rated character, is considerably higher than the rate level on the traffic moving within Official territory. This is shown by Appendix B attached from which the following tabulation is taken.

[3]

Average Rate Level Expressed as a Percentage of Docket 28300, Appendix 18 First Class Rates

Territorial Movement	Percent		
	1957	1958	1959
Official to Official	13.1	13.7	13.7
Official to South	27.5	25.8	26.3
South to Official	17.6	17.7	17.7
Between Official and South	20.4	20.0	20.4
Official to Western Trunk Line	30.9	30.9	32.9
Western Trunk Line to Official	28.3	25.8	28.5
Between Official and Western Trunk Line	28.9	27.5	29.7
Official to Southwest	41.0	43.0	41.7
Southwest to Official	26.0	26.2	25.0
Between Official and Southwest	31.5	31.3	29.9
Official to Mountain-Pacific	44.1	45.3	42.9
Mountain-Pacific to Official	24.8	25.5	25.3
Between Official and Mountain-Pacific	30.1	30.4	30.2

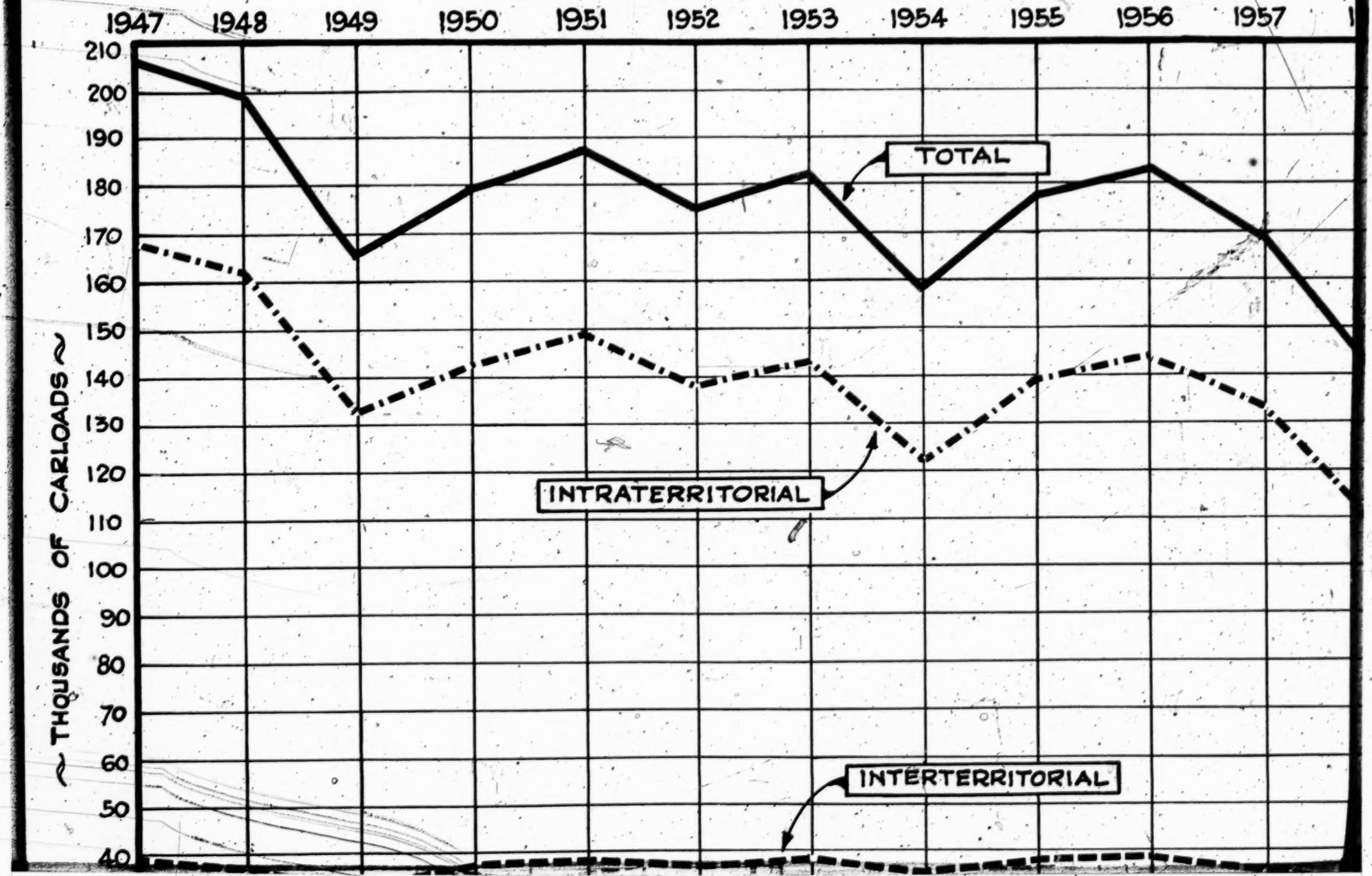
The proposal of Southern lines' witnesses that the greater relative volume of the Official-Southern traffic to the total traffic of the South than to that of Official territory should be regarded by the Commission as a reason for according Southern lines a greater proportion of the interterritorial revenues than would otherwise be proper, is both unsound and impractical. Because Official Territory is populous and industrialized, with a large intraterritorial traffic, and is an important market for the products of other territories, the logical extension of the theory of these Southern witnesses would operate to the disadvantage of Eastern lines on all their several interterritorial traffic with other territorial groups, although as a whole the Official interterritorial traffic is an important part of Official Territory lines' total traffic. The result would be to excuse the better paying interterritorial traffic of Eastern lines from contributing its fair share toward meeting their revenue needs.

[4]

The great need of Eastern lines for increased revenues, and the exceedingly great difficulty of obtaining them from their intraterritorial traffic, have been explained by other Eastern lines' witnesses. It is, therefore, essential that Eastern lines should not be deprived of such fair share of the interterritorial revenues as would otherwise be appropriate, on the ground of the relative proportions of this traffic to the total traffic in the North and South, respectively.

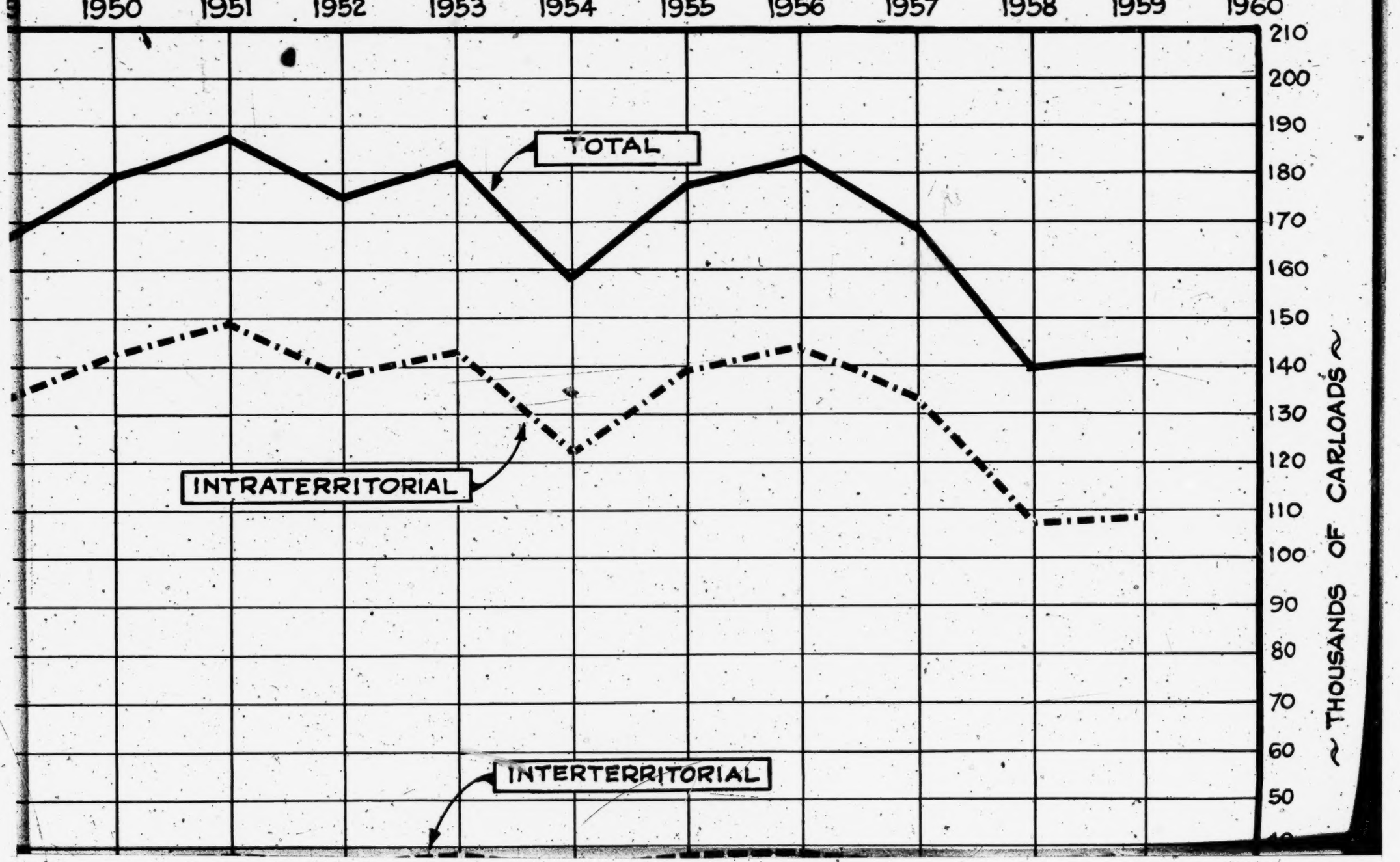
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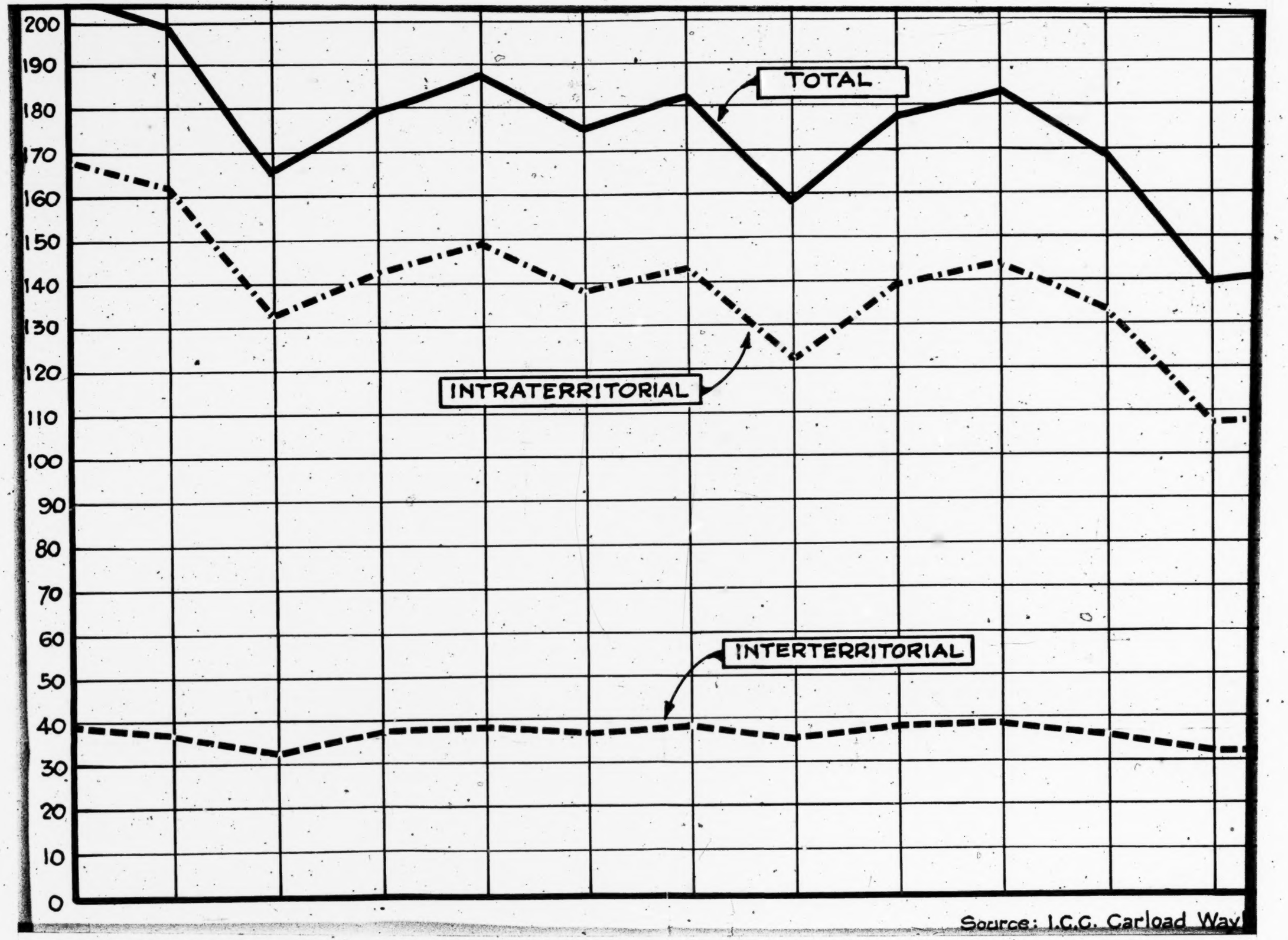
OFFICIAL TERRITORY TRAFFIC ~ CARLOADS

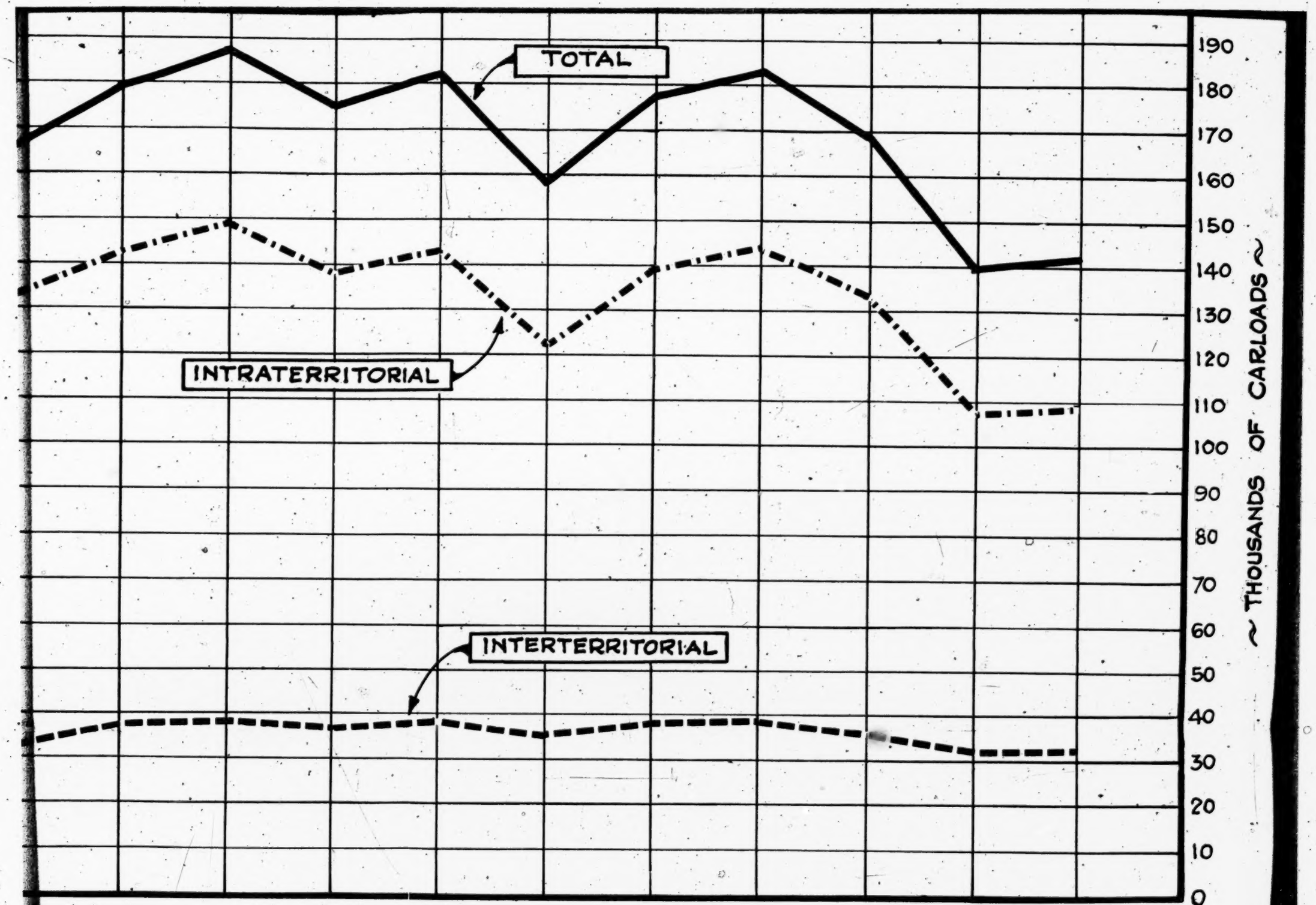


Appendix "A" ~ Page 1

OFFICIAL TERRITORY TRAFFIC ~ CARLOADS

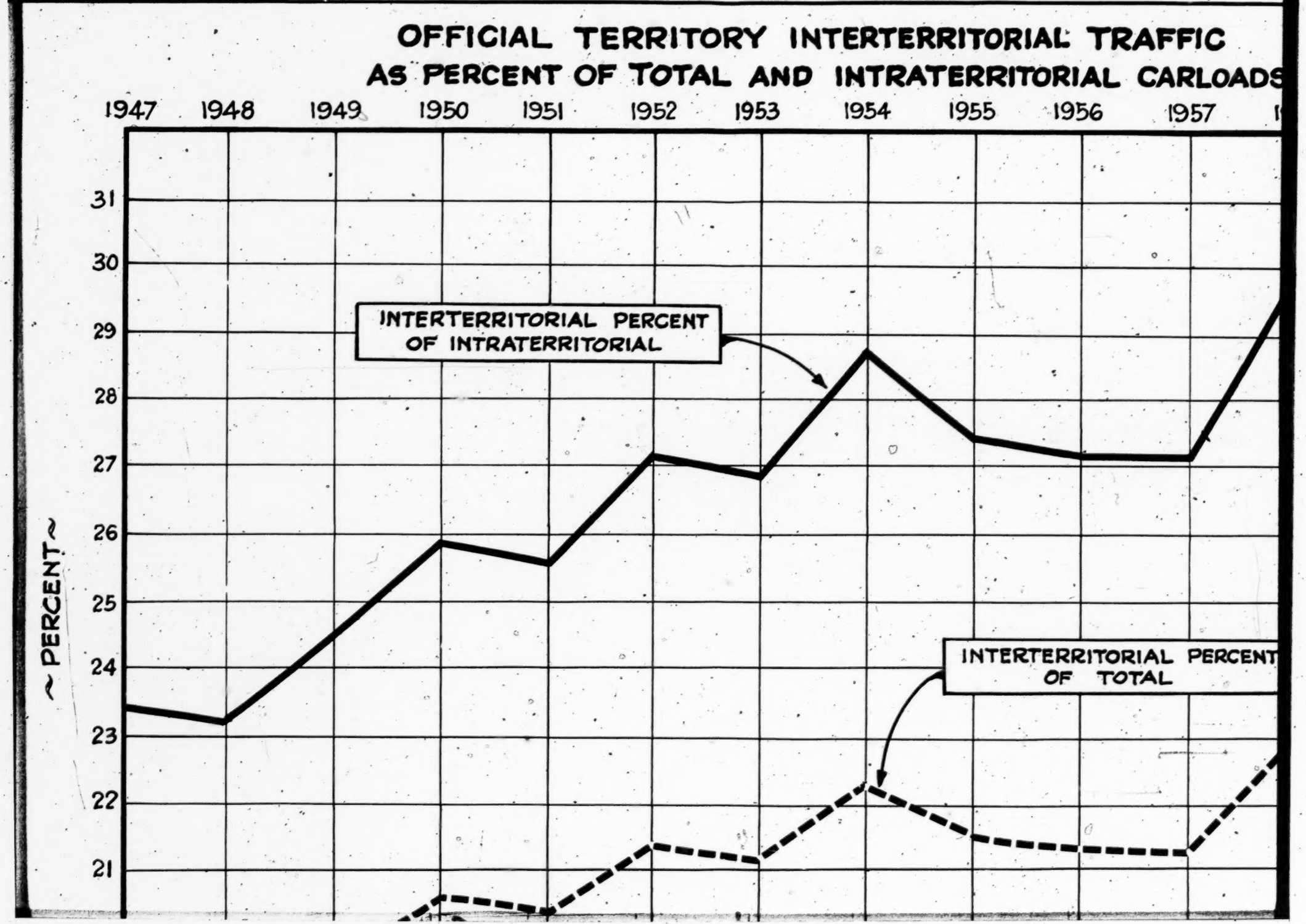



200
190
180
170
160
150
140
130
120
110
100
90
80
70
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50
40
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10
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TOTAL
INTRATERRITORIAL
INTERTERRITORIAL
Source: I.C.C. Carload Way



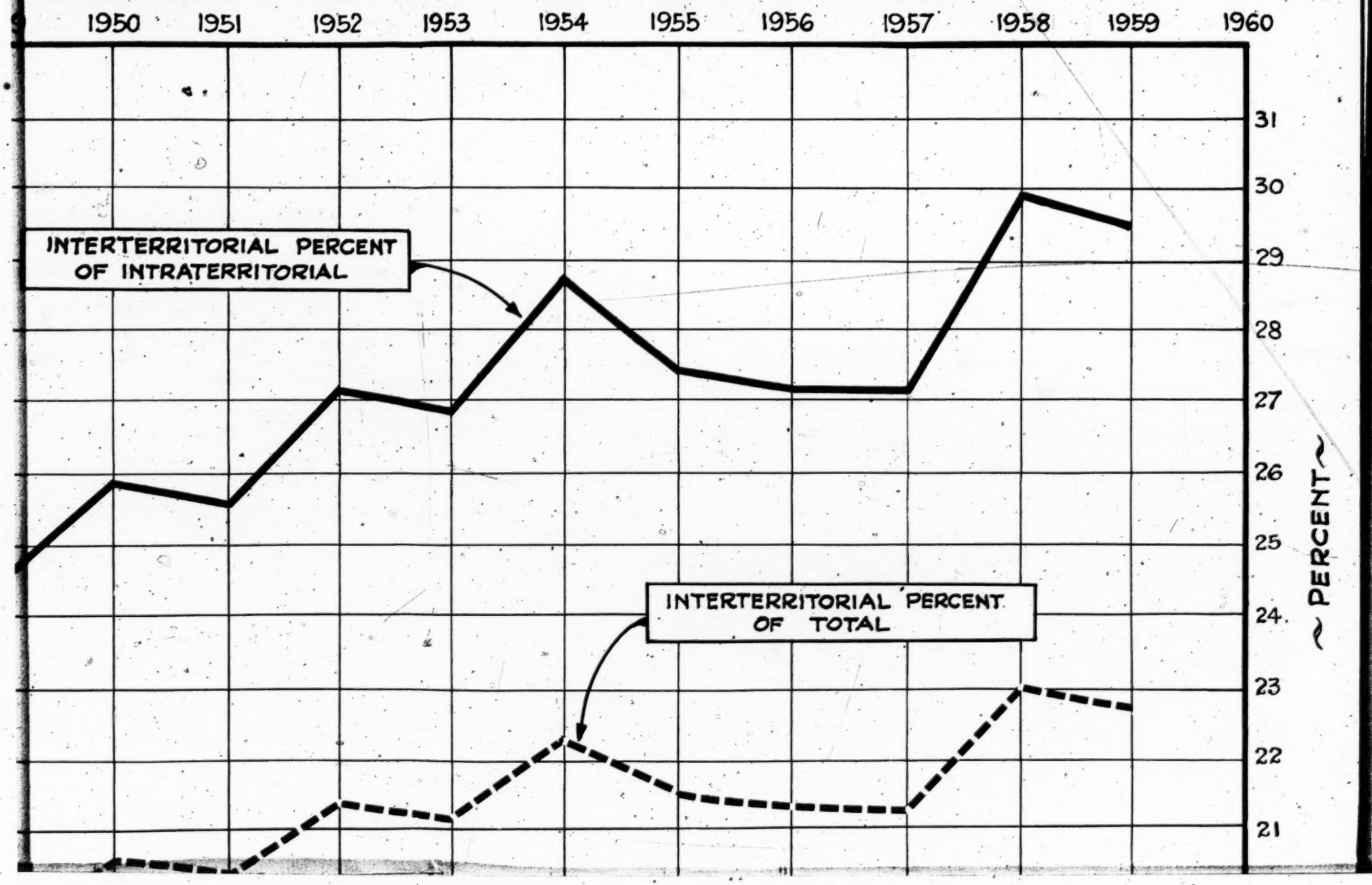
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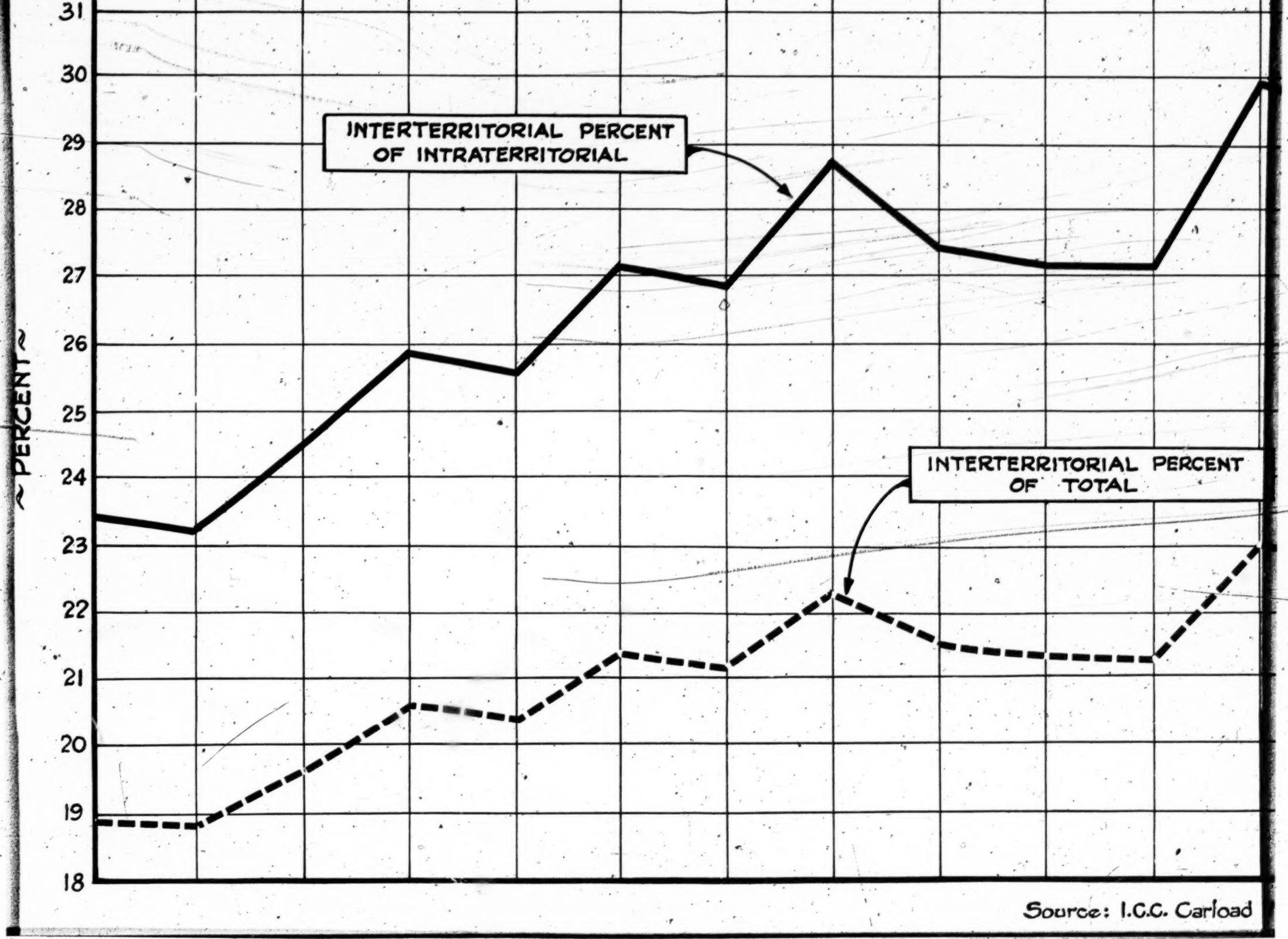
OFFICIAL TERRITORY INTERTERRITORIAL TRAFFIC AS PERCENT OF TOTAL AND INTRATERRITORIAL CARLOADS

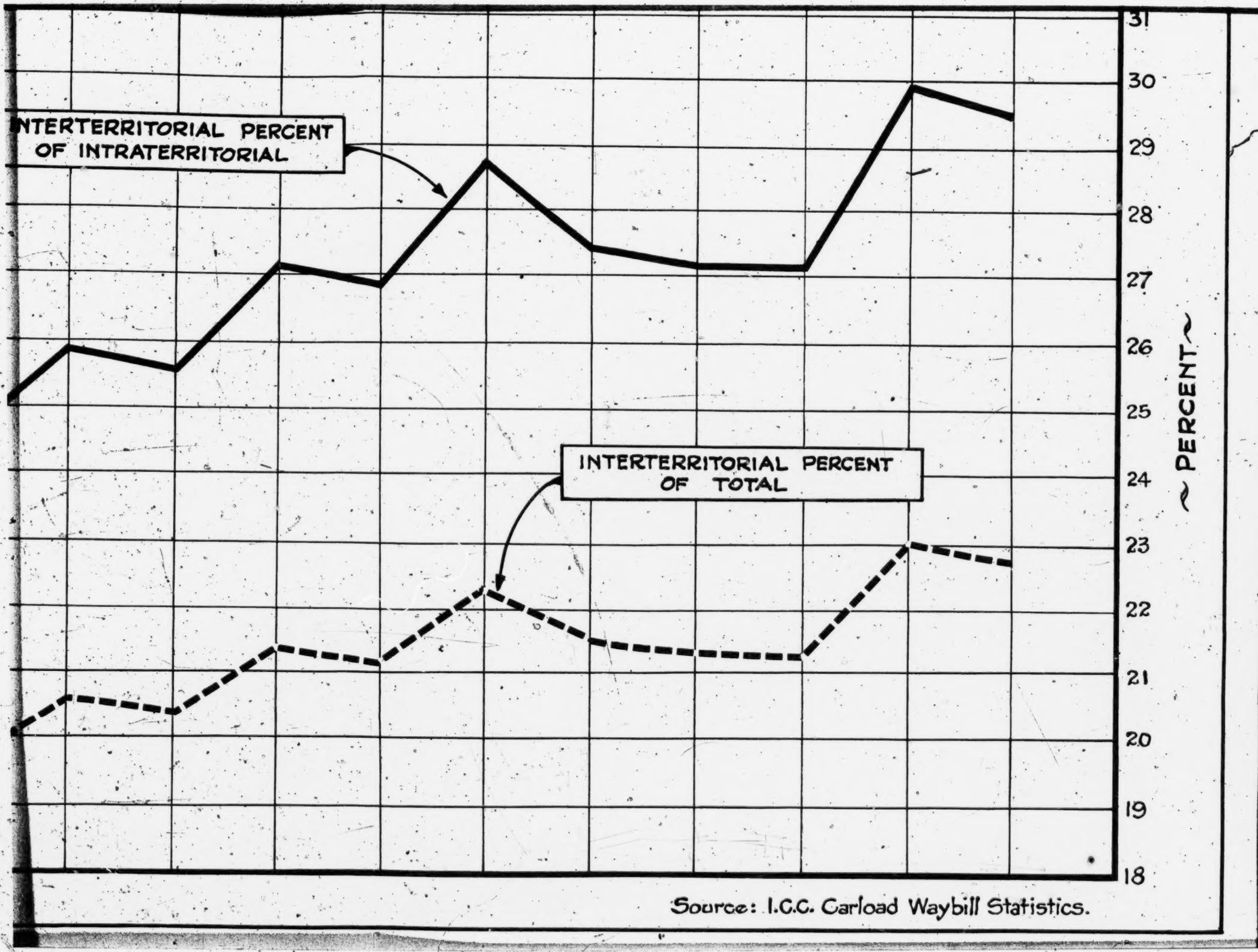


Appendix "A" ~ Page 2

OFFICIAL TERRITORY INTERTERRITORIAL TRAFFIC AS PERCENT OF TOTAL AND INTRATERRITORIAL CARLOADS




INTERTERRITORIAL PERCENT OF INTRATERRITORIAL
INTERTERRITORIAL PERCENT OF TOTAL
≈PERCENT≈
31
30
29
28
27
26
25
24
23
22
21
20
19
18
Source: I.C.C. Carload


NTERTERRITORIAL PERCENT
OF INTRATERRITORIAL
INTERTERRITORIAL PERCENT
OF TOTAL
31
30
29
28
27
26
25
24
23
22
21
20
19
18
~ PERCENT ~
Source: I.C.C. Carload Waybill Statistics.

OFFICIAL TERRITORY TRAFFIC - CARLOADS

Year	Interterritorial	Intraterritorial	Total	Percent Interterritorial Traffic of Total	Percent Interterritorial Traffic of Intraterritorial
1947	39090	167489	206579	18.92	23.34
1948	37503	162021	199524	18.80	23.15
1949	32293	132257	164550	19.63	24.42
1950	36907	142719	179626	20.55	25.85
1951	38345	149961	188306	20.36	25.57
1952	37410	138035	175445	21.32	27.10
1953	38359	143038	181397	21.15	26.82
1954	35108	122372	157480	22.29	28.69
1955	38253	139494	177747	21.52	27.42
1956	39144	144278	183422	21.34	27.13
1957	36060	133053	169113	21.32	27.10
1958	32132	107424	139556	23.02	29.91
1959	32409	109776	142185	22.79	29.52

Source: ICC Carload Waybill Statistics.

OFFICIAL TERRITORY TRAFFIC - CARLOADS

ear	Interterritorial	Intraterritorial	Total	Percent Interterritorial Traffic of Total	Percent Interterritorial Traffic of Intraterritorial
947	39090	167489	206579	18.92	23.34
948	37503	162021	199524	18.80	23.15
949	32293	132257	164550	19.63	24.42
950	36907	142719	179626	20.55	25.85
951	38345	149961	188306	20.36	25.57
952	37410	138035	175445	21.32	27.10
953	38359	143038	181397	21.15	26.82
954	35108	122372	157480	22.29	28.69
955	38253	139494	177747	21.52	27.42
956	39144	144278	183422	21.34	27.13
957	36060	133053	169113	21.32	27.10
958	32132	107424	139556	23.02	29.91
959	32409	109776	142185	22.79	29.52

VERIFIED STATEMENT NO. 76
OF F. F. COATES

[1]

My name is Frank F. Coates and I hold the position of Assistant Chief Statistician with The Pennsylvania Railroad Company, Philadelphia, Pa. I have had over nineteen years' experience in the Accounting and Financial Departments of this Company. Since 1948 I have been actively engaged in the analysis and preparation of cost studies presented before Federal and State regulatory bodies and have previously testified before this Commission.

Witness Cole in V.S. 39 discusses car costs and contends that United States average car costs should be used in computing costs in both the North and the South rather than such costs for the territorial groups. By employing this method he reduces the costs of the North by $5,592,936 and reduces the South's cost by $215,266. It reduces the North's proportion of the total cost by 0.76%. These figures have been taken from Southern Lines' studies submitted by Witness J. J. Remington in V.S. 40 and 40-A, Exhibit B, page 3 and Exhibit G, pages 5 and 9.

At page 40 and several other places throughout his discussion of car costs Mr. Cole says with respect to car costs for refrigerator and tank cars that the basis of costing is a nationally applicable mileage rate for the particular type of car. The inference is that, because the mileage rental rate for each type of car is the same, the identical cost is used whether traffic is being priced out on an individual road or territory. This is not a fact because, in the case of refrigerator cars, the net debits and credits on account of refrigeration and heater service, car inspection, and general overhead costs are added to this national mileage rate. These costs are not equal as among the several territories over which refrigerator car traffic moves. Such costs per car mile for refrigerator cars as taken from the Commission's

Cost Section application of Rail Form A for 1956, are as follows:

Eastern District	5.58271¢
Pocahontas Region	5.89055
Southern Region	5.85400

[2]

I might point out here that Witness Remington, by using a national car cost, wipes out the differences in general overhead cost ratios among the several territories, which is an item included in the car costs for per diem cars. Costs are incurred by a railroad operating other than mileage cars because of per diem costs whether the car is moving or not. However, with respect to mileage cars the rental costs are borne by the carrier operating the car only for the mileage which that car may make on its lines.

[3]

At page 41 Witness Cole shows comparisons for a box car with a 28.9 ton load moving 350 miles with one terminal using only the car costs developed from Rail Form A by territories. These are shown to be $17.91 Eastern District, $16.20 Eastern District plus Pocahontas Region, and $12.22 Southern Region. These costs assume an empty return ratio that is equal in each territory which of course does not recognize the operating conditions in that respect which are different in each territory.

In its burden statements the Commission's Cost Section in pricing out South to South movements uses Southern territorial car costs and in pricing Official to Official movements uses Official territory costs. In the case of Official-Southern interterritorial traffic the Cost Section uses the car costs for both territories. That is, it prices one terminal at Southern costs, the other at Official costs and the line-haul is priced 50 percent at the Southern level and 50 percent at the Official level. It should be noted that the Cost Section does not use United States costs for either local or interterritorial movements.

Witness Cole cites an example of a box car owned by the Union Pacific Railroad moving from Morristown, Tenn., to Willard, Ohio, over the lines of the Baltimore & Ohio and Southern Railway for a total of 707 miles, 351 North and 356 South. Concerning this movement Witness Cole states as follows:

[4]

> "Quite obviously the tare weight of the . . . box car . . . does not change upon its crossing of the territorial boundary and just as obviously the car cost on such a car does not change upon the crossing of the territorial boundary." (page 57)
>
> ". . . both the Southern Railway and the Baltimore and Ohio pay the same national per diem rate and neither incur depreciation or repair expense on the car." (page 42)

If the Baltimore and Ohio makes repairs to Union Pacific freight cars and charges the labor and material to Account 314—Freight Train Car Repairs, it incurs repair expense on freight cars. As an indication as to what the situation is, during the month of May 1960 the B. & O. billed the Union Pacific in the amount of $2,781.06 for repairs made by the B. & O. on Union Pacific freight cars. These bills were made in accordance with the AAR Code of Rules Governing the Condition of and Repairs to Freight Cars. The amount billed was at standard labor and material charges for specific repairs and may or may not reimburse the B. & O. for the actual expense for labor, material, rip track switching, etc. In addition, if the B. & O. made repairs that were on account of damage occurring through unfair usage or improper protection by the B. & O., the B. & O. would receive no reimbursement therefor. Of course the Southern Railway repairs Union Pacific cars also.

Also, both the B. & O. and the Southern Railway incur car inspection costs which are included in Account 314—Freight Train Car Repairs

[5]

and are applicable to Home and Foreign Per Diem cars and cars rented on a mileage basis.

Witness Cole considers the example cited to be "realistic" for the reason that "our traffic study showed that 27.43 percent of the box cars handling North-South traffic are owned by carriers other than Official or Southern Carriers". This would mean that the balance or 72.57 percent of the box car traffic, which would be more realistic, moves in cars owned by Official or Southern Carriers, and a great many of these moves would be in cars owned by one of the carriers involved in the particular movement. Take, for example, a box car owned by the Southern and moving from Morristown to Willard via the Southern and B. & O., between the same points and handled by the same roads as the example cited by Witness Cole, the only difference being in the ownership of the car. Witness Cole's contention that because the tare weight does not change at the territorial boundary the car cost does not change at the territorial boundary is obviously incorrect.

Of course the South must foot the bill when transportation service is being rendered in the South, and the North stands the expense when the transportation service is north of the gateway. But when the movement is in the Southern Railway box car the costs incurred by the Southern Railway are interwoven with ownership costs, users costs, and per

[6]

diem credits, while the expense incurred by the B. & O. is reflected in per diem charges and users' costs. When the shipment moves in a car of B. & O. ownership the situation is reversed. Other situations would include using a car of Pennsylvania Railroad ownership, that is, a car of northern ownership but the owner road not involved in the specific movement. Another example would be the use of an Atlantic Coast Line car, a car of southern ownership, but by a road not involved in the particular movement.

Every movement of the studied traffic involves at least two carriers and at least one of them uses a foreign car. The variety of situations is almost unlimited, with varying numbers of roads involved.

It is obvious that any car moving North-South traffic involves the whole range of car costs, not only those listed by Witness Cole when he defined the terms in his opening paragraph but also the per diem costs he included on page 41 when he cites car costs in figures.

Mr. Cole has suggested three reasons why the system average car costs vary so greatly as between territories, the first of which he summarizes as follows:

> "(1) The system average car cost reflects the composite cost of the car fleet owned by each group of roads. This is a different car fleet in each territory, and is very different from the consist of the cars handling Official-Southern traffic."

[7]

The foregoing is incomplete and inaccurate. The fact is that territorial average Form A costs reflect the composite cost of both the car fleet owned and the car fleet used plus the net effect of per diem debits and credits. The fact that there is a different car fleet in each territory and that it is not the same as the consist of the cars handling North-South traffic is no justification for the use of national car costs.

Mr. Cole has suggested that the Rail Form A produces results which are inappropriate for use in this proceeding since such costs are greatly influenced by the types of cars owned by each group of roads. At page 44 he lists the percentage distribution of Official-Southern traffic moving in per diem cars by type of car and makes the comment that over 80 percent of such cars are box cars and less than 1 percent of the traffic moves in hopper cars. Then at page 45 he shows ownership and car miles, the latter based on the 7-day study, for Official territory and the Southern terri-

tory and points out that compared with the Official-Southern traffic the types of cars, particularly with respect to open top cars, are quite different for both territories. I have reproduced in Appendix A car ownership, car miles, and car miles per serviceable car per day for the United States, Eastern District, Pocahontas Region, Official territory, Southern Region, and Western Dis-

[8]

trict. I conclude from Mr. Cole's statements that, because the percentages of cars originated or terminated and car miles with respect to box cars handling Official-Southern traffic are substantially in excess of box-car percentages of cars owned and total car miles for Official territory and Southern Region, his solution would be to use the national car costs for the national ownership and car miles. From my Appendix "A" it is readily apparent that even the totals for the United States do not approach the box car proportions involved in handling the traffic at issue in this proceeding. It might be noted that the highest percentages for box cars were shown for the Western District and even those are not sufficiently close to the 80 percent figure referred to by Mr. Cole to justify using the average United States car cost.

Next Mr. Cole suggests that the significant difference as between types of cars is in the degree of utilization. This is based on a constructed figure called car miles per year by type of car, the construction of which is shown in Witness Remington's Verified Statement No. 40, Exhibit C, page 15. There are some inaccuracies in developing these averages. One of these is the use of cars owned by Class I railroads in the United States and does not consider that a number of these cars are unserviceable and therefore could not make any car miles for at least whatever the period was that they were awaiting repairs.

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While Mr. Cole has developed these averages for United States cars and car miles, he ignores the fact that utiliza-

tion with respect to car miles per car by type may be much different in each of the territories for a number of reasons such as commodities handled, speed of trains, terminal delays, shopped cars, etc. He then mentions that the separation of car costs between mileage and time would be different if different degrees of utilization by type of car is recognized, again ignoring possible territorial differences. These computations were made by Witness Remington and I will defer that subject until later.

The next thing that Witness Cole suggests as being a difference caused by consist of the car fleets is the age of the Official territory rail carriers car fleet in 1956 and that it was considerably greater than that of the Southern carriers. He then presents a table purporting to show the percentage of owned cars in excess of 25 years old and further mentions that an even greater percentage of Pennsylvania Railroad open hopper cars are in excess of that age. I would suggest that the point which Mr. Cole tries to make here is valueless because the statistics that are available and from which he made his computations are based on the years that the cars were originally built. These statistics do not recognize and moreover they cannot recognize that the repair costs incurred in connection with these alleged old cars are not as great as Mr. Cole would lead us to believe, because many of these cars have

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been rebuilt. This is true not only with respect to hopper cars but all freight cars, and the rebuilding, at least from a cost standpoint, puts so much new material into an old car that in my opinion it may be considered as a new car. Unfortunately, statistics are not available to show this information and make any meaningful indication of the age of the cars as affected by rebuilding.

Mr. Cole concludes this section of his statement by saying that "Rail Form A application to carriers in the North, which develops the same car costs for all per diem cars

irrespective of consist, utilization or age reflects to a substantial extent the expenses incurred for the handling of open hopper cars within the North." His conclusion then is that it is improper to use northern lines' costs which he says are so affected by open top hopper cars which are not used to any appreciable extent in the traffic here in issue. I cannot agree with this conclusion because if such were the case I would expect that Pocahontas Region car mile costs would be substantially greater than those for the Eastern District. From Rail Form A as applied by the Commission's Cost Section for the Pocahontas Region, the total loaded and empty car miles other than mileage car miles which are the service units used to develop Group I car mile costs amount to 2,224,075,488 miles. Apportioning this total to types of cars based on the 7-day study, open

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hopper cars made 1,605,521,263 miles which is 72 percent of the total. The car mile cost developed in this Rail Form A was 1.79 cents. The comparable cost for the Eastern District was 3.27 cents where the percentage of open top hopper car miles to total car miles is only 34 percent.

In here taking the position that hopper car costs are a major factor in making Eastern District car costs higher than those in the Southern Region, Witness Cole is inconsistent with his testimony in I.&S. No. 6177, Crude Sulphur-Louisiana and Texas to Virginia, wherein, at the hearing on April 2, 1954, he testified at page 435 of the transcript as follows:

> "I previously testified in the Grain Case, Docket No. 30744, that in my opinion the cost of maintaining a box car was considerably higher than the cost of maintaining an open trap [top] car."

And certainly the difference in cost (which influences the return and depreciation factors) as between the purchase of a box car and that of an open hopper or gondola is not in favor of Mr. Cole's contention that average car

costs deal unfairly with box cars. In 1959, for example, the average cost of general service box cars in the United States was $9,851; that of open hoppers, $8,715; and gondolas, $8,409. (Railroad Car Facts, 1959, American Railway Car Institute, p. 53.)

[12]

Witness Cole's second reason for using United States car costs rather than territorial car costs is as follows:

> "(2) The system average car cost developed in Rail Form A is strongly affected by per diem debits and credits. This has a distorting effect because the basis used in computing Rail Form A costs differs from that used in determining per diem rates."

Of course, car costs are affected by per diem debits and credits and properly so. It is incorrect to say that per diem debits and credits have a distorting effect when the fact is that failure to reflect per diem in the costs would have a distorting effect. Every traffic study movement involves per diem since at least two carriers participate in the haul and at least one uses a foreign car. I do not know upon what basis Mr. Cole either computed or assumed the rates of $1.50, $2.00, and $2.40 used in his illustrations. If he is using these costs which he applies to car days as being representative of the per diem charges in effect during 1956 and prior thereto, I would like to point out that only a portion (about 45%) of these costs represent depreciation and return based on reproduction costs new and not the full amounts used in his illustrations. Also I would suggest, that since the costs included on a territorial basis are net debits and credits, the greater part of these costs are offset and that to the extent a different valuation base is used in developing per diem rates as contrasted with depreciation and return costs in the several territories the effect is not as great

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as his illustrations would seem to indicate when considering total car costs.

Witness Cole summarizes his third reason in the following words:

> "(3) The unit cost for car costs is determined by dividing cost of cars owned by the car miles operated. The numerator and the denominator do not represent the same cars in any given territory."

I disagree with this statement. Territorial average Form A unit car costs reflect the total net costs and the car miles operated in the territory. The numerators and denominators are consistent.

Mr. Cole reiterates on more than one occasion that Rail Form A costs include repairs made by the owning road to its own cars or paid by the owning road for repair work performed off line. He seems to gloss over the fact that there is a substantial cost of operating cars other than a railroad's own ownership included in the accounts. As a matter of fact the costs which are included in the accounts of the railroads in each of the territories are costs which must be met from its own cash, the source of which must be its freight revenues and certainly include its share of revenues from handling interterritorial traffic. The miles included in the accounts represent miles operated by all cars regardless of ownership and these miles must be used as a basis for determining costs and the pricing of traffic which moves over a particular railroad or territory. To illustrate this point I

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would again like to refer to the Commission's application of Rail Form A for the Eastern District and the Pocahontas Region. The car mile costs included in Group I for running service, interchange switching, and intertrain and intratrain switching total approximately $291 million.

Using the United States car costs computed by Witness Remington applied to the miles for the Eastern District and Pocahontas Region produced $250 million which is short of the total dollars expended by these lines by an amount of nearly $41 million. While we are here involved with traffic moving between the North and South the Official territory lines participate to a substantial degree in interterritorial traffic to Transcontinental, Western Trunk Line, and Southwestern teritories, and, if the theory espoused by Mr. Cole with respect to U.S. car costs were carried to its ultimate conclusion, all of these traffics would have to be priced on the same basis, thereby leaving Official territory intraterritorial traffic to bear not only the burden of car costs associated with the handling of that traffic, but also a part of the burden of car costs properly assignable to the interterritorial traffic. This, of course, is improper.

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A similar computation made for the Eastern District lines shows that U.S. car costs would leave almost $62 million that Eastern District lines would have to absorb by their own intraterritorial traffic. This figure represents 25 percent of the total car mile cost of the Eastern District lines.

On the other hand U.S. car costs applied to the Southern Region statistics would add costs amounting to nearly $9 million which were never in fact incurred by those lines.

The car mile costs used above are as follows:

Eastern District	3.27046 ¢
Official Territory	2.94081 ¢
Southern Region	2.31045 ¢

I have also applied the Official territory and Southern Region car mile costs to loaded car miles for per diem cars shown in Witness Luckett's Exhibit 4 to V.S. No. 36 after increasing them to reflect the empty return ratios from the 7-day study except for box cars. In the latter case I used without in any way adopting the equalized empty return

ratios of 30 percent for general purpose box cars and 100 percent for special device box cars to Southern automobile assembly points as used by Witness Remington. To the same car miles I applied the average U.S. car mile costs by type of car. The results of these computations are shown below.

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TOTAL CAR MILE COSTS

	Official Territory	Southern Region
Territorial average cost	$14,313,261	$15,086,878
U. S. average cost	10,561,338	14,738,504
Difference	3,751,923	348,374

This shows that the U.S. average car mile cost reduces the Official territory costs to a very substantial degree. The Southern Region costs are reduced because of the preponderance of box car miles priced at a U.S. cost of 2.008¢ which is below that of the Southern Region territorial Rail Form A cost. Going one step further I have used the same unit costs applied to the same loaded car miles but in addition the box car miles were increased by the territorial empty return ratios as well.

TOTAL CAR MILE COSTS

	Official Territory	Southern Region
Territorial average cost	$15,056,900	$15,196,570
U. S. average cost	11,421,964	14,833,856
Difference	3,634,936	362,714

In this instance the territorial average costs including the proper empty return ratios more nearly reflect the costs of doing business in each of the territories. The territorial average costs shown immediately above divide 49.77 percent North and 50.23 percent South whereas the U.S. average costs divide 43.50 percent North and 56.50 percent South. Moreover, the use of U.S. average car costs reduces the cost

of doing business in the North when compared with the territorial Rail Form A basis by 24 percent and the reduction in the South is but 2.39 percent.

[17]

The Southern lines' treatment of the car cost portions of switching costs developed in Rail Form A, Group VI, for switching road train to industry also produce drastic results to the Official territory lines. I have used the per diem cars originated or terminated listed in Witness Cole's V.S. 39, Appendix I, to which I have applied the unit costs per car by type at U.S. averages shown in Witness Remington's V.S. 40, Exhibit C, page 18, Table C. The resulting total cost is $2,920,914 which amount is assigned to both Northern and Southern lines so that costs are equalized for both territories. I have also applied to the same number of cars unit costs of $4.552 for box cars and $5.058 for all other types for Official territory and $3.121 and $3.468, respectively, for the Southern Region. The results are as follows:

Official Territory	$3,824,520
Southern Region	2,622,227

These costs divide 59.32 percent North and 40.68 percent South which is substantially different from the 50-50 split used by the Southern lines. In addition $903,606 are excluded from Northern line's costs and $298,687 are added to Southern lines' costs by this device.

The above car mile and car costs represent only the out-of-pocket portion of the costs. I have not dealt with the constant costs at all even though similar infirmities are involved in the use of such costs on a U.S. average basis.

[18]

Mr. Cole then suggests that because the present Rail Form A procedure, as used by both Mr. Heywood and the Interstate Commerce Commission, uses a national tare weight figure in developing Rail Form A costs, that logic would suggest the use of national average car costs by type

of car. In my opinion the use of tare weights on a U.S. basis furnishes no reason for applying car costs on a U.S. basis. In fact, except as to the development of the percentages for the separation of costs between mileage and time portions for depreciation, tare weights never enter into car cost development in Rail Form A.

At page 45 Witness Cole describes Mr. Heywood's territorial average Form A car costs as measuring "the composite effect of the car fleet owned by the respective groups of roads:". He repeats his error of including only ownership costs and ignoring the users costs, per diem debits and per diem credits. In Appendix B I have compiled from data in Appendix J of Witness Cole's Verified Statement an analysis of the car miles handling North-South traffic. From this it will be noted that the use of Official Territory equipment predominates. For example, column (c) indicates that 40.77 percent of Official Territory car miles were in Official Territory equipment and 34.04 percent in equipment owned by Southern Region carriers. Column (e) shows that 39.97 percent of Southern car miles were in Official Territory

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equipment and 34.61 percent in Southern cars. Column (g) shows that of the total car miles 40.30 percent were in equipment owned by the North and 34.38 percent in Southern cars. Of the total miles in equipment owned by the North or South 53.96 percent was in Northern owned equipment and 46.04 percent in Southern owned equipment, as shown in column (h). Yet the participation in the line-haul, as indicated in line 6 is 40.81 percent North and 59.19 percent South. Thus, disregarding equipment of other territories, Northern lines furnished cars for 53.96 percent of the total car miles although having only 40.81 percent of such car miles in the North. This is a ratio of 134 to 100. But Southern lines furnished cars for only 46.04 percent of such total car miles although having 59.19 percent of such car miles in the South. This is a ratio of only 78 to 100.

As shown by my Exhibit A the significance of the contribution of the northern lines to the car fleet and car miles in North-South traffic is all the more important when considering the usage advantage indicated by the car miles per serviceable car per day of 49.5 for the Southern Region but only 39.4 for the Official Territory.

Mr. Heywood in his V.S. No. 80, Exhibit F-2, shows average compensation for all classes of employes comparing Eastern District and Southern Region. I would call attention to this Exhibit, particularly the divisions representing maintenance of equipment employes which

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indicate another area of cost difference between territories which the U.S. average cost ignores.

At page 45 of V.S. 39 J. P. Cole sets forth two tables, the first comparing the per diem car fleets of Official territory and Southern territory and the second comparing car miles by type of per diem car for the same territory. Taken as they stand, and assuming that the car miles under the 7-day study show a utilization also attributable to the owned car fleets, it appears that Official territory with 40.4 percent open hoppers and utilization of 40.0 percent in car miles, obtained a better utilization than the South with an ownership of 32.8 percent of open hoppers and a car mile result of 23.6 percent.

When Witness Cole's figures for Official territory are separated into those for the Eastern District and the Pocahontas Region, the better performance of the Northern lines is also shown. For more ready comparison Mr. Cole's figures from page 45 and the separated figures described are compared in my Appendix A. As there shown, Eastern District lines with an open hopper ownership of 33.5 percent secured a utilization of 30.6 percent as compared with Southern ownership of 32.8 percent and utilization of 23.6 percent. By comparison the Pocahontas Region with 67.5 percent of its ownership of per diem cars in open hoppers secured a utilization of 72.2 per cent. The poorer

[21]

utilization is therefore in the South, and Southern lines have no proper objection to a comparison of group costs on this basis.

Further, 41.2 percent of the Eastern District per diem fleet consisted of box cars yet the Eastern District had 51.9 percent of its car miles in box car equipment. In the case of the Pocahontas Region 19.8 percent of their per diem car fleet consisted of box cars and 20.5 percent of their car miles were in that class of equipment.

At page 47 Witness Cole points out that in splitting car costs between mileage and time, national factors are used and contends that the factors can be validly applied only on a national basis. This is another example of this witness' inconsistency. Group Form A factors are found acceptable and used when Witness Cole chooses to use separate territorial average Form A costs but are unacceptable when they result in higher costs in the North than in the South.

At pages 48-53 Witness Cole speaks of "The Distorting Effect of Per Diem Debits and Credits". As I have previously stated, this is incorrect. The fact is that failure to reflect per diem debits and credits in the costs would have a distorting effect.

At page 53 Witness Cole seeks to discount the use of territorial car costs on the ground that the same method of cost computation as applied to the Clinchfield Railroad individually would produce a negative unit cost for *return* on its equipment. However, if group costs are em-

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ployed, as in my opinion they should be in this case, the results for individual road Form A applications are not significant.

The Southern lines' presentation from a seemingly theoretical standpoint was discussed by Witness Cole. The development of the unit costs for the U.S. average car by type of car was made by Witness Remington. In doing this he has endeavored to recognize all of the factors which

Mr. Cole discussed and which I have criticized above. The first step in his computation after aggregating all of the cost data from the several Rail Form A computations was to allocate those costs among the several types of cars. To do this he has assumed that the average cost for expenses, rents, and return on investment is the same per car regardless of the type of car. He says further that the differences as between the several types of cars is insignificant. I fail to see where there is any substantial difference from a theory standpoint as between Witness Remington's average cost per car and the unadjusted Rail Form A costs per car mile which is the same for each type of car in one territory and influenced only by the empty return ratio when applying costs to a particular traffic.

Mr. Remington claims that he has produced "refined" U.S. car costs with a step to separate the costs by type of car. The step involves elaborate computations. The separation relies heavily on his Table A in Section 5 of Exhibit C to V.S. 40. This table shows car miles per car

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owned per year for 7 types of cars and is based on cars owned, U.S., and a separation of car miles, total U.S., based on the 7-day study car miles. The total U.S. car miles exclude car miles made in Canada or Mexico by cars of U.S. ownership and include car miles in the U.S. made by cars of non U.S. ownership (Canada and Mexico). No attempt is made to exclude bad-order cars. Of course these make no mileage and the relative percentage of bad-order cars varies by type of car.

Mr. Remington starts with basic data prepared by the Cost Finding Section of the Interstate Commerce Commission. The Cost Finding Section requested an engineering study to indicate the approximate separation of freight car repairs between that chargeable to car miles and that chargeable to car days. As a result the Engineering Section made an analysis and concluded that the separation should

be 75 percent use and 25 percent time. The analysis was based on box cars. The use portion included expenses due to wear and tear resulting from loading and unloading. When this portion was transferred to time and rounded off the final percentages were 70 percent use and 30 percent time.

Examination of Witness Remington's Table B, lines 5 and 6, which is part of Exhibit C, shows that Mr. Remington's formula changes the

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split for box cars from 70-30 to 75-25. At lines 10 and 11 Witness Remington has developed percentages to allocate car depreciation costs between mileage and time portions for the box car. These were 51 percent and 49 percent, respectively, and for the open hopper car were 39 percent and 61 percent. Rail Form A for depreciation costs uses 45 percent mileage and 55 percent time which was based on studies and judgment by the Engineering Section at the request of the Cost Finding Section and uses both box cars and hopper cars in arriving at the results to be used in Rail Form A. For box cars the costs were found to be 50 percent use and 50 percent time whereas the hopper cars were found to be 55 percent use and 45 percent time. These figures were averaged as to use and time and an adjustment made to reduce the mileage portion for wear and tear incidental to car loading and unloading based on a study for box cars. There is no information given in Statement No. 4-54 entitled "Explanation of Rail Cost Finding Procedures and Principles Relating to the Use of Costs Prepared by the Cost Finding Section" as to wear and tear incidental to car loading and unloading for hopper cars. However, Mr. Remington's figures are so different from the results developed for the Cost Finding Section and are so dependent upon inconsistent statistics and arbitrary assumptions as to be of no value in my opinion.

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In conclusion it is my opinion the unit car costs associated with the costs and transportation service for each of the two territories are more appropriate for use in a North-South Divisions Case than a nationwide average car cost which ignores the differences in territorial costs that do exist.

Freight Carrying Cars - Number - December 31, 1956, Car Miles - 7-Day Study - Total And Car Miles Per Serviceable Car Per Day

Line No.	Type Of Car	All Districts		Eastern District		Pocahontas Region		Official Territory	
	Freight Carrying Cars (a)	Cars (b)	Percent of Total (c)	Cars (d)	Percent of Total (e)	Cars (f)	Percent of Total (g)	Cars (h)	Percent of Total (i)
1.	Box	727,659	43.3%	267,266	41.2%	32,834	19.8%	300,100	36.9%
2.	Gondola	277,802	16.5	126,672	19.5	15,686	9.5	142,358	17.5
3.	Hopper - Open	503,442	30.0	217,507	33.5	111,764	67.6	329,271	40.4
4.	Hopper - Covered	46,952	2.8	18,116	2.8	2,464	1.5	20,580	2.5
5.	Stock	36,830	2.2	4,912	.8	447	.3	5,359	.7
6.	Flat	55,962	3.3	11,201	1.7	1,109	.7	12,310	1.5
7.	Rack	29,378	1.8	1,154	.2	1,079	.6	2,233	.3
8.	Flat and Rack	85,340	5.1	12,355	1.9	2,188	1.3	14,543	1.8
9.	Other	2,332	.1	1,902	.3	73	.0	1,975	.2
10.	Grand Total	1,680,357	100.0	648,730	100.0	165,456	100.0	814,186	100.0
	Car Miles - 7 Day Study - Total	Car Miles		Car Miles		Car Miles		Car Miles	
11.	Box	270,897,178	56.4	79,485,290	51.9	9,230,523	20.5	88,715,813	44.8
12.	Gondola	50,053,571	10.4	15,037,459	9.8	2,118,636	4.7	17,156,095	8.7
13.	Hopper - Open	112,889,088	23.5	46,860,063	30.6	32,428,922	72.2	79,288,985	40.0
14.	Hopper - Covered	12,298,668	2.5	3,672,149	2.4	637,029	1.4	4,309,178	2.2
15.	Stock	11,840,941	2.5	3,196,278	2.1	69,749	.2	3,266,027	1.6
16.	Flat	20,154,618	4.2	4,107,126	2.7	437,792	1.0	4,544,918	2.3
17.	Other	2,227,311	.5	793,130	.5	62	.0	793,192	.4
18.	Total	480,361,375	100.0	153,151,495	100.0	44,922,713	100.0	198,074,208	100.0
19.	Car Miles Per Serviceable Car Per Day	48.3						39.4	

Sources:

Lines 1 to 9 inclusive, Transport Statistics In The United States, 1956, Table 26

Lines 11 to 17 inclusive, I.C.C., Cost Finding Section, Statement No. 6-57 Percent of Empty to Loaded Freight Car Miles by Class of Through and All Trains Combined, Table 2

Line 19, Association of American Railroads, Bureau of Railway Economics, Operating Statistics, Freight Train, Passenger Train, and years 1957 and 1956, O. S. Series No. 199, Column 48

Freight Carrying Cars - Number - December 31, 1956, Car Miles - 7-Day Study - Total And Car Miles Per Serviceable Car Per Day

tricts	Eastern District		Pocahontas Region		Official Territory		Southern Region		Western District	
Percent of Total (c)	Cars (d)	Percent of Total (e)	Cars (f)	Percent of Total (g)	Cars (h)	Percent of Total (i)	Cars (j)	Percent of Total (k)	Cars (l)	Percent of Total (m)
43.3%	267,266	41.2%	32,834	19.8%	300,100	36.9%	100,191	37.9%	327,368	54.4%
16.5	126,672	19.5	15,686	9.5	142,358	17.5	40,228	15.2	95,216	15.8
30.0	217,507	33.5	111,764	67.6	329,271	40.4	86,712	32.8	87,459	14.5
2.8	18,116	2.8	2,464	1.5	20,580	2.5	9,974	3.8	16,398	2.7
2.2	4,912	.8	447	.3	5,359	.7	1,514	.6	29,957	5.0
3.3	11,201	1.7	1,109	.7	12,310	1.5	6,461	2.4	37,191	6.2
1.8	1,154	.2	1,079	.6	2,233	.3	19,270	7.3	7,875	1.3
5.1	12,355	1.9	2,188	1.3	14,543	1.8	25,731	9.7	45,066	7.5
.1	1,902	.3	73	.0	1,975	.2	86	.0	271	.1
100.0	648,730	100.0	165,456	100.0	814,186	100.0	264,436	100.0	601,735	100.0

	Car Miles		Car Miles		Car Miles		Car Miles		Car Miles	
56.4	79,485,290	51.9	9,230,523	20.5	88,715,813	44.8	36,898,919	54.0	145,282,446	67.9
10.4	15,037,459	9.8	2,118,636	4.7	17,156,095	8.7	7,357,766	10.8	25,539,710	12.0
23.5	46,860,063	30.6	32,428,922	72.2	79,288,985	40.0	16,141,974	23.6	17,458,129	8.1
2.5	3,672,149	2.4	637,029	1.4	4,309,178	2.2	2,834,885	4.2	5,154,605	2.4
2.5	3,196,278	2.1	69,749	.2	3,266,027	1.6	304,602	.4	8,270,312	3.9
4.2	4,107,126	2.7	437,792	1.0	4,544,918	2.3	4,465,611	6.5	11,144,089	5.2
.5	793,130	.5	62	.0	793,192	.4	308,117	.5	1,126,002	.5
100.0	153,151,495	100.0	44,922,713	100.0	198,074,208	100.0	68,311,874	100.0	213,975,293	100.0
					39.4		49.5		58.5	

tics In The United States, 1956, Table 26
ding Section, Statement No. 6-57 Percent of Empty to Loaded Freight Car Miles by Class of Equipment and Performance Factors for Way, All Trains Combined, Table 2
, Bureau of Railway Economics, Operating Statistics, Freight Train, Passenger Train, and Yard Service Performance; etc., Calendar and 1956, O. S. Series No. 199, Column 48

Car Miles of North-South Traffic

Territorial Car Ownership	On Official Territory Roads		On Southern Region Roads		Total Movement		
	Car Miles	Percent of Total	Car Miles	Percent of Total	Car Miles	Percent of Total	Percent of Line 3
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1. Official	131,992,024	40.77	187,633,257	39.97	319,625,281	40.30	53.96
2. Southern	110,179,374	34.04	162,485,924	34.61	272,665,298	34.38	46.04
3. Sub-Total	242,171,398		350,119,181		592,290,579		100.00
4. Other	81,549,880	25.19	119,336,966	25.42	200,886,846	25.32	
5. Grand Total	323,721,278	100.00	469,456,147	100.00	793,177,425	100.00	
6. Percent-Line 5	40.81%		59.19%		100.00%		

VERIFIED STATEMENT No. 80
OF J. L. HEYWOOD

Section A

[1]

COUNT OF CARS

Under the heading "Consistent Count of Cars Originated and Terminated", Mr. Remington, in Exhibit C of his Verified Statement No. 40, makes certain adjustments in the count of cars developed from the Freight Commodity Statistics, which are used in computing costs under Rail Form A. These adjustments add a portion of the cars therein reported as interchanged to the number of cars reported as given terminal handling. So increasing the number of cars counted as given terminal handling, and decreasing the number counted as given interchange service operates, under Rail Form A, to assign less switching expense to interchange, which is a line haul item, and thereby to reduce line haul costs. The transfer of switching expense to terminal does not much affect the terminal unit cost per car, because of the increase of the count of cars given terminal service.

This adjustment relates principally to lake cargo coal, tidewater coal and ex-lake ore. It is based upon the theory that, "For cost purposes a car is originated when lading is placed in a car for outbound movement, and car terminated is a car in which lading is removed and the car made empty." (Exhibit C, p. 5) Thus, the sole test as to whether a shipment is interchanged or is originated or terminated is whether the lading was put into or taken from a car. All other characteristics of the operation would be disregarded. Such a test obviously has no relation to cost. It has no relation to whether a given operation is more like an interchange from the standpoint of the service

[2]

performed and, hence, of the costs incurred, or more like an origination or termination of a shipment.

That the service at tidewater ports on coal, and at the lake ports on coal and ore, is interchange rather than terminal is apparent from the facts with respect to these services. Taking lake cargo coal as an example, the coal trains go to the railroads' lake front yards at the ports. Unlike cars which are to be terminated, the lake cargo coal cars are not then moved to various industries in transfer runs and then switched to effect delivery at the consignee's plant. Rather, they are moved to a dumping machine at the railroads' water front yards and there dumped into the lake vessel. It is obvious that this service is much more akin to a movement to an interchange track than to a transfer and switching movement to effect delivery to a consignee. The fact that the car is not given over to the boat line along with the lading cannot, in itself, mean that the shipment is not interchanged. The interchange of an l.c.l. shipment between railroads is not accompanied by a delivery of the car which carried the shipment; but, nevertheless, it is an interchange. Also, the fact that the interchange is with a boat rather than with a railroad—that the movement is to a dumping machine rather than to an interchange track with another railroad—cannot detract from the essentials of the operation and their significance from a cost standpoint.

[3]

In *Lake Cargo Coal Rates, 1925,* 126 I.C.C. 309, the Commission stated at p. 313, with respect to lake cargo coal rates:

> "The rates thereon apply from the mines to the raised or hump tracks beyond the classification yards at the Lake Erie ports. From these tracks the loaded cars are dropped by gravity to dumping machines at the docks. A separate tariff charge for transferring

the coal from cars to vessels is not in issue. The rates on lake-cargo coal are treated as in the nature of proportional rates to the ports for part of a through movement to cross-lake destinations. They include no terminal delivery to consignees at the ports. The local rates on so-called commercial coal to the port cities cover such delivery. For this and other reasons as, for example, concentrated movement at times when commercial coal is not moving heavily, rates on lake-cargo coal always have been lower than the local rates on commercial coal."

On lake cargo coal, even the rates indicate interchange rather than delivery, because they are either: (1) proportional rates, the application of which is conditioned upon further movement from the port by water and differing from the rates to the port cities for local deliveries; (2) lower proportionals than those just mentioned, if the shipment is to have a further movement at the termination of the water haul, or (of more recent origin) (3) joint rail-water, or rail-water and rail rates.

What I have said with respect to lake cargo coal is true, in its essentials, with respect to iron ore (moving in the reverse direction) and tidewater coal.

The fact that the Commission has so carefully differentiated these movements from ordinary movements to and from water lines attests

[4]

to the fact that they are different in character than those ordinary movements. The Commission having, by its definitions used in connection with freight commodity statistics (V.S. 40, Ex. C, p. 6), prescribed that shipments delivered to water lines are to be regarded as terminated on line, and having prescribed that shipments received from water lines should be classified as having originated on line and yet, in the same order, having prescribed that "lake cargo coal delivered to Lower Lake and St. Lawrence River ports for

transshipment by vessel" and "tidewater coal to Atlantic ports", and iron ore received at Lower Lake and St. Lawrence River ports and tidewater coal from Atlantic ports should all be classified as interchange traffic, could only mean that the Commission saw an essential difference in this traffic as compared with the ordinary traffic delivered to and received from water lines.

Of course, interchange service may involve high, low or average expense, just as terminal service may involve high, low or average expense. For example, the interchange of cars between railroads in New York Harbor necessitates the expense of floating service. So does the interchange of cars between the Pennsylvania and connecting lines at Norfolk. Another illustration of an expensive interchange service of cars is in the case of traffic which formerly moved between interior

[5]

points in the East and interior points in the Southwest over the so-called break bulk water routes. This traffic, even where moving under joint rates (like some of the lake cargo coal traffic) required transfer from car to vessel at the ports.

The Remington car-count adjustment is unsound not only in theory but in application. Based on information furnished by the carriers to the Commission at its request to enable it to reconcile its One Percent Waybill statistics with the Freight Commodity Statistics, Witness Remington transfers to an originated or terminated basis certain cars which by reason of transloading of through traffic at the ports was reported as interchanged. But the information so requested by the Commission and furnished by the carriers is not sufficiently complete to permit the making of the adjustment even if it were otherwise appropriate, which in my opinion it is not. Because such information is not complete, Witness Remington's method of re-stating the car-count involves the estimating of a substantial portion of the cars which, according to his theory, should be classi-

fied as having been given terminal rather than interchange service. But these estimates along with other computations made by the witness in developing the adjustment of the car-count used by him in his revised I.C.C. cost applications involve many assumptions which make his resulting conclusions wholly unreliable.

The fact is that even if it were desired to make an adjustment along

[6]

the lines of the Remington theory, it would be impossible to do so because the information to accomplish that adjustment is not available. The only definite figures available to the witness relate to cars reported to the Commission as cars terminated in connection with the one percent waybill sample. To obtain figures for the other categories of cars Witness Remington resorted to estimates which cannot be considered as of any value for the purpose. Further, the witness has made no attempt to eliminate company material cars from the car counts other than where the carriers' only adjustment reported covered such cars. Company material cars cannot be considered as a part of any such adjustment as they are not included in the car count in the Freight Commodity Statistics.

The supplemental information furnished by the railroads at the Commission's request as a basis for its verification of the representative character of the one percent waybill sample is not intended as a means of "correcting" the Freight Commodity statistics. If such statistics as now reported were regarded by the Commission as improperly stated as between cars reported as given interchange or terminal service, it could readily revise its requirements for the reporting of such information. But the fact is that although the Commission has from time to time issued orders relating to the reporting of Freight Commodity Statistics, it has never sought to change the car counts along the lines Witness Remington suggests. On the contrary

throughout the period its Cost Section has been issuing its annual statements of relative costs

[7]

for the several carrier groups the Commission has continued to require the reporting of freight commodity statistics in the same fashion as is currently done.

Further, the lack of value of such an adjustment if all necessary information were secured is indicated, in my opinion, by the fact that since the Cost Section of the Commission began its annual issuance of group cost data, beginning with the year 1947, it has never required the carriers to furnish such information and has continued to compute its regularly issued data on group costs with reference to the car counts derived from the Freight Commodity Statistics.

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Section F

[1]

DIFFERENCES IN WAGES AND TAXES— NORTH v. SOUTH

Beginning at page 62 of his Verified Statement No. 39, Mr. Cole purports to identify "the source of the differences in Official and Southern costs". Mr. DeButts stated at page 3 of V.S. No. 14, "My purpose in this statement is to highlight some of the factors affecting cost . . . in freight service." Also, at page 2 of Exhibit 3 to Mr. Luckett's Verified Statement 36, index figures relating to prices of railway materials and supplies are shown for the Southern and Eastern lines, respectively. Nowhere in these endeavors of Southern lines is any mention made of the higher wage rates and taxes paid by the Northern lines as compared with the Southern lines. While I do not believe it to be necessary to go behind the reported expense figures and point out basic differences in transportation conditions which give rise to differences in costs, nevertheless in view

of Mr. Cole's attempt to identify "the source of the differences" in costs, Mr. DeButt's purpose as above quoted, and Mr. Luckett's apparent attempt to indicate a difference in prices, in this section of my statement I desire to indicate how just two items, namely, wage rates and taxes (not including wage and income taxes) affect the relative cost levels, comparing the North and the South.

[2]

Although in recent years wage negotiations have been on a national basis, the wage increases are applied to existing wages which are not uniform nationally. As the statistics compiled by the Commission demonstrate, wage rates paid by the railroads of the Eastern District and Pocahontas Region exceed those paid by the railroads of the Southern Region. This is shown for the year 1956 by Exhibit F-1 to this section of my statement, a reproduction of page 50, Table 67 of the ICC's "Transport Statistics in the United States."

That these differences substantially affect the operating results of the Northern lines is shown by Exhibit F-2 to this section of my statement. In that exhibit is shown the average compensation on the basis of straight time, overtime, and time paid for but not worked for the railroads of the Eastern District, those of the Pocahontas Region and those of the Southern Region. The exhibit shows that, on the whole, the rates of compensation in the North are so much higher than those in the South that if the Eastern District lines, in the year 1956, had had the same wage levels as those of the Southern Region lines, the total wages paid by Eastern District lines would have been $52,128,388 less than what they actually did pay. Likewise, it is shown by Exhibit F-3 that on the same premise the total wages paid by the Pocahontas lines would have been $5,609,060 less than they actually were.

[3]

I have examined also the relative taxes paid by the several groups of railroads in categories other than federal income and payroll taxes. This study is set forth in Exhibit F-4. It shows that in 1956 the taxes per mile of road for the Eastern District lines were $2,960.83, for Eastern District including Pocahontas $3,070.41, and for the Southern Region roads, $1,647.62. If the tax basis of the Southern lines had prevailed in the North, the Eastern District railroads would have paid $83,080,412 less than they did in 1956, and the roads of the Eastern District plus Pocahontas Region would have paid $110,861,289 less than they did.

The sum of the wage and tax items of savings is $135,208,800 for the railroads of the Eastern District alone, and $168,598,737 for the lines of the Eastern District including Pocahontas.

Exhibit F-1

EMPLOYEES

TABLE 67.—Employees: Number, Service, and Compensation—By Occupational Group and by District, 1956

(CLASS I LINE-HAUL RAILROADS)

Groups of employees and territory covered	Average number (middle-of-month count)	Service hours				Compensation				Average per employee	Average per hour
		Straight time paid for a	Overtime paid for b	Other allowances c	Total	Straight time paid for a	Overtime paid for b	Other compensation c	Total		
ALL DISTRICTS											
I. Executives, officials, and staff assistants	16,299	40,185,120	12,256	204,015	40,401,391	$171,302,056	$52,497	$752,862	$172,107,415	$10,559	$4.26
II. Professional, clerical, and general	196,374	397,259,456	16,350,808	26,852,066	436,462,330	857,181,848	31,566,028	56,003,522	944,751,398	4,811	2.17
III. Maintenance of way and structures	185,923	360,911,628	12,912,296	24,880,545	398,704,469	672,841,977	36,314,203	46,601,559	755,757,739	4,065	1.90
IV. Maintenance of equipment and stores	265,774	516,717,319	18,430,329	44,402,058	577,549,706	1,077,006,076	51,490,730	92,367,917	1,220,864,723	4,594	2.11
V. Transportation (other than train, engine, and yard)	122,449	256,003,656	10,831,229	17,181,284	284,016,169	507,109,809	31,968,434	34,054,949	573,133,192	4,681	2.02
VI (a). Transportation (yardmasters, switch tenders, and hostlers)	14,468	35,692,157	1,141,741	2,200,837	39,034,735	86,478,692	3,860,890	5,371,950	95,711,532	6,615	2.45
VI (b). Transportation (train and engine service)	242,160	576,257,821	44,507,547	71,241,369	692,006,737	1,271,769,185	138,775,476	151,801,285	1,562,345,946	6,452	2.26
All employees	1,043,447	2,183,027,157	96,186,206	186,962,174	2,466,175,537	4,643,689,643	294,028,258	386,954,044	5,324,671,945	5,103	2.16
EASTERN DISTRICT											
I. Executives, officials, and staff assistants	5,853	13,584,157	6,746	65,678	13,656,581	63,619,861	28,153	213,968	63,861,982	10,911	4.68
II. Professional, clerical, and general	75,419	150,539,358	4,857,957	10,647,563	166,044,878	329,978,120	14,795,170	22,258,829	367,032,119	4,867	2.21
III. Maintenance of way and structures	57,637	112,473,133	5,689,134	8,241,627	126,403,894	217,015,437	16,597,336	15,907,459	249,520,232	4,329	1.97
IV. Maintenance of equipment and stores	101,999	198,396,042	7,318,218	18,355,948	224,070,208	420,425,991	23,205,248	38,547,798	482,179,037	4,727	2.15
V. Transportation (other than train, engine, and yard)	52,600	108,863,982	5,370,559	7,527,475	121,762,016	217,797,655	15,793,310	15,024,969	248,615,934	4,727	2.04
VI (a). Transportation (yardmasters, switch tenders, and hostlers)	6,870	16,878,378	554,229	1,053,975	18,486,582	40,607,866	1,886,530	2,566,911	45,061,307	6,559	2.44
VI (b). Transportation (train and engine service)	102,279	234,277,301	21,838,518	27,349,224	283,465,043	515,465,975	67,195,814	57,717,914	640,379,703	6,261	2.26
All employees	402,657	835,012,351	45,635,361	73,241,490	953,889,202	1,804,910,905	139,501,561	152,237,848	2,096,650,314	5,207	2.20
POCAHONTAS REGION											
I. Executives, officials, and staff assistants	1,285	3,580,198	...	174	3,580,372	13,758,517	...	101,603	13,860,120	10,786	3.87
II. Professional, clerical, and general	10,136	21,054,284	896,489	1,553,082	23,503,855	44,926,085	2,811,015	3,413,718	51,150,818	5,046	2.18
III. Maintenance of way and structures	10,681	21,058,166	1,090,821	1,537,599	23,686,586	38,967,787	2,959,851	2,896,808	44,824,446	4,197	1.89
IV. Maintenance of equipment and stores	18,913	37,177,517	2,087,800	3,293,815	42,559,132	76,381,604	6,668,726	6,972,500	90,022,830	4,760	2.12
V. Transportation (other than train, engine, and yard)	4,873	10,631,529	604,820	688,846	11,925,195	21,721,383	1,881,184	1,534,767	25,137,334	5,158	2.11
VI (a). Transportation (yardmasters, switch tenders, and hostlers)	1,004	2,414,236	50,091	141,023	2,605,398	5,971,190	168,398	352,747	6,492,225	6,466	2.49
VI (b). Transportation (train and engine service)	14,150	32,524,659	2,655,597	2,804,630	37,984,886	71,947,295	8,547,468	6,188,748	86,683,511	6,126	2.28
All employees	61,042	128,440,587	7,385,618	10,019,169	145,845,374	273,673,861	23,036,532	21,460,891	318,171,284	5,212	2.18
SOUTHERN REGION											
I. Executives, officials, and staff assistants	2,770	6,990,653	529	4,778	6,995,960	28,074,324	1,948	13,339	28,089,611	10,141	4.02
II. Professional, clerical, and general	26,965	55,696,830	824,436	3,452,447	59,973,713	118,705,576	2,447,380	7,132,426	128,285,382	4,757	2.14
III. Maintenance of way and structures	28,872	55,676,213	1,331,025	3,942,931	60,950,169	101,070,085	3,589,727	7,098,449	111,758,261	3,871	1.83
IV. Maintenance of equipment and stores	34,895	69,021,554	1,804,691	5,293,054	76,119,299	141,141,100	5,507,828	10,727,221	157,376,149	4,510	2.07
V. Transportation (other than train, engine, and yard)	16,647	35,111,871	914,827	2,252,841	38,279,539	67,158,585	2,595,499	4,301,322	74,055,406	4,449	1.93
VI (a). Transportation (yardmasters, switch tenders, and hostlers)	1,625	4,051,847	96,797	253,918	4,402,562	9,632,418	306,723	611,844	10,550,985	6,493	2.40
VI (b). Transportation (train and engine service)	31,550	75,149,330	4,717,264	7,187,816	87,124,410	165,382,052	14,986,539	15,599,766	195,908,357	6,209	2.25
All employees	143,324	301,698,298	9,759,569	22,387,785	333,845,652	631,164,140	29,435,644	45,444,367	706,024,151	4,926	2.11
WESTERN DISTRICT											
I. Executives, officials, and staff assistants	6,391	16,030,112	4,981	133,385	16,168,478	65,849,354	22,396	423,952	66,295,702	10,373	4.10
II. Professional, clerical, and general	83,854	169,968,984	5,771,926	11,198,974	184,939,884	363,572,067	11,512,463	23,198,549	398,283,079	4,750	2.15
III. Maintenance of way and structures	88,733	171,704,116	4,801,316	11,158,388	187,663,820	315,788,668	13,167,289	20,698,843	349,654,800	3,941	1.86
IV. Maintenance of equipment and stores	109,967	212,122,206	5,219,620	17,459,241	234,801,067	439,057,381	16,108,928	36,170,398	491,286,707	4,468	2.09
V. Transportation (other than train, engine, and yard)	48,329	101,396,274	3,941,023	6,712,122	112,049,419	200,432,186	11,698,441	13,193,891	225,324,518	4,662	2.01
VI (a). Transportation (yardmasters, switch tenders, and hostlers)	4,969	12,747,698	440,624	751,921	13,540,243	30,747,218	1,499,369	1,840,448	33,607,035	6,763	2.48
VI (b). Transportation (train and engine service)	44,181	234,306,531	15,726,168	33,999,699	283,432,398	518,993,863	48,065,655	72,334,857	639,374,375	6,709	2.26
All employees	436,424	917,875,921	33,405,658	81,313,730	1,032,595,309	1,933,960,737	102,054,571	167,810,938	2,203,826,196	5,050	2.13

AVERAGE COMPENSATION

Year 1956

Division No.	Reporting Division	Eastern District Hourly Rates: Straight Time	Eastern District Hourly Rates: Overtime	Eastern District Hourly Rates: Time Paid For Not Worked	Southern Region Hourly Rates: Straight Time	Southern Region Hourly Rates: Overtime	Southern Region Hourly Rates: Time Paid For Not Worked	Eastern District Rates 1 of Southern Region R: Straight Time	Eastern District Rates 1 of Southern Region R: Overtime
	I. EXECUTIVES, OFFICIALS, AND STAFF ASSISTANTS								
1	Executives, General Officers, and Assistants	$5.984	$3.266	$3.899	$4.797	-	$3.522	$1.187	-
2	Division Officers, Assistants, and Staff Assistants	3.839	4.182	3.071	3.287	$3.682	2.615	.552	$.500
(901)	TOTAL (Executives, Officials, and Staff Assistants)	4.683	4.173	3.258	4.016	3.682	2:796	.667	.491
	II. PROFESSIONAL, CLERICAL, AND GENERAL								
3	Professional and Subprofessional Assistants	2.788	3.529	2.517	2.609	3.444	2.555	.179	.085
4	Supervisory or Chief Clerks (Major Departments)	3.062	3.690	2.614	2.683	3.490	2.718	.379	.200
5	Chief Clerks (Minor Departments) and Assistant Chief Clerks and Supervising Cashiers	2.552	3.466	2.396	2.342	3.234	2.366	.210	.232
6	Clerks and Clerical Specialists (A)	2.453	3.429	2.359	2.253	3.186	2.242	.200	.243
7	Clerks (B and C)	2.051	3.041	2.065	2.007	2.978	2.025	.044	.063
8	Mechancial Device Operators (Office)	1.956	3.003	1.977	1.978	3.034	1.982	D .022	.031
9	Stenographers and Secretaries (A)	2.380	3.275	2.162	2.136	3.215	2.125	.244	.060
10	Stenographers and Typists (B)	2:027	3.017	1.994	1.943	3.009	2.016	.084	.008
11	Storekeepers, Sales Agents, and Buyers	2.465	3.165	2.267	2.328	2.991	2.132	.137	.174
12	Ticket Agents and Assistant Ticket Agents	2.314	3.195	2.178	2.327	3.163	2.170	D .013	.032
13	Traveling Auditors or Accountants	2.794	3.775	2.614	2.732	3.357	2.871	.062	.418
14	Telephone Switchboard Operators and Office Assistants	1.795	2.726	1.821	1.715	2.613	1.739	.080	.113
15	Messengers and Office Boys	1.699	2.544	1.709	1.632	2.465	1.644	.067	.079
16	Elevator Operators and Other Office Attendants	1.831	2.808	1.820	1.643	2.451	1.644	.188	.357
17	Lieutenants and Sergeants of Police	2.502	3.548	2.390	1.937	2.629	2.054	.565	.919
18	Patrolmen and Watchmen	2.160	3.027	2.134	1.978	2.479	1.940	.182	.548
19	Traffic and Various Other Agents, Inspectors and In Investigators	2.918	3.720	2.641	2.749	-	2.895	.169	-
20	Claim Agents or Investigators	2.825	3.750	2.833	2.879	-	2.412	D .054	-
21	Freight Claim Agents or Investigators	2.759	3.200	2.494	2.674	-	2.645	.085	-
22	Chief Claim Agents or Investigators	3.885	-	3.396	3.211	-	-	.674	-
23	Miscellaneous Trades Workers (Other Than Plumbers)	2.196	3.272	2.180	2.230	3.536	2.193	D .034	D .264
24	Motor Vehicle and Motor Car Operators	1.883	2.864	1.885	1.801	2.649	1.786	.082	.215
25	Teamsters and Stablemen	-	-	-	-	-	-	-	-
26	Janitors and Cleaners	1.731	2.635	1.757	1.622	2.488	1.641	.109	.147
(902)	TOTAL (Professional, Clerical, and General)	2.192	3.046	2.091	2.131	2.969	2.066	.061	.077
	III. MAINTENANCE OF WAY AND STRUCTURES								
27	Roadmasters, General Foremen, and Assistants	2.861	3.357	2.848	2.709	2.621	2.498	.152	.736
28	Maintenance of Way and Scale Inspectors	2.416	3.355	2.283	2.361	3.005	1.981	.055	.350
29	Bridge and Building Gang Foremen (Skilled Labor)	2.338	3.492	2.354	2.133	3.184	2.157	.205	.308
30	Bridge and Building Carpenters	2.033	3.083	2.033	1.928	2.887	1.942	.105	.196
31	Bridge and Building Ironworkers	2.131	3.227	2.146	2.024	3.058	1.970	.107	.169
32	Bridge and Building Painters	2.038	3.108	2.053	1.917	2.739	1.932	.121	.369
33	Masons, Bricklayers, Plasterers, and Plumbers	2.155	3.287	2.160	2.161	3.205	2.172	D .006	.082
34	Maintenance of Way and Structures Helpers and Apprentices	1.870	2.853	1.873	1.806	2.717	1.812	.064	.136
35	Portable Equipment Operators	2.016	3.056	2.030	1.994	3.010	2.017	.022	.046
36	Portable Equipment Operator Helpers	1.834	2.691	1.846	1.781	2.706	1.796	.053	D .015
37	Pumping Equipment Operators	1.747	2.533	1.758	1.818	3.019	1.912	D .071	D .486
38	Gang Foremen (Extra Gang and Work-Train Laborers)	2.069	3.167	2.091	2.057	3.052	2.050	.012	.115
39	Gang Foremen (Bridge, Building, Signal and Telegraph Laborers)	2.432	3.234	2.318	2.133	2.854	2.128	.299	.380
40	Gang or Section Foremen	2.051	3.139	2.080	1.983	2.963	1.985	.068	.176
41	Extra Gang Men	1.721	2.641	1.734	1.638	2.483	1.644	.083	.158

AVERAGE COMPENSATION

Year 1956

Eastern District Hourly Rates			Southern Region Hourly Rates			Eastern District Rates in Excess of Southern Region Rates			Annual Saving to Eastern District at Southern Region Rates			
Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Total
$5.984	$3.266	$3.899	$4.797	-	$3.522	$1.187	-	$.377	$6,348,058	-	$5,577	$6,353,635
3.839	4.182	3.071	3.287	$3.682	2.615	.552	$.500	.456	4,546,367	$3,341	23,204	4,572,912
4.683	4.173	3.258	4.016	3.682	2.796	.667	.491	.462	10,894,425	3,341	28,781	10,926,547
2.788	3.529	2.517	2.609	3.444	2.555	.179	.085	D .038	1,031,038	1,338	3,271	1,029,105
3.062	3.690	2.614	2.683	3.490	2.718	.379	.200	D .104	809,911	2,111	7,833	804,189
2.552	3.466	2.396	2.342	3.234	2.366	.210	.232	.030	1,788,525	47,495	17,016	1,853,036
2.453	3.429	2.359	2.253	3.186	2.242	.200	.243	.117	1,488,002	31,017	66,473	1,585,492
2.051	3.041	2.065	2.007	2.978	2.025	.044	.063	.040	3,315,522	221,921	256,781	3,794,224
1.956	3.003	1.977	1.978	3.034	1.982	D .022	.031	D .005	132,557	6,508	2,553	141,618
2.380	3.275	2.162	2.136	3.215	2.125	.244	.060	.037	533,682	246	2,751	536,679
2.027	3.017	1.994	1.943	3.009	2.016	.084	.008	D .022	721,653	622	12,102	710,173
2.465	3.165	2.267	2.328	2.991	2.132	.137	.174	.135	223,928	3,697	14,310	241,935
2.314	3.195	2.178	2.327	3.163	2.170	D .013	.032	.008	12,472	1,220	438	10,814
2.794	3.775	2.614	2.732	3.357	2.871	.062	.418	D .257	45,334	375	5,029	40,680
1.795	2.726	1.821	1.715	2.613	1.739	.080	.113	.082	194,528	6,094	15,169	215,791
1.699	2.544	1.709	1.632	2.465	1.644	.067	.079	.065	95,663	2,957	5,926	104,546
1.831	2.808	1.820	1.643	2.451	1.644	.188	.357	.176	118,082	8,248	8,222	134,552
2.502	3.548	2.390	1.937	2.629	2.054	.565	.919	.336	782,474	2,440	24,897	809,811
2.160	3.027	2.134	1.978	2.479	1.940	.182	.548	.194	976,759	36,167	63,319	1,076,245
2.918	3.720	2.641	2.749	-	2.895	.169	-	D .254	1,396,157	-	25,701	1,370,456
2.825	3.750	2.833	2.879	-	2.412	D .054	-	.421	45,709	-	5,939	39,770
2.759	3.200	2.494	2.674	-	2.645	.085	-	.151	21,649	-	1,663	19,986
3.885	-	3.396	3.211	-	-	.674	-	-	133,585	-	-	133,585
2.196	3.272	2.180	2.230	3.536	2.193	D .034	D .264	D .013	32,177	6,051	940	39,168
1.883	2.864	1.885	1.801	2.649	1.786	.082	.215	.099	399,801	65,500	35,204	500,505
-	-	-	-	-	-	-	-	-	-	-	-	-
1.731	2.635	1.757	1.622	2.488	1.641	.109	.147	.116	499,461	16,059	39,008	554,528
2.192	3.046	2.091	2.131	2.969	2.066	.061	.077	.025	14,352,839	434,948	496,361	15,284,148
2.861	3.357	2.848	2.709	2.621	2.498	.152	.736	.350	375,780	198	14,940	390,918
2.416	3.355	2.283	2.361	3.005	1.981	.055	.350	.302	43,870	7,961	13,112	64,943
2.338	3.492	2.354	2.133	3.184	2.157	.205	.308	.197	485,186	25,372	42,100	552,658
2.033	3.083	2.033	1.928	2.887	1.942	.105	.196	.091	675,308	32,636	47,526	755,470
2.131	3.227	2.146	2.024	3.058	1.970	.107	.169	.176	60,615	2,532	8,081	71,228
2.038	3.108	2.053	1.917	2.739	1.932	.121	.369	.121	169,240	4,714	12,086	186,040
2.155	3.287	2.160	2.161	3.205	2.172	D .006	.082	D .012	12,245	6,142	1,951	8,054
1.870	2.853	1.873	1.806	2.717	1.812	.064	.136	.061	167,751	8,152	11,142	187,045
2.016	3.056	2.030	1.994	3.010	2.017	.022	.046	.013	103,789	18,220	4,373	126,382
1.834	2.691	1.846	1.781	2.706	1.796	.053	D .015	.050	6,790	139	410	7,061
1.747	2.533	1.758	1.818	3.019	1.912	D .071	D .486	D .154	7,969	4,175	1,292	13,436
2.069	3.167	2.091	2.057	3.052	2.050	.012	.115	.041	34,006	24,958	10,350	69,314
2.432	3.234	2.318	2.133	2.854	2.128	.299	.380	.190	27,928	1,207	1,978	31,113
2.051	3.139	2.080	1.983	2.963	1.985	.068	.176	.095	734,666	148,628	88,915	972,209
1.721	2.641	1.734	1.638	2.483	1.644	.083	.158	.090	1,384,814	104,063	82,185	1,571,062

Year 1956

Division No.	Reporting Division	Eastern District Hourly Rates			Southern Region Hourly Rates			Eastern District Rates of Southern Region	
		Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime
	III. MAINTENANCE OF WAY AND STRUCTURES-Continued								
42	Section Men	$1.732	$2.633	$1.741	$1.628	$2.437	$1.633	$.104	$.196
43	Maintenance of Way Laborers (Other Than Track and Roadway) and Gardeners and Farmers	1.745	2.609	1.756	1.666	2.434	1.680	.079	.175
44	General and Assistant General Foreman, and Inspectors (Signal, Telegraph, and Electrical Transmission)	2.757	3.764	2.467	2.789	3.495	2.515	D .032	.269
45	Gang Foremen (Signal and Telegraph Skilled Trades Labor)	2.424	3.563	2.384	2.333	3.403	2.270	.091	.160
46	Signalmen and Signal Maintainers	2.226	3.375	2.228	2.199	3.283	2.198	.027	.092
47	Linemen and Groundmen	2.173	3.336	2.182	2.172	3.253	2.180	.001	.083
48	Assistant Signalmen and Assistant Signal Maintainers	2.049	3.096	2.068	2.029	2.975	2.040	.020	.121
49	Signalman and Signal Maintainer Helpers	1.917	2.931	1.920	1.881	2.807	1.837	.036	.124
(903)	TOTAL (Maintenance of Way and Structures)	1.929	2.917	1.930	1.815	2.697	1.800	.114	.220
	IV. MAINTENANCE OF EQUIPMENT AND STORES								
50	General, Assistant General, and Department Foremen	2.901	4.081	2.783	2.843	3.772	2.704	.058	.309
51	General and Assistant General Foremen (Stores)	2.422	3.059	2.238	2.300	3.526	2.426	.122	D .467
52	Equipment, Shop, Electrical, Material and Supplies Inspectors	2.726	3.663	2.620	2.440	3.911	2.571	.286	D .248
53	Gang Foremen and Gang Leaders (Skilled Labor)	2.644	3.865	2.620	2.496	3.528	2.365	.148	.337
54	Blacksmiths	2.198	3.299	2.201	2.206	3.354	2.208	D .008	D .055
55	Boilermakers	2.226	3.347	2.230	2.226	3.368	2.223	-	D .021
56	Carmen (A and B)	2.203	3.331	2.206	2.195	3.315	2.197	.008	.016
57	Carmen (C and D)	2.166	3.260	2.166	2.145	3.216	2.148	.021	.044
58	Electrical Workers (A)	2.213	3.332	2.211	2.200	3.304	2.200	.013	.028
59	Electrical Workers (B)	2.200	3.284	2.148	2.099	3.022	2.105	.101	.262
60	Electrical Workers (C)	2.087	3.099	2.096	1.755	2.580	1.735	.332	.519
61	Machinists	2.207	3.315	2.208	2.198	3.301	2.195	.009	.014
62	Molders	2.473	3.283	2.438	2.192	3.313	2.188	.281	D .030
63	Sheet-metal Workers	2.205	3.312	2.207	2.202	3.321	2.193	.003	D .009
64	Skilled Trades Helpers (M.of E. and Stores)	1.934	2.904	1.938	1.876	2.799	1.879	.058	.105
65	Helper Apprentices (M.of E. and Stores)	1.959	3.020	1.960	1.930	2.888	1.934	.029	.132
66	Regular Apprentices (M. of E. and Stores)	1.804	2.881	1.825	1.756	2.714	1.796	.048	.167
67	Coach Cleaners	1.759	2.652	1.764	1.650	2.496	1.647	.109	.156
68	Gang Foremen (Shops, Enginehouses, and Power Plants)	2.158	3.254	2.167	2.027	2.984	2.012	.131	.270
69	Gang Foremen (Stores, Ice, Reclamation, Timber-Treating Plants)	2.056	3.118	2.054	2.079	3.022	2.066	D .023	.096
70	Classified Laborers (Shops, Enginehouses, and Power Plants)	1.779	2.673	1.786	1.647	2.492	1.650	.132	.181
71	General Laborers (Shops, Enginehouses, and Power Plants)	1.746	2.624	1.743	1.632	2.450	1.631	.114	.174
72	General Laborers (Stores and Ice, Reclamation, and Timber-Treating Plants)	1.811	2.745	1.815	1.707	2.632	1.710	.104	.113
73	Stationary Engineers (Steam)	2.191	3.204	2.304	2.138	3.161	2.095	.053	.043
74	Stationary Firemen, Oilers, Coal Passers, and Water Tenders	1.967	2.965	1.976	1.769	2.705	1.783	.198	.260
(904)	TOTAL (Maintenance of Equipment and Stores)	2.119	3.171	2.100	2.045	3.052	2.027	.074	.119
	V. TRANSPORTATION (OTHER THAN TRAIN, ENGINE AND YARD)								
75	Chief Train Dispatchers	3.368	5.074	3.355	3.252	4.425	3.210	.116	.649
76	Train Dispatchers	3.068	4.560	3.066	3.017	4.385	3.021	.051	.175
77	Train Directors	2.902	3.962	2.640	-	-	-	-	-
78	Station Agents (Supervisory-Major Stations-Nontelegraphers)	2.896	3.421	2.507	2.598	3.576	2.412	.298	D .155
79	Station Agents (Smaller Stations-Nontelegraphers)	2.198	3.219	2.192	2.075	3.190	2.071	.123	.029
80	Station Agents (Telegraphers and Telephoners)	2.061	3.115	2.084	2.036	3.094	2.038	.025	.021
81	Chief Telegraphers and Telephoners or Wire Chiefs	2.390	3.515	2.383	2.310	3.325	2.273	.080	.190
82	Clerk-Telegraphers and Clerk-Telephoners	2.033	3.062	2.047	2.023	3.301	2.031	.010	.031
83	Telegraphers, Telephoners, and Towermen	2.099	3.168	2.118	2.023	3.109	2.070	.076	.059

Year 1956

	Eastern District Hourly Rates			Southern Region Hourly Rates			Eastern District Rates in Excess of Southern Region Rates			Annual Saving to Eastern District at Southern Region Rates			
	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Total
	$1.732	$2.633	$1.741	$1.628	$2.437	$1.633	$.104	$.196	$.108	$4,341,667	$422,095	$348,802	$5,112,564
Roadway)	1.745	2.609	1.756	1.666	2.434	1.680	.079	.175	.076	64,840	5,948	4,166	74,954
tors	2.757	3.764	2.467	2.789	3.495	2.515	D .032	.269	D .048	47,444	8,135	4,386	43,695
)	2.424	3.563	2.384	2.333	3.403	2.270	.091	.160	.114	152,114	18,562	16,906	187,582
Labor)	2.226	3.375	2.228	2.199	3.283	2.198	.027	.092	.030	200,825	48,371	17,868	267,064
	2.173	3.336	2.182	2.172	3.253	2.180	.001	.083	.002	1,572	8,425	221	10,218
ers	2.049	3.096	2.068	2.029	2.975	2.040	.020	.121	.028	33,969	8,293	3,189	45,451
	1.917	2.931	1.920	1.881	2.807	1.837	.036	.124	.083	71,058	10,883	9,911	91,852
	1.929	2.917	1.930	1.815	2.697	1.800	.114	.220	.130	9,068,130	911,181	730,632	10,709,943
	2.901	4.081	2.783	2.843	3.772	2.704	.058	.309	.079	401,749	22,722	25,397	449,868
n	2.422	3.059	2.238	2.300	3.526	2.426	.122	D .467	D .188	19,795	735	1,993	17,067
	2.726	3.663	2.620	2.440	3.911	2.571	.286	D .248	.049	413,632	2,450	1,915	473,097
s Inspectors	2.644	3.865	2.620	2.496	3.528	2.365	.148	.337	.255	1,041,279	82,057	127,058	1,250,394
	2.198	3.299	2.201	2.206	3.354	2.208	D .008	D .055	D .007	18,680	3,087	1,507	23,274
	2.226	3.347	2.230	2.226	3.368	2.223	-	D .021	.007	-	1,981	2,495	514
	2.203	3.331	2.206	2.195	3.315	2.197	.008	.016	.009	92,044	4,697	9,448	106,189
	2.166	3.260	2.166	2.145	3.216	2.148	.021	.044	.018	1,003,654	105,439	82,223	1,191,316
	2.213	3.332	2.211	2.200	3.304	2.200	.013	.028	.011	179,574	17,600	15,040	212,214
	2.200	3.284	2.148	2.099	3.022	2.105	.101	.262	.043	228,055	27,606	8,644	264,305
	2.087	3.099	2.096	1.755	2.580	1.735	.332	.519	.361	103,341	78,478	8,799	190,618
	2.207	3.315	2.208	2.198	3.301	2.195	.009	.014	.013	219,416	11,776	33,790	264,982
	2.473	3.283	2.438	2.192	3.313	2.188	.281	D .030	.250	24,652	10	1,943	26,585
	2.205	3.312	2.207	2.202	3.321	2.193	.003	D .009	.014	18,879	1,697	9,162	26,344
	1.934	2.904	1.938	1.876	2.799	1.879	.058	.105	.059	1,778,127	105,971	169,372	2,053,470
	1.959	3.020	1.960	1.930	2.888	1.934	.029	.132	.026	9,962	716	718	11,396
	1.804	2.881	1.825	1.756	2.714	1.796	.048	.167	.029	132,380	2,649	5,098	140,127
	1.759	2.652	1.764	1.650	2.496	1.647	.109	.156	.117	808,730	33,623	88,633	930,986
ts)	2.158	3.254	2.167	2.027	2.984	2.012	.131	.270	.155	75,389	4,071	6,329	85,789
eating	2.056	3.118	2.054	2.079	3.022	2.066	D .023	.096	D .012	12,497	1,062	613	12,048
er Plants)	1.779	2.673	1.786	1.647	2.492	1.650	.132	.181	.136	1,392,313	75,188	134,215	1,601,716
Plants)	1.746	2.624	1.743	1.632	2.450	1.631	.114	.174	.112	776,655	27,623	70,451	874,729
Timber-	1.811	2.745	1.815	1.707	2.632	1.710	.104	.113	.105	842,759	19,662	69,030	931,451
	2.191	3.204	2.304	2.138	3.161	2.095	.053	.043	.209	57,432	4,254	18,234	79,920
er Tenders	1.967	2.965	1.976	1.769	2.705	1.783	.198	.260	.193	340,425	29,872	30,630	400,927
	2.119	3.171	2.100	2.045	3.052	2.027	.074	.119	.073	9,989,065	645,106	914,511	11,548,082
D YARD)													
	3.368	5.074	3.355	3.252	4.425	3.210	.116	.649	.145	87,454	5,054	7,044	99,552
	3.068	4.560	3.066	3.017	4.385	3.021	.051	.175	.045	113,119	3,178	6,399	122,696
	2.902	3.962	2.640	-	-	-	-	-	-	-	-	-	-
graphers)	2.896	3.421	2.507	2.598	3.576	2.412	.298	D .155	.095	539,446	795	5,024	543,675
	2.198	3.219	2.192	2.075	3.190	2.071	.123	.029	.121	494,260	3,492	38,770	536,522
	2.061	3.115	2.084	2.036	3.094	2.038	.025	.021	.046	145,087	7,035	21,870	173,992
	2.390	3.515	2.383	2.310	3.325	2.273	.080	.190	.110	38,296	6,528	4,086	48,910
	2.033	3.062	2.047	2.023	3.301	2.031	.010	.031	.016	36,377	7,286	4,143	47,806
	2.099	3.168	2.118	2.023	3.109	2.070	.076	.059	.048	1,158,048	40,550	51,114	1,249,712

AVERAGE COMPENSATION

Year 1956

Division No.	Reporting Division	Eastern District Hourly Rates			Southern Region Hourly Rates			Eastern District Rate of Southern Regi	
		Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime
	V. TRANSPORTATION (OTHER THAN TRAIN, ENGINE AND YARD) - Continued								
84	Station Masters and Assistants	$2.665	$3.626	$2.671	$2.572	$3.710	$2.619	$.093	D $.084
85	Supervising Baggage Agents	2.349	3.269	2.103	1.875	-	-	.474	-
86	Baggage Agents and Assistants	1.953	2.873	1.953	2.381	3.108	2.349	D .428	D .235
87	Baggage, Parcel Room, and Station Attendants	1.888	2.889	1.892	1.722	2.653	1.742	.166	.236
88	General Foremen (Freight Stations, Warehouses, Grain Elevators, and Docks)	2.571	3.435	2.394	2.145	3.261	2.230	.426	.174
89	Assistant General Foremen (Freight Stations, warehouses, Grain Elevators, and Docks)	2.203	3.300	2.248	2.143	3.322	2.143	.060	D .022
90	Gang Foremen (Freight Station, Warehouse, Grain Elevator, and Dock Labor)	2.131	3.188	2.126	2.174	3.000	2.174	D .043	.188
91	Callers, Loaders, Scalers, and Perishable-Freight Inspectors	1.880	2.820	1.880	1.742	2.667	1.739	.138	.153
92	Truckers (Stations, Warehouses, and Platforms)	1.863	2.801	1.857	1.680	2.532	1.682	.183	.269
93	Laborers (Coal and Ore Docks and Grain Elevators)	1.973	2.841	1.904	2.272	2.487	1.652	D .299	.354
94	Common Laborers (Stations, Warehouses, Platforms, and Grain Elevators)	1.854	2.810	1.859	1.614	2.443	1.620	.240	.367
95	Stewards, Restaurant and Lodging-House Managers, and Dining-Car Supervisors	2.165	3.241	2.184	2.169	3.182	2.151	D .004	.059
96	Chefs and Cooks (Restaurants or Dining Cars)	1.834	2.734	1.852	1.746	2.636	1.701	.088	.098
97	Waiters, Camp Cooks, Kitchen Helpers, etc.	1.655	2.620	1.662	1.568	2.385	1.542	.087	.235
98	Officers, Workers, and Attendants on Barges, Launches, Ferry Boats, Towing Vessels, and Steamers, and Shore Workers	2.167	3.244	2.217	1.749	2.622	1.658	.418	.622
99	Transportation and Dining-Service Inspectors	2.616	3.122	2.097	2.672	3.230	2.305	D .056	D .108
100	Parlor and Sleeping Car Conductors	-	-	-	-	-	-	-	-
101	Train Attendants	1.745	2.459	1.675	1.663	2.392	1.592	.082	.067
102	Bridge Operators and Helpers	1.960	2.849	1.959	1.707	2.547	1.729	.253	.302
103	Crossing and Bridge Flagmen and Gatemen	1.637	2.452	1.641	1.616	2.420	1.619	.021	.032
104	Foremen (Laundry) and Laundry Workers	1.749	2.670	1.769	1.699	2.585	1.696	.050	.085
(905)	TOTAL (Transportation-Other Than Train, Engine, and Yard)	2.001	2.941	1.996	1.913	2.837	1.909	.088	.104
	VI (a). TRANSPORTATION (Yardmasters, Switch Tenders, and Hostlers)								
105	Yardmasters	2.845	4.290	2.836	2.858	4.222	2.852	D .013	.068
106	Assistant Yardmasters	2.700	4.058	2.730	2.879	4.221	2.883	D .179	D .163
107	Switch Tenders	2.061	3.110	2.059	2.105	3.185	2.100	D .044	D .075
108	Outside Hostlers	2.149	3.198	2.177	2.101	3.183	2.113	.048	.015
109	Inside Hostlers	2.056	3.039	2.069	2.028	3.056	2.138	.028	D .017
110	Outside Hostler Helpers	1.935	2.889	2.009	1.921	2.915	1.956	.014	D .026
(906)	TOTAL (Transportation-Yardmasters, Switch Tenders, and Hostlers)	2.406	3.404	2.435	2.377	3.169	2.410	.029	.235
(907)	TOTAL, ALL GROUPS (Except Train and Engine)	2.146	3.038	2.060	2.056	2.906	1.966	.090	.132

AVERAGE COMPENSATION

Year 1956

Reporting Division	Eastern District Hourly Rates			Southern Region Hourly Rates			Eastern District Rates in Excess of Southern Region Rates			Annual S at S
	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time
TATION (OTHER THAN TRAIN, ENGINE AND - Continued										
s and Assistants	$2.665	$3.626	$2.671	$2.572	$3.710	$2.619	$.093	D $.084	$.052	$48,837
ggage Agents	2.349	3.269	2.103	1.875	-	-	.474	-	-	77,177
and Assistants	1.953	2.873	1.953	2.381	3.108	2.349	D .428	D .235	D .396	225,818
l Rods, and Station Attendants	1.888	2.889	1.892	1.722	2.653	1.742	.166	.236	.150	1,874,019
n (Freight Stations, Warehouses, Grain nd Docks)	2.571	3.435	2.394	2.145	3.261	2.230	.426	.174	.164	173,343
ral Foremen (Freight Stations, warehouses, ors, and Docks)	2.203	3.300	2.248	2.143	3.322	2.143	.060	D .022	.105	12,283
Freight Station, Warehouse, Grain Elevator, or)	2.131	3.188	2.126	2.174	3.000	2.174	D .043	.188	D .048	110,171
rs, Scalers, and Perishable-Freight Inspectors	1.880	2.820	1.880	1.742	2.667	1.739	.138	.153	.141	1,409,844
ions, Warehouses, and Platforms)	1.863	2.801	1.857	1.680	2.532	1.682	.183	.269	.175	2,090,733
and Ore Docks and Grain Elevators)	1.973	2.841	1.904	2.272	2.487	1.652	D .299	.354	.252	312,561
s (Stations, Warehouses, Platforms, and ors)	1.854	2.810	1.859	1.614	2.443	1.620	.240	.367	D .006	1,050,591
aurant and Lodging-House Managers, and upervisors	2.165	3.241	2.184	2.169	3.182	2.151	D .004	.059	.033	4,186
s (Restaurants or Dining Cars)	1.834	2.734	1.852	1.746	2.636	1.701	.088	.098	.151	229,227
Cooks, Kitchen Helpers, etc.	1.655	2.620	1.662	1.568	2.385	1.542	.087	.235	.120	514,865
ers, and Attendants on Barges, Launches, Towing Vessels, and Steamers, and Shore Workers	2.167	3.244	2.217	1.749	2.622	1.658	.418	.622	.559	3,573,914
and Dining-Service Inspectors	2.616	3.122	2.097	2.672	3.230	2.305	D .056	D .108	D .208	26,855
eping Car Conductors	-	-	-	-	-	-	-	-	-	-
ts	1.745	2.459	1.675	1.663	2.392	1.592	.082	.067	.083	104,951
rs and Helpers	1.960	2.849	1.959	1.707	2.547	1.729	.253	.302	.230	220,464
ridge Flagmen and Gatemen	1.637	2.452	1.641	1.616	2.420	1.619	.021	.032	.022	221,530
ry) and Laundry Workers	1.749	2.670	1.769	1.699	2.585	1.696	.050	.085	.073	7,246
portation-Other Than Train, Engine, and Yard)	2.001	2.941	1.996	1.913	2.837	1.909	.088	.104	.087	13,541,520
SPORTATION (Yardmasters, Switch Tenders, and Hostlers)										
	2.845	4.290	2.836	2.858	4.222	2.852	D .013	.068	D .016	76,770
masters	2.700	4.058	2.730	2.879	4.221	2.883	D .179	D .163	D .153	309,790
	2.061	3.110	2.059	2.105	3.185	2.100	D .044	D .075	D .041	182,224
rs	2.149	3.198	2.177	2.101	3.183	2.113	.048	.015	.064	73,887
	2.056	3.039	2.069	2.028	3.056	2.138	.028	D .017	D .069	92,294
r Helpers	1.935	2.889	2.009	1.921	2.915	1.956	.014	D .026	.053	3,715
portation-Yardmasters, Switch Tenders, and rs)	2.406	3.404	2.435	2.377	3.169	2.410	.029	.235	.025	398,888
ROUPS (Except Train and Engine)	2.146	3.038	2.060	2.056	2.906	1.966	.090	.132	.094	57,447,091

AVERAGE COMPENSATION

Year 1956

	Eastern District Hourly Rates			Southern Region Hourly Rates			Eastern District Rates in Excess of Southern Region Rates			Annual Saving to Eastern District at Southern Region Rates			
	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Total
	$2.665	$3.626	$2.671	$2.572	$3.710	$2.619	$.093	D $.084	$.052	$48,837	$594	$1,705	$49,948
	2.349	3.269	2.103	1.875	-	-	.474	-	-	77,177	-	-	77,177
	1.953	2.873	1.953	2.381	3.108	2.349	D .428	D .235	D .396	225,818	6,291	16,635	248,744
	1.888	2.889	1.892	1.722	2.653	1.742	.166	.236	.150	1,874,019	115,054	117,579	2,106,652
	2.571	3.435	2.394	2.145	3.261	2.230	.426	.174	.164	173,343	1,983	3,279	178,605
s,	2.203	3.300	2.248	2.143	3.322	2.143	.060	D .022	.105	12,283	448	1,834	13,669
or,	2.131	3.188	2.126	2.174	3.000	2.174	D .043	.188	D .048	110,171	32,012	10,861	89,020
ectors	1.880	2.820	1.880	1.742	2.667	1.739	.138	.153	.141	1,409,844	88,826	92,559	1,591,229
	1.863	2.801	1.857	1.680	2.532	1.682	.183	.269	.175	2,090,733	137,253	150,803	2,378,789
	1.973	2.841	1.904	2.272	2.487	1.652	D .299	.354	.252	312,561	109,490	15,556	187,515
	1.854	2.810	1.859	1.614	2.443	1.620	.240	.367	D .006	1,050,591	116,918	1,752	1,165,757
	2.165	3.241	2.184	2.169	3.182	2.151	D .004	.059	.033	4,186	1,425	1,957	804
	1.834	2.734	1.852	1.746	2.636	1.701	.088	.098	.151	229,227	1,061	25,108	255,396
	1.655	2.620	1.662	1.568	2.385	1.542	.087	.235	.120	514,865	25,628	44,316	584,809
Workers	2.167	3.244	2.217	1.749	2.622	1.658	.418	.622	.559	3,573,914	357,829	350,025	4,281,768
	2.616	3.122	2.097	2.672	3.230	2.305	D .056	D .108	D .208	26,855	600	2,468	29,923
	-	-	-	-	-	-	-	-	-	-	-	-	-
	1.745	2.459	1.675	1.663	2.392	1.592	.082	.067	.083	104,951	545	4,787	110,283
	1.960	2.849	1.959	1.707	2.547	1.729	.253	.302	.230	220,464	17,095	13,856	251,415
	1.637	2.452	1.641	1.616	2.420	1.619	.021	.032	.022	221,530	21,090	15,786	258,406
	1.749	2.670	1.769	1.699	2.585	1.696	.050	.085	.073	7,246	705	827	8,778
Yard)	2.001	2.941	1.996	1.913	2.837	1.909	.088	.104	.087	13,541,520	1,091,309	946,711	15,579,540
	2.845	4.290	2.836	2.858	4.222	2.852	D .013	.068	D .016	76,770	7,452	6,272	75,590
	2.700	4.058	2.730	2.879	4.221	2.883	D .179	D .163	D .153	309,790	6,787	18,391	334,968
	2.061	3.110	2.059	2.105	3.185	2.100	D .044	D .075	D .041	182,224	16,807	8,785	207,816
	2.149	3.198	2.177	2.101	3.183	2.113	.048	.015	.064	73,887	850	5,419	80,156
	2.056	3.039	2.069	2.028	3.056	2.138	.028	D .017	D .069	92,294	1,818	15,722	74,754
	1.935	2.889	2.009	1.921	2.915	1.956	.014	D .026	.053	3,715	397	793	4,111
nd	2.406	3.404	2.435	2.377	3.169	2.410	.029	.235	.025	398,888	17,507	42,958	459,353
	2.146	3.038	2.060	2.056	2.906	1.966	.090	.132	.094	57,447,091	3,068,378	3,074,038	63,589,507

AVERAGE COMPENSATION

Year 1956

Division No.	Reporting Division	Eastern District Hourly Rates			Southern Region Hourly Rates			Eastern District of Southern	
		Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Ove
	VI (b). TRANSPORTATION (Train and Engine)								
111	Road Passenger Conductors	$2.199	$2.127	$2.134	$2.264	$2.140	$2.217	D $.065	D
112	Assistant Road Passenger Conductors and Ticket Collectors	1.983	1.925	1.940	2.370	1.943	2.521	D .387	D
113	Road Freight Conductors (Through Freight)	2.070	3.076	2.040	2.069	3.082	2.051	.001	D
114	Road Freight Conductors (Local and Way Freight)	2.135	3.179	2.121	2.106	3.153	2.119	.029	
115	Road Passenger Baggagemen	1.962	1.871	1.877	1.955	1.613	1.913	.007	
116	Road Passenger Brakemen and Flagmen	1.894	1.820	1.833	1.911	1.801	1.863	D .017	
117	Road Freight Brakemen and Flagmen (Through Freight)	1.854	2.769	1.823	1.853	2.771	1.839	.001	D
118	Road Freight Brakemen and Flagmen (Local and Way Freight)	1.908	2.838	1.902	1.873	2.809	1.891	.035	
119	Yard Conductors and Yard Foremen	2.430	3.623	2.388	2.438	3.653	2.534	D .008	D
120	Yard Brakemen and Yard Helpers	2.269	3.378	2.232	2.269	3.396	2.368	-	D
121	Road Passenger Engineers and Motormen	2.696	2.066	2.210	3.221	2.124	2.522	D .525	D
122	Road Freight Engineers and Motormen (Through Freight)	2.364	3.458	2.329	2.417	3.380	2.401	D .053	
123	Road Freight Engineers and Motormen (Local and Way Freight)	2.345	3.456	2.327	2.339	3.468	2.332	.006	D
124	Yard Engineers and Motormen	2.356	3.522	2.335	2.295	3.349	2.300	.061	
125	Road Passenger Firemen and Helpers	2.490	1.814	1.946	2.936	1.823	2.163	D .446	D
126	Road Freight Firemen and Helpers (Through Freight)	2.041	2.986	2.004	2.088	2.940	2.080	D .047	
127	Road Freight Firemen and Helpers (Local and Way Freight)	2.032	2.975	2.005	2.084	3.071	2.073	D .052	D
128	Yard Firemen and Helpers	2.108	3.151	2.085	2.106	3.188	2.104	.002	D
(908)	TOTAL (Transportation - Train and Engine)	2.194	3.077	2.110	2.200	3.131	2.165	D .006	D
	GRAND TOTAL								

D - Southern Region Rates in Excess of Eastern District Rates.

AVERAGE COMPENSATION

Year 1956

	Eastern District Hourly Rates			Southern Region Hourly Rates			Eastern District Rates in Excess of Southern Region Rates			Annual Saving to Eastern District at Southern Region Rates			
	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Total
	$2.199	$2.127	$2.134	$2.264	$2.140	$2.217	D $.065	D $.013	D $.083	$497,133	$6,835	$76,459	$580,427
	1.983	1.925	1.940	2.370	1.943	2.521	D .387	D .018	D .581	2,518,030	16,064	300,228	2,834,322
	2.070	3.076	2.040	2.069	3.082	2.051	.001	D .006	D .011	8,399	2,212	20,718	14,531
	2.135	3.179	2.121	2.106	3.153	2.119	.029	.026	.002	180,841	30,314	1,303	212,458
	1.962	1.871	1.877	1.955	1.613	1.913	.007	.258	D .036	29,259	56,693	12,060	73,892
ght)	1.894	1.820	1.833	1.911	1.801	1.863	D .017	.019	D .030	128,918	5.798	27,219	150,339
Freight)	1.854	2.769	1.823	1.853	2.771	1.839	.001	D .002	D .016	19,032	1,440	60,397	42,805
	1.908	2.838	1.902	1.873	2.809	1.891	.035	.029	.011	492,900	77,041	13,566	583,507
	2.430	3.623	2.388	2.438	3.653	2.534	D .008	D .030	D .146	181,801	61,476	325,996	569,273
	2.269	3.378	2.232	2.269	3.396	2.368	-	D .018	D .136	-	80,844	496,475	577,319
	2.696	2.066	2.210	3.221	2.124	2.522	D .525	D .058	D .312	4,011,375	35,020	409,117	4,455,512
ight)	2.364	3.458	2.329	2.417	3.380	2.401	D .053	.078	D .072	549,266	38,903	164,081	674,444
Freight)	2.345	3.456	2.327	2.339	3.468	2.332	.006	D .012	D .005	39,356	15,920	3,830	19,606
	2.356	3.522	2.335	2.295	3.349	2.300	.061	.173	.035	1,264,120	336,067	71,115	1,671,302
	2.490	1.814	1.946	2.936	1.823	2.163	D .446	D .009	D .217	2,762,118	3,377	192,969	2,958,464
t)	2.041	2.986	2.004	2.088	2.940	2.080	D .047	.046	D .076	472,422	21,567	145,249	596,104
reight)	2.032	2.975	2.005	2.084	3.071	2.073	D .052	D .096	D .068	344,568	122,898	42,654	510,120
	2.108	3.151	2.085	2.106	3.188	2.104	.002	D .037	D .019	40,947	72,064	27,107	58,224
	2.194	3.077	2.110	2.200	3.131	2.165	D .006	D .054	D .055	9,390,777	148,233	2,218,575	11,461,119
										48,056,314	3,216,611	855,463	52,128,388

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AVERAGE COMPENSATION

YEAR 1956

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Division No.	Reporting Division	Southern Region Hourly Rates			Pocahontas Region Hourly Rates			Pocahontas Regi of Southe	
		Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Over
	I. Executives, Officials, and Staff Assistants								
1	Executives, General Officers, and Assistants	$4.797	-	$3.522	$4.921	-	-	$ .124	
2	Division Officers, Assistants, and Staff Assistants	3.287	$3.682	2.615	3.239	-	$2.621	D .048	
(901)	TOTAL (Executives, Officials, and Staff Assistants)	4.016	3.682	2.796	3.871	-	2.621	D .145	
	II. PROFESSIONAL, CLERICAL, AND GENERAL								
3	Professional and Subprofessional Assistants	2.609	3.444	2.555	2.188	3.794	4.255	D .421	$
4	Supervisory or Chief Clerks (Major Departments)	2.683	3.490	2.718	2.875	4.466	3.038	.192	
5	Chief Clerks (Minor Departments) and Assistant Chief Clerks and Supervising Cashiers	2.342	3.234	2.366	2.553	3.854	2.618	.211	
6	Clerks and Clerical Specialists (A)	2.253	3.186	2.242	2.350	3.509	2.352	.097	
7	Clerks (B and C)	2.007	2.978	2.025	2.039	3.097	2.085	.032	
8	Mechanical Device Operators (Office)	1.978	3.034	1.982	2.049	3.079	2.039	.071	
9	Stenographers and Secretaries (A)	2.136	3.215	2.125	2.213	3.490	2.301	.077	
10	Stenographers and Typists (B)	1.943	3.009	2.016	2.026	3.004	2.047	.083	D
11	Storekeepers, Sales Agents, and Buyers	2.328	2.991	2.132	2.164	3.267	2.148	D .164	$
12	Ticket Agents and Assistant Ticket Agents	2.327	3.163	2.170	2.254	3.241	2.250	D .073	
13	Traveling Auditors or Accountants	2.732	3.357	2.871	2.967	4.593	3.202	.235	1
14	Telephone Switchboard Operators and Office Assistants	1.715	2.613	1.734	1.758	2.665	1.760	.043	
15	Messengers and Office Boys	1.632	2.465	1.644	1.650	2.508	1.674	.018	
16	Elevator Operators and Other Office Attendants	1.643	2.451	1.644	1.657	2.576	1.844	.014	
17	Lieutenants and Sergeants of Police	1.937	2.629	2.054	1.726	-	9.894	D .211	D 2
18	Patrolmen and Watchmen	1.978	2.479	1.940	1.998	3.003	2.096	.020	
19	Traffic and Various Other Agents, Inspectors and Investigators	2.749	-	2.895	2.804	-	3.597	.055	
20	Claim Agents or Investigators	2.879	-	2.412	2.820	-	4.202	D .059	
21	Freight Claim Agents or Investigators	2.674	-	2.645	2.649	3.776	2.794	D .025	
22	Chief Claim Agents or Investigators	3.211	-	-	4.753	-	5.335	1.542	
23	Miscellaneous Trades Workers (Other Than Plumbers)	2.230	3.536	2.193	2.117	3.299	2.475	D .113	D
24	Motor Vehicle and Motor Car Operators	1.801	2.649	1.786	1.826	2.932	1.900	.025	
25	Teamsters and Stablemen	-	-	-	-	-	-	-	
26	Janitors and Cleaners	1.622	2.488	1.641	1.684	2.544	1.690	.062	
(902)	TOTAL (Professional, Clerical, and General)	2.131	2.969	2.066	2.134	3.136	2.198	.003	
	III. MAINTENANCE OF WAY AND STRUCTURES								
27	Roadmasters, General Foreman, and Assistants	2.709	2.621	2.498	2.492	3.496	4.431	D .217	
28	Maintenance of Way and Scale Inspectors	2.361	3.005	1.981	2.105	3.043	2.802	D .256	
29	Bridge and Building Gang Foremen (Skilled Labor)	2.133	3.184	2.157	2.203	3.351	2.235	.070	
30	Bridge and Building Carpenters	1.928	2.887	1.942	1.992	3.008	2.003	.064	
31	Bridge and Building Ironworkers	2.024	3.058	1.970	1.990	2.987	2.060	D .034	D
32	Bridge and Building Painters	1.917	2.739	1.932	1.997	2.987	2.007	.080	
33	Masons, Bricklayers, Plasterers, and Plumbers	2.161	3.205	2.172	2.107	3.214	2.134	D .054	
34	Maintenance of Way and Structures Helpers and Apprentices	1.806	2.717	1.812	1.817	2.756	1.824	.011	
35	Portable equipment operators	1.994	3.010	2.017	1.987	3.029	2.029	D .007	
36	Portable Equipment Operator Helpers	1.781	2.706	1.796	1.792	2.678	1.811	.011	D
37	Pumping Equipment Operators	1.818	3.019	1.912	1.790	2.659	1.807	D .028	D
38	Gang Foremen (Extra Gang and Work-Train Laborers)	2.057	3.052	2.050	2.029	3.037	2.084	D .028	D
39	Gang Foremen (Bridge, Building, Signal and Telegraph Laborers)	2,133	2.854	2,128	2.092	3.290	2.276	D .041	
40	Gang or Section Foremen	1.983	2.963	1.985	2.037	3.079	2.076	.054	
41	Extra Gang Men	1.638	2.483	1.644	1.704	2.539	1.697	.066	

AVERAGE COMPENSATION

YEAR 1956

Ex. F-3 Sheet 1

	Southern Region Hourly Rates			Pocahontas Region Hourly Rates			Pocahontas Region Rates in Excess of Southern Region Rates			Annual Saving to Pocahontas Region at Southern Region Rates			
	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Total
	$4.797	-	$3.522	$4.921	-	-	$ .124	-	-	$166,790	-	-	$166,790
	3.287	$3.682	2.615	3.239	-	$2.621	D .048	-	$ .006	107,286	-	$1	107,285
	4.016	3.682	2.796	3.871	-	2.621	D .145	-	D .175	59,504	-	1	59,505
	2.609	3.444	2.555	2.188	3.794	4.255	D .421	$ .350	1.700	643,775	$2,584	30,947	610,244
	2.683	3.490	2.718	2.875	4.466	3.038	.192	.976	.320	70,500	5,071	5,468	81,039
	2.342	3.234	2.366	2.553	3.854	2.618	.211	.620	.252	217,596	28,979	23,252	269,827
	2.253	3.186	2.242	2.350	3.509	2.352	.097	.323	.110	118,566	10,142	14,004	142,712
	2.007	2.978	2.025	2.039	3.097	2.085	.032	.119	.060	280,898	69,883	46,897	397,678
	1.978	3.034	1.982	2.049	3.079	2.039	.071	.045	.057	60,535	2,404	4,529	67,468
	2.136	3.215	2.125	2.213	3.490	2.301	.077	.275	.176	49,187	1,590	7,597	58,374
	1.943	3.009	2.016	2.026	3.004	2.047	.083	D .005	.031	165,215	138	4,551	169,628
	2.328	2.991	2.132	2.164	3.267	2.148	D .164	.276	.016	64,842	5,983	522	58,337
	2.327	3.163	2.170	2.254	3.241	2.250	D .073	.078	.080	7,789	299	533	6,957
	2.732	3.357	2.871	2.967	4.593	3.202	.235	1.236	.331	21,285	1,200	1,764	24,249
	1.715	2.613	1.734	1.758	2.665	1.760	.043	.052	.026	11,120	454	733	12,307
	1.632	2.465	1.644	1.650	2.508	1.674	.018	.043	.030	5,831	455	586	6,872
	1.643	2.451	1.644	1.657	2.576	1.844	.014	.125	.200	657	67	486	1,210
	1.937	2.629	2.054	1.726	-	9.894	D .211	D 2.629	7.840	72,730	-	8,452	64,278
	1.978	2.479	1.940	1.998	3.003	2.096	.020	.524	.156	8,522	5,261	3,143	16,926
	2.749	-	2.895	2.804	-	3.597	.055	-	.702	63,406	-	22,728	86,134
	2.879	-	2.412	2.820	-	4.202	D .059	-	1.790	5,634	-	5,452	182
	2.674	-	2.645	2.649	3.776	2.794	D .025	-	.149	1,378	-	810	568
	3.211	-	-	4.753	-	5.335	1.542	-	-	8,919	-	-	8,919
	2.230	3.536	2.193	2.117	3.299	2.475	D .113	D .237	.282	4,305	248	461	4,092
	1.801	2.649	1.786	1.826	2.932	1.900	.025	.283	.114	17,743	15,570	5,257	38,570
	-	-	-	-	-	-	-	-	-	-	-	-	-
	1.622	2.488	1.641	1.684	2.544	1.690	.062	.056	.049	36,855	1,061	2,070	39,986
	2.131	2.969	2.066	2.134	3.136	2.198	.003	.167	.132	336,382	150,617	190,242	697,241
	2.709	2.621	2.498	2.492	3.496	4.431	D .217	.875	1.933	99,358	101	12,858	86,399
	2.361	3.005	1.981	2.105	3.043	2.802	D .256	.038	.821	31,838	2	3,870	27,966
	2.133	3.184	2.157	2.203	3.351	2.235	.070	.167	.078	23,182	1,939	2,137	27,258
	1.928	2.887	1.942	1.992	3.008	2.003	.064	.121	.061	88,031	6,851	6,724	101,606
	2.024	3.058	1.970	1.990	2.987	2.060	D .034	D .071	.090	1,113	11	201	923
	1.917	2.739	1.932	1.997	2.987	2.007	.080	.248	.075	36,361	285	2,331	38,977
	2.161	3.205	2.172	2.107	3.214	2.134	D .054	.009	D .038	10,905	33	610	11,482
	1.806	2.717	1.812	1.817	2.756	1.824	.011	.039	.012	7,788	585	529	8,902
	1.994	3.010	2.017	1.987	3.029	2.029	D .007	.019	.012	5,058	1,306	627	3,125
	1.781	2.706	1.796	1.792	2.678	1.811	.011	D .028	.015	747	341	64	470
	1.818	3.019	1.912	1.790	2.659	1.807	D .028	D .360	D .105	2,490	2,039	729	5,258
	2.057	3.052	2.050	2.029	3.037	2.084	D .028	D .015	.034	8,485	273	765	7,993
	2,133	2.854	2,128	2.092	3.290	2.276	D .041	.436	.148	817	230	58	529
	1.963	2.963	1.985	2.037	3.079	2.076	.054	.116	.091	72,597	10,741	10,670	94,008
	1.638	2.483	1.644	1.704	2.539	1.697	.066	.056	.053	236,863	12,519	11,133	260,515

AVERAGE COMPENSATION

YEAR 1956

Ex. F-3 She

Division No.	Reporting Division	Southern Region Hourly Rates			Pocahontas Region Hourly Rates			Pocahontas Region of Southern	
		Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overt
	III. MAINTENANCE OF WAY AND STRUCTURES - Continued								
42	Section Men	$1.628	$2.437	$1.633	$1.702	$2.558	$1.720	$.074	$.1
43	Maintenance of Way Laborers (Other than Track and Roadway)and Gardners and Farmers	1.666	2.434	1.680	1.707	2.597	1.706	.041	.1
44	General and Assistant General Foreman, and Inspectors (Signal, Telegraph, and Electrical Transmission)	2.789	3.495	2.515	2.445	3.200	2.855	D .344	D .2
45	Gang Foremen (Signal and Telegraph Skilled Trades Labor)	2.333	3.403	2.270	2.274	3.427	2.322	D .059	D .0
46	Signalmen and Signal Maintainers	2.199	3.283	2.198	2.190	3.299	2.206	D .009	.0
47	Linemen and Groundmen	2.172	3.253	2.180	2.155	3.143	2.191	D .017	D .1
48	Assistant Signalmen and Assistant Signal Maintainers	2.029	2.975	2.040	2.018	3.064	2.050	D .011	.0
49	Signalman and Signal Maintainer Helpers	1.880	2.807	1.837	1.890	2.876	1.932	.010	.0
(903)	TOTAL (Maintenance of Way and Structures)	1.815	2.697	1.800	1.850	2.713	1.884	.035	.0
	IV. MAINTENANCE OF EQUIPMENT AND STORES								
50	General, Assistant General, and Department Foremen	2.843	3.772	2.704	2.685	3.728	2.971	D .158	D .0
51	General and Assistant General Foremen (Stores)	2.300	3.526	2.426	2.570	3.540	2.618	.270	.0
52	Equipment, Shop, Electrical, Material and Supplies Inspectors	2.440	3.911	2.571	2.161	3.284	2.417	D .279	D .6
53	Gang Foremen and Gang Leaders (Skilled Labor)	2.496	3.528	2.365	2.317	3.375	2.500	D .179	D .1
54	Blacksmiths	2.206	3.354	2.208	2.130	3.242	2.156	D .076	D .1
55	Boilermakers	2.226	3.368	2.223	2.218	3.348	2.220	D .008	D .0
56	Carmen (A and B)	2.195	3.315	2.197	2.213	3.316	2.221	.018	.0
57	Carmen (C and D)	2.145	3.216	2.148	2.147	3.221	2.180	.002	.0
58	Electrical Workers (A)	2.200	3.304	2.200	2.214	3.339	2.260	.014	.0
59	Electrical Workers (B)	2.099	3.022	2.105	2.114	3.179	2.142	.015	.1
60	Electrical Workers (C)	1.755	2.580	1.735	2.249	3.584	3.227	.494	1.0
61	Machinists	2.198	3.301	2.195	2.201	3.310	2.239	.003	.0
62	Molders	2.192	3.313	2.189	2.186	3.308	2.184	D .006	D .0
63	Sheet-metal workers	2.202	3.321	2.193	2.202	3.313	2.230	-	D .0
64	Skilled Trades Helpers (M. of E. and Stores)	1.876	2.799	1.879	1.917	2.875	1.944	.041	.0
65	Helper Apprentices (M. of E. and Stores)	1.930	2.888	1.934	1.952	2.937	1.957	.022	.0
66	Regular Apprentices (M. of E. and Stores)	1.756	2.714	1.796	1.752	2.711	1.778	D .004	D .0
67	Coach Cleaners	1.650	2.496	1.647	1.710	2.588	1.729	.060	.0
68	Gang Foremen (Shops, Enginehouses, and Power Plants)	2.027	2.984	2.012	1.958	2.901	2.000	D .069	D .0
69	Gang Foremen (Stores and Ice, Reclamation, and Timber-Treating Plants)	2.079	3.022	2.066	2.065	3.387	2.096	D .014	.3
70	Classified Laborers (Shops, Enginehouses, and Power Plants)	1.647	2.492	1.650	1.753	2.640	1.796	.106	.1
71	General Laborers(Shops, Enginehouses, and Power Plants)	1.632	2.450	1.631	1.702	2.568	1.718	.070	.1
72	General Laborers (Stores and Ice, Reclamation, and Timber-Treating Plants)	1.707	2.632	1.710	1.739	2.620	1.755	.032	D .0
73	Stationary Engineers (Steam)	2.138	3.161	2.095	2.385	4.385	3.633	.247	1.2
74	Stationary Firemen, Oilers, Coal Passers, and Water Tenders	1.769	2.705	1.713	1.941	3.786	2.263	.172	1.0
(904)	TOTAL (Maintenance of Equipment and Stores)	2.045	3.052	2.027	2.055	3.194	2.062	.010	.1
	V. TRANSPORTATION (OTHER THAN TRAIN, ENGINE AND YARD)								
75	Chief Train Dispatchers	3.252	4.425	3.210	3.298	4.784	3.721	.046	.3
76	Train Dispatchers	3.017	4.385	3.021	3.052	4.612	3.160	.035	.2
77	Train Directors	-	-	-	-	-	-	-	
78	Station Agents (Supervisory-Major Stations-Nontelegraphers)	2.598	3.576	2.412	2.636	3.394	3.032	.038	D .1
79	Station Agents (Smaller Stations - Nontelegraphers)	2.075	3.190	2.071	2.033	3.171	2.056	D .042	D .0

AVERAGE COMPENSATION

YEAR 1956

	Southern Region Hourly Rates			Pocahontas Region Hourly Rates			Pocahontas Region Rates in Excess of Southern Region Rates			Annual Saving to Pocahontas Region at Southern Region Rates			
	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Total
tinued													
i	$1.628	$2.437	$1.633	$1.702	$2.558	$1.720	$.074	$.121	$.087	$634,703	$61,504	$57,647	$753,854
	1.666	2.434	1.680	1.707	2.597	1.706	.041	.163	.026	13,306	1,703	425	15,434
tors													
a)	2.789	3.495	2.515	2.445	3.200	2.855	D .344	D .295	.340	89,245	6	4,225	85,026
s Labor)	2.333	3.403	2.270	2.274	3.427	2.322	D .059	D .024	.052	9,367	72	985	8,454
	2.199	3.283	2.198	2.190	3.299	2.206	D .009	.016	.008	8,428	556	820	7,052
	2.172	3.253	2.180	2.155	3.143	2.191	D 017	D .110	.011	6,600	1,552	370	7,782
ers	2.029	2.975	2.040	2.018	3.064	2.050	D .011	.089	.010	2,960	400	180	2,380
	1.880	2.807	1.837	1.890	2.876	1.932	.010	.069	.095	3,230	403	1,144	4,777
	1.815	2.697	1.800	1.850	2.713	1.884	.035	.016	.084	840,144	94,864	116,424	1,051,432
n	2.843	3.772	2.704	2.685	3.728	2.971	D .158	D .044	.267	217,791	595	18,683	199,703
e	2.300	3.526	2.426	2.570	3.540	2.618	.270	.014	.192	3,564	6	151	3,721
	2.440	3.911	2.571	2.161	3.284	2.417	D .279	D .627	D .154	81,883	D11,115	3,728	96,726
	2.496	3.528	2.365	2.317	3.375	2.500	D .179	D .153	.135	298,557	D30,177	18,044	300,690
	2.206	3.354	2.208	2.130	3.242	2.156	D .076	D .112	D .052	52,259	D 1,871	3,038	57,168
	2.226	3.368	2.223	2.218	3.348	2.220	D .008	D .020	D .003	4,727	D 547	195	5,469
	2.195	3.315	2.197	2.213	3.316	2.221	.018	.001	.024	38,347	85	4,361	42,793
	2.145	3.216	2.148	2.147	3.221	2.180	.002	.004	.032	14,399	1,888	20,450	36,737
	2.200	3.304	2.200	2.214	3.339	2.260	.014	.035	.060	18,116	4,698	7,999	30,813
	2.099	3.022	2.105	2.114	3.179	2.142	.015	.157	.037	5,973	2,891	1,417	10,281
	1.755	2.580	1.735	2.249	3.584	3.227	.494	1.004	1.492	194,718	178,652	43,852	417,222
	2.198	3.301	2.195	2.201	3.310	2.239	.003	.009	.044	11,698	2,449	19,195	33,342
	2.192	3.313	2.189	2.186	3.308	2.184	D .006	D .005	D .005	421	3	27	451	
	2.202	3.321	2.193	2.202	3.313	2.230	-	D .008	.037	-	385	4,000	3,615
	1.876	2.799	1.879	1.917	2.875	1.944	.041	.076	.065	329,420	29,618	47,232	406,270
	1.930	2.888	1.934	1.952	2.937	1.957	.022	.049	.023	1,719	92	114	1,925
	1.756	2.714	1.796	1.752	2.711	1.778	D .004	D .003	D .018	3,692	18	891	4,601
	1.650	2.496	1.647	1.710	2.588	1.729	.060	.092	.082	27,050	1,128	3,379	31,557
e)	2.027	2.984	2.012	1.988	2.901	2.000	D .069	D .083	D .012	11,252	985	152	12,389
ber-													
	2.079	3.022	2.066	2.065	3.387	2.096	D .014	.365	.030	877	851	174	148
r Plants)	1.647	2.492	1.650	1.753	2.640	1.796	.106	.148	.146	215,713	15,835	25,000	256,548
nts)	1.632	2.450	1.631	1.702	2.568	1.718	.070	.118	.087	206,390	12,724	20,872	239,986
imber-													
	1.707	2.632	1.710	1.739	2.620	1.755	.032	D .012	.045	33,378	315	3,183	36,246
	2.138	3.161	2.095	2.385	4.385	3.633	.247	1.224	1.538	33,228	74,042	28,084	135,354
r Tenders	1.769	2.705	1.713	1.941	3.786	2.263	.172	1.081	.550	49,428	44,212	16,203	109,843
	2.045	3.052	2.027	2.055	3.194	2.062	.010	.142	.035	511,682	333,160	274,362	1,119,204
ARD)													
	3.252	4.425	3.210	3.298	4.784	3.721	.046	.359	.511	7,016	70	4,403	11,489
	3.017	4.385	3.021	3.052	4.612	3.160	.035	.227	.139	11,807	442	3,001	15,250
	-	-	-	-	-	-	-	-	-	-	-	-	-
phers)	2.598	3.576	2.412	2.636	3.394	3.032	.038	D .182	.620	8,886	324	4,483	13,045
	2.075	3.190	2.071	2.033	3.171	2.056	D .042	D .019	D .015	13,851	166	399	14,416

AVERAGE COMPENSATION

YEAR 1956

Division No.	Reporting Division	Southern Region Hourly Rates			Pocahontas Region Hourly Rates			Pocahontas Region Rate of Southern Reg	
		Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime
	V. TRANSPORTATION (OTHER THAN TRAIN, ENGINE, AND YARD) - Continued								
80	Station Agents (Telegraphers and Telephoners)	$2.036	$3.094	$2.038	$2.043	$3.097	$2.082	$.007	$.003
81	Chief Telegraphers and Telephoner or Wire Chiefs	2.310	3.325	2.273	2.280	3.324	2.292	D .030	D .001
82	Clerk-telegraphers and Clerk-telephoners	2.023	3.031	2.031	2.024	3.125	2.125	.001	.094
83	Telegraphers, Telephoners, and Towermen	2.023	3.109	2.070	2.075	3.107	2.089	.052	D .002
84	Station Masters and Assistants	2.572	3.710	2.619	2.688	3.891	2.635	.116	.181
85	Supervising Baggage Agents	1.875	-	-	-	-	-	-	-
86	Baggage Agents and Assistants	2.381	3.108	2.349	1.968	2.959	1.972	D .413	D .149
87	Baggage, parcel room, and station attendants	1.722	2.653	1.742	1.749	2.682	2.289	.027	.029
88	General Foremen (Freight Stations, Warehouses, Grain Elevators, and Docks)	2.145	3.261	2.230	2.473	3.623	2.557	.328	.362
89	Assistant General Foremen (Freight Stations, Warehouses, Grain Elevators, and Docks)	2.143	3.322	2.143	2.705	3.771	4.788	.562	.449
90	Gang Foremen (Freight Station, Warehouse, Grain Elevator, and Dock Labor)	2.174	3.000	2.174	2.133	3.327	2.174	D .041	.327
91	Callers, Loaders, Scalers, Sealers, and Perishable-Freight Inspectors	1.742	2.667	1.739	1.765	2.633	1.766	.023	D .034
92	Truckers (Stations, Warehouses, and Platforms)	1.680	2.532	1.682	1.740	2.620	1.747	.060	.088
93	Laborers (Coal and Ore Docks and Grain Elevators)	2.272	2.487	1.652	2.167	3.338	2.673	D .105	.851
94	Common Laborers (Stations, Warehouses, Platforms, and Grain Elevators)	1.614	2.443	1.620	1.677	2.551	1.691	.063	.108
95	Stewards, Restaurant and Lodging-House Managers, and Dining-Car Supervisors	2.169	3.182	2.151	2.174	3.179	2.190	.005	D .003
96	Chefs and Cooks (Restaurants or Dining Cars)	1.746	2.636	1.701	1.827	2.673	1.831	.081	.037
97	Waiters, Camp Cooks, Kitchen Helpers, etc.	1.568	2.385	1.542	1.659	2.576	1.717	.091	.191
98	Officers, Workers, and Attendants on Barges, Launches, Ferry Boats, Towing Vessels, and Steamers, and Shore Workers	1.749	2.622	1.658	2.179	3.143	3.530	.430	.521
99	Transportation and Dining-Service Inspectors	2.672	3.230	2.305	2.872	4.414	3.791	.200	1.184
100	Parlor and Sleeping Car Conductors	-	-	-	-	-	-	-	-
101	Train Attendants	1.663	2.392	1.592	1.670	3.375	1.644	.007	.983
102	Bridge Operators and Helpers	1.707	2.547	1.729	1.831	2.790	1.878	.124	.243
103	Crossing and bridge flagmen and gatemen	1.616	2.420	1.619	1.631	2.459	1.675	.015	.039
104	Foremen (Laundry) and Laundry Workers	1.699	2.585	1.696	1.686	2.512	1.814	D .013	D .073
(905)	TOTAL (Transportation-Other Than Train, Engine, and Yard)	1.913	2.837	1.909	2.043	3.110	2.228	.130	.273
	VI (a) TRANSPORTATION (YARDMASTERS, SWITCH TENDERS, AND HOSTLERS)								
105	Yardmasters	2.858	4.222	2.852	2.913	4.403	2.971	.055	.181
106	Assistant Yardmasters	2.879	4.221	2.883	2.822	4.331	2.799	D .057	.110
107	Switch Tenders	2.105	3.185	2.100	2.071	3.077	2.118	D .034	D .108
108	Outside Hostlers	2.101	3.103	2.113	2.234	3.301	2.250	.133	.198
109	Inside Hostlers	2.028	3.056	2.138	2.139	3.156	2.235	.111	.100
110	Outside Hostler Helpers	1.921	2.915	1.956	2.075	3.119	2.138	.154	.204
(906)	TOTAL (Transportation-Yardmasters, Switch Tenders, Hostlers)	2.377	3.169	2.410	2.473	3.360	2.501	.096	.191
(907)	TOTAL, ALL GROUPS (Except Train and Engine)	2.056	2.906	1.966	2.104	3.063	2.103	.048	.157

Southern Region Hourly Rates			Pocahontas Region Hourly Rates			Pocahontas Region Rates in Excess of Southern Region Rates			Annual Saving to Pocahontas Region at Southern Region Rates			
Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Total
$2.036	$3.094	$2.038	$2.043	$3.097	$2.082	$.007	$.003	$.044	$6,970	$107	$3,542	$10,619
2.310	3.325	2.273	2.280	3.324	2.292	D .030	D .001	.019	2,076	2	85	1,993
2.023	3.031	2.031	2.024	3.125	2.125	.001	.094	.094	389	1,819	2,230	4,438
2.023	3.109	2.070	2.075	3.107	2.089	.052	D .002	.019	83,263	110	2,277	85,430
2.572	3.710	2.619	2.688	3.891	2.635	.116	.181	.016	2,525	297	37	2,859
1.875	-	-	-	-	-	-	-	-	-	-	-	-
2.381	3.108	2.349	1.968	2.959	1.972	D .413	D .149	D .377	21,254	512	1,900	23,666
1.722	2.653	1.742	1.749	2.682	2.289	.027	.029	.547	7,478	292	10,480	18,250
2.145	3.261	2.230	2.473	3.623	2.557	.328	.362	.327	14,219	374	1,073	15,666
2.143	3.322	2.143	2.705	3.771	4.788	.562	.449	2.645	18,271	683	1,312	20,266
2.174	3.000	2.174	2.133	3.327	2.174	D .041	.327	-	9,593	13,037	-	3,444
1.742	2.667	1.739	1.765	2.633	1.766	.023	D .034	.027	14,423	1,302	1,192	14,313
1.680	2.532	1.682	1.740	2.620	1.747	.060	.088	.065	52,220	3,633	3,801	59,654
2.272	2.487	1.652	2.167	3.338	2.673	D .105	.851	1.021	86,649	191,135	30,568	135,054
1.614	2.443	1.620	1.677	2.551	1.691	.063	.108	.071	14,537	1,434	1,471	17,442
2.169	3.182	2.151	2.174	3.179	2.190	.005	D .003	.039	414	6	210	618
1.746	2.636	1.701	1.827	2.673	1.831	.081	.037	.130	16,158	44	1,735	17,937
1.568	2.385	1.542	1.659	2.576	1.717	.091	.191	.175	78,141	3,320	9,335	90,796
1.749	2.622	1.658	2.179	3.143	3.530	.430	.521	1.872	682,514	36,010	147,317	865,841
2.672	3.230	2.305	2.872	4.414	3.791	.200	1.184	1.486	11,226	34	1,878	13,138
-	-	-	-	-	-	-	-	-	-	-	-	-
1.663	2.392	1.592	1.670	3.375	1.644	.007	.983	.052	1,783	15	932	2,730
1.707	2.547	1.729	1.831	2.790	1.878	.124	.243	.149	5,694	391	432	6,517
1.616	2.420	1.619	1.631	2.459	1.675	.015	.039	.056	2,907	493	828	4,228
1.699	2.585	1.696	1.686	2.512	1.814	D .013	D .073	.118	404	25	337	92
1.913	2.837	1.909	2.043	3.110	2.228	.130	.273	.319	907,014	251,183	230,660	1,388,857
2.858	4.222	2.852	2.913	4.403	2.971	.055	.181	.119	38,270	1,196	4,051	43,517
2.879	4.221	2.883	2.822	4.331	2.799	D .057	.110	D .084	20,933	52	2,060	22,941
2.105	3.185	2.100	2.071	3.077	2.118	D .034	D .108	.018	9,551	1,268	221	10,598
2.101	3.103	2.113	2.234	3.301	2.250	.133	.198	.137	60,515	3,319	4,788	68,622
2.028	3.056	2.138	2.139	3.156	2.235	.111	.100	.097	57,203	1,148	3,014	61,365
1.921	2.915	1.956	2.075	3.119	2.138	.154	.204	.182	15,388	616	754	16,758
2.377	3.169	2.410	2.473	3.360	2.501	.096	.191	.091	140,892	5,063	10,768	156,723
2.056	2.906	1.966	2.104	3.063	2.103	.048	.157	.137	2,795,618	834,887	822,457	4,452,962

AVERAGE COMPENSATION

YEAR 1956

Division No.	Reporting Division	Southern Region Hourly Rates			Pocahontas Region Hourly Rates			Pocahontas Region R of Southern R	
		Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overti
	VI. (b) TRANSPORTATION (TRAIN AND ENGINE)								
111	Road Passenger Conductors	$2.264	$2.140	$2.217	$2.501	$2.109	$2.281	$ .237	D $.031
112	Assistant Road Passenger Conductors and Ticket Collectors	2.370	1.943	2.521	2.296	1.875	2.035	D .074	D .068
113	Road Freight Conductors (Through Freight)	2.069	3.082	2.051	2.106	3.160	2.061	.037	.078
114	Road Freight Conductors (Local and Way Freight)	2.106	3.153	2.119	2.116	3.178	2.095	.010	.025
115	Road Passenger Baggagemen	1.955	1.613	1.913	1.992	1.867	1.842	.037	.254
116	Road Passenger Brakemen and Flagmen	1.911	1.801	1.863	2.123	1.811	2.032	.212	.010
117	Road Freight Brakemen and Flagmen (Through Freight)	1.853	2.771	1.839	1.891	2.856	1.841	.038	.085
118	Road Freight Brakemen and Flagmen (Local and Way Freight)	1.873	2.809	1.891	1.885	2.839	1.864	.012	.030
119	Yard Conductors and Yard Foremen	2.438	3.653	2.534	2.441	3.644	2.574	.003	D .009
120	Yard Brakemen and Yard Helpers	2.269	3.396	2.368	2.281	3.389	2.431	.012	D .007
121	Road Passenger Engineers and Motormen	3.221	2.124	2.522	3.485	2.072	2.333	.264	D .052
122	Road Freight Engineers and Motormen (Through Freight)	2.417	3.380	2.401	2.388	3.509	2.461	D .029	.129
123	Road Freight Engineers and Motormen (Local and Way Freight)	2.339	3.468	2.332	2.377	3.563	2.385	.038	.095
124	Yard Engineers and Motormen	2.295	3.349	2.300	2.379	3.571	2.394	.084	.222
125	Road Passenger Firemen and Helpers	2.936	1.823	2.163	3.138	1.833	2.062	.202	.010
126	Road Freight Firemen and Helpers (Through Freight)	2.088	2.940	2.080	2.045	3.003	2.112	D .043	.063
127	Road Freight Firemen and Helpers (Local and Way Freight)	2.084	3.071	2.073	2.027	3.034	2.062	D .057	D .037
128	Yard Firemen and Helpers	2.106	3.188	2.104	2.175	3.235	2.270	.069	.047
(908)	TOTAL (Transportation-Train and Engine)	2.200	3.131	2.165	2.212	3.219	2.207	.012	.088
	GRAND TOTAL								

D - Southern Region Rates in Excess of Pocahontas Region Rates.

AVERAGE COMPENSATION

YEAR 1956

	Southern Region Hourly Rates			Pocahontas Region Hourly Rates			Pocahontas Region Rates in Excess of Southern Region Rates			Annual Saving to Pocahontas Region at Southern Region Rates			
	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Straight Time	Overtime	Time Paid For Not Worked	Total
	$2.264	$2.140	$2.217	$2.501	$2.109	$2.281	$ .237	D $.031	$.064	$83,479	$753	$2,437	$85,163
tors	2.370	1.943	2.521	2.296	1.875	2.035	D .074	D .068	D .486	3,985	227	1,921	6,133
	2.069	3.082	2.051	2.106	3.160	2.061	.037	.078	.010	74,476	4,512	2,597	81,585
	2.106	3.153	2.119	2.116	3.178	2.095	.010	.025	D .024	8,641	4,076	1,842	10,875
	1.955	1.613	1.913	1.992	1.867	1.842	.037	.254	D .071	10,822	6,343	1,472	15,693
	1.911	1.801	1.863	2.123	1.811	2.032	.212	.010	.169	94,680	237	7,308	102,225
	1.853	2.771	1.839	1.891	2.856	1.841	.038	.085	.002	159,055	11,561	920	171,536
ght)	1.873	2.809	1.891	1.885	2.839	1.864	.012	.030	D .027	23,472	11,905	3,872	31,505
	2.438	3.653	2.534	2.441	3.644	2.574	.003	D .009	.040	8,258	2,511	9,427	15,174
	2.269	3.396	2.368	2.281	3.389	2.431	.012	D .007	.063	88,892	4,117	26,764	111,539
	3.221	2.124	2.522	3.485	2.072	2.333	.264	D .052	D .189	96,550	709	12,406	83,435
)	2.417	3.380	2.401	2.388	3.509	2.461	D .029	.129	.060	65,474	12,640	15,942	36,892
ight)	2.339	3.468	2.332	2.377	3.563	2.385	.038	.095	.053	30,547	14,291	3,916	48,754
	2.295	3.349	2.300	2.379	3.571	2.394	.084	.222	.094	224,081	52,320	19,164	295,565
	2.936	1.823	2.163	3.138	1.833	2.062	.202	.010	D .101	70,491	115	6,470	64,136
	2.088	2.940	2.080	2.045	3.003	2.112	D .043	.063	.032	97,503	5,875	7,628	84,000
t)	2.084	3.071	2.073	2.027	3.034	2.062	D .057	D .037	D .011	45,342	5,235	650	51,227
	2.106	3.188	2.104	2.175	3.235	2.270	.069	.047	.166	185,864	10,084	21,217	217,165
	2.200	3.131	2.165	2.212	3.219	2.207	.012	.088	.042	947,004	120,407	88,687	1,156,098
										3,742,622	955,294	911,144	5,609,060

ion Rates.

Exhibit F-4:

Railway Taxes—Other than Federal Income and Payroll Taxes

	1956
Eastern District	
Taxes	$142,688,158
Miles of Road	48,192
Taxes per Mile of Road	2,960.83
Eastern District—Including Pocahontas	
Taxes	170,469,035
Miles of Road	55,520
Taxes per Mile of Road	3,070.41
Southern Region	
Taxes	59,607,746
Miles of Road	36,178
Taxes per Mile of Road	1,647.62

Section G

Relation Between Southern Lines' Intrastate Traffic and Other Southern Region Interstate Traffic

[1]

This section of my statement is in rebuttal of V.S. 29 (Broetzman), V.S. 30 (Waters), V.S. 31 (Small), V.S. 32 (Waters), V.S. 33 (Buelow), V.S. 34 (Stewart), V.S. 40 and 40-A (Remington), and V.S. 41 (Burroughs). Evidence of the Southern lines in the statements just enumerated, is to the effect that traffic movements within the South, particularly on volume commodities, have certain characteristics which result in lower operating costs than the average traffic on the Southern Region lines and that, therefore, the average Southern Region costs, as shown in Form A applications, are understated as to North-South traffic. In rebuttal of this contention, I show in Table G-1 to this section of my statement the percentage relationship between intra-

state traffic within the Southern states and the total traffic of the Southern region, both as to all commodities and the so-called volume commodities of gravel and sand, crushed stone, phosphate rock and pulpwood. I have shown the percentages including and excluding Louisiana, because part of Louisiana is in Southwestern Territory.

The facts shown on this exhibit are to be considered in connection with the evidence, being offered in this record, of Southern lines' operating witnesses in various 13th Section cases wherein it was testified that intrastate operations of Southern lines are more expensive than their interstate operations. It will be noted that, including Louisiana, the percentage relation between intrastate movements and Southern Region interstate movements amount to 87.78% for sand and gravel, 89.63% for crushed stone, 88.69% for phosphate rock, 65.79% for pulpwood and 67.34% for all commodities. Excluding Louisiana, the percentages vary slightly, but not materially, being 67.66% for all commodities.

[2]

The testimony of Southern lines' operating witnesses from various 13th Section cases which I mentioned in the last paragraph is contained in the exhibits which I now identify:

Docket 31291—So. Carolina	Exhibit G-1
Docket 31307—Tennessee	Exhibit G-2
Docket 31321—Alabama	Exhibit G-3
Docket 31163—Louisiana	Exhibit G-4
Docket 30783—Louisiana	Exhibit G-5
Docket 31164—Mississippi	Exhibit G-6
Docket 30140—Florida	Exhibit G-7
Docket 32148—Louisiana	Exhibit G-8
Docket 31479—No. Carolina	Exhibit G-9
Docket 29845—Alabama (pp. 156, 292-98)	Exhibit G-10
Docket 29845—Alabama (pp. 369, et al.)	Exhibit G-11
Docket 29845—Alabama (Marks' testimony and exhibits)	Exhibit G-12

Section H

List of Citations.

My Exhibit No. H-1 is a list of citations of proceedings in which representatives of Southern lines have used regional average Form A costs in support of their position in the respective cases without any modifications such as are suggested by Southern lines in this proceeding. This list is not an exhaustive compilation of the use of such costs by representatives of the Southern lines. It is sufficient, however, to illustrate how these costs are used by Southern lines, as a matter of established practice, month in and month out before the Commission.

Exhibit H-1

[1]

I & S 6739, Aluminum, Louisiana to West Virginia.

Form A costs based on I.C.C. Statement 5-56 used in reply to Petition for Suspension by S. R. Goodman, of Southern Railway. (Reply dated March 12, 1957)

Suspension Case No. 17607, Crude Phosphate Rock from ACL and SAL Mines in Florida to East St. Louis.

Form A costs based on Statement 5-58 used in reply to Petition for Suspension by G. M. Mann of ACL and J. A. Kane, of SAL. Reply dated December 19, 1958. The statement said, with respect to these costs: "The methods used conform to those generally followed by the Cost Section and reflect the proper ascertainment of costs for the phosphate rock traffic."

Suspension Case No. 16284 and *F.S.A. Nos. 34843 and 34847, Pig Iron from Calvert, Ky. to Detroit and Saginaw, Mich., from Keokuk, Ia. to Detroit.*

Form A costs from I.C.C.'s Statement 2-58 used in reply to Petition for Suspension by A. A. Koch, Illinois-Central Railroad (Effective date—August 27, 1958).

Suspension Case No. 18062, Cement and Related Articles from Southern Territory Producing Points to Ironton, Ohio, Hagerstown, Md., Fordwick and Lone Star, Va. to Destinations in Florida.

Form A costs based on I.C.C. Statement 2-58 used in reply to Petition for Suspension by Rudd K. Parsons, of Florida East Coast (Jan. 8, 1959).

Suspension Case No. 18486, Alcoholic Liquors from Gulf, Southern Florida and South Atlantic Ports to Points in Indiana and Kentucky.

Form A costs based on I.C.C. Statement 2-58 used by H. M. Engdahl, of Southern Ports Foreign Freight Committee, February 14, 1959.

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[2]

Suspension Case No. 19190, Phosphate Rock from ACL and SAL Florida Mines to Points in Louisiana and Texas.

Form A costs based on I.C.C. Statement 5-58 used in reply to Petition for Suspension; said reply filed by Messrs. Kane and Mann, with Messrs. Beverly and Turkal, of ACL and SAL, as counsel. Filed April 7, 1959. In the reply it was stated, "The methods used conform with those generally followed by the Cost Section and reflect the proper ascertainment of costs for the phosphate rock traffic."

Suspension Case 19172, Glassware from Jackson, Miss., to Atlanta.

Form A costs used in reply filed by A. A. Koch, of Illinois-Central, reply incorporating letter dated April 3, 1959 and exhibits by John P. Cole correcting the protestants' exhibits; Mr. Cole using I.C.C. Statement 5-58.

Suspension Case No. 19667, Ester Gum from Goodyear and Picayune, Miss. to Jersey City, Newark, New Brunswick, Oak Tree, N. J., Phila.

Form A costs based on I.C.C. Statement 5-58 used in reply filed by S. R. Goodman of Southern Railway to Petition for Suspension on May 14, 1959.

Suspension Case No. 20239, Aluminum and Aluminum Articles from Southern Points to Northern Points.

Form A costs based on Statement 5-58 shown from two principal origins, Listerhill, Ala. and Alcoa, Tenn. to Boston, New York, Baltimore, Pittsburgh, Buffalo, Clarksburg, W. Va., Canton, Ohio, Lafayette, Ind. and Chicago, Ill.

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[3]

I.C.C. Docket No. 32816—Canned Foodstuffs, Florida to the North.

I.C.C. Form A costs based upon Statement 5-58 introduced in Exhibit 4 by Witness R. L. Cornelius, of ACL on July 21, 1959. At pages 57-58 of the record, Mr. Cornelius stated that the original exhibit was prepared jointly with Mr. Cole.

Suspension Case No. 20441, Brass, Bronze or Copper Scrap from W. Rome, Ga. to Carteret and Perth Amboy, N. J. and Nichols Siding, N. Y.

In reply to Petition for Suspension, Form A costs were used by Mr. Goodman, of Southern Railway on July 16, 1959, based upon I.C.C. Statement 5-58.

Suspension Case No. 20702, Telephone Directories from Atlanta to Miami.

Mr. Goodman, of Southern Railway, filed reply to Petition for Suspension and showed Form A costs, based upon I.C.C. Statement 5-58, Aug. 17, 1959.

Suspension Case No. 20909 (September 14, 1959), *Petroleum and Products, In Packages,* from Origins in Delaware, Maryland, New Jersey, New York, Pennsylvania and West Virginia to all Points in Southern Territory (not in tank cars).

Reply to Petition for Suspension was submitted by S. R. Goodman, of Southern Railway and used Form A costs based upon Statement 5-58.

Suspension Case No. 22039, Candy or Confectionery from Chicago to Various Points in the South. Form A costs based upon I.C.C. Statement 5-59 used by S. R. Goodman, of Southern Railway in reply to Petition for Suspension on January 5, 1960.

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[4]

I & S No. 6914—Sugar from Gulf and South Atlantic Ports to Ohio River Crossings.

Exhibit 9 of Witness R. L. Cornelius, of Association of Southeastern Railroads, showed Form A costs based upon I.C.C. Statement 2-58. Witness used for the haul in way trains the regional average haul in way trains for all traffic, increased for average circuities. At Tr. 72, 73, in response to the Examiner's question as to why he used the average regional costs, Mr. Cornelius stated, "Sir, I do not have any costs for any particular carrier. This is my only source, sir, is the regional average. I assume that even though it travels on one railroad it experiences perhaps all of the various differences in operating characteristics that other railroads experience."

I & S 6177—Crude Sulphur, Louisiana and Texas to Virginia.

At the hearing on April 2, 1954 in this proceeding, Mr. John P. Cole, of the Southeastern Association of Railroads, in criticizing the use of Form A costs for measuring the cost of handling a specific commodity between two points, also stated at R. 389-399:

"I would like to make a few comments with respect to Rail Form A: In 1942 and '43 I was employed as senior transportation cost analyst for the Board of Investigation and Research, and one of the duties of that organization was to determine the relative economy and fitness by carriers by rail, water and truck. Among other things, I made a very intensive study of Rail Form A as it existed at that time. I pointed out to the public, through a report that was circulated to the railroad industry, and was also given to Dr. Edwards for criticism, and to Dr. Lorenz, who was Chief Statistician for the Commission at the time, that the method used in Form A, the cost formula, certainly had a tendency to overstate long-haul costs and understate short-haul costs, for this reason: Once a long-haul shipment makes its first junction point it tends to move by two through routes to its final destination, or to the last junction point."

And at R. 406-A:

"Q. Do you have any comments you would care to make, Mr. Cole?

"A. None, except that I want it clearly understood that I do not approve of Form A in any way whatsoever except as a method of producing average costs.

[5]

"Q. Let me ask you this: Wasn't the purpose of Form A to determine more or less accurately the comparative costs of handling traffic in different types of equipment in different territories?

"A. That is correct. In Docket 28300, that is when Form A was in its infancy, and it does have some value for that purpose.

Mr. Schlifer: What was that purpose again?

Mr. Reynolds: The comparative costs of handling different types of traffic in different types of equipment in different territories."

Section J

Statistics, Passenger Deficit and Costs

[1]

In Verified Statement No. 14 of Mr. DeButts, it is contended that the Southern lines should not be made to bear any part of the passenger deficit of the Eastern railroads which results from commutation service. In rebuttal of this point I desire to show the over-all passenger service deficits of the Eastern and Southern lines and the freight net railway operating income and rates of return of the several groups. My Exhibit 1 also shows passenger service net railway operating deficit and freight net railway operating income for the years 1948 through 1959. The figures show that the Eastern lines have done better in coping with the passenger deficit than the Southern lines.

Moreover, taking the entire passenger deficit out of the figures and making a comparison only on the results of freight operation, my Exhibit 1 also shows that the rates of return from freight operation for the Eastern lines are lower than those of the lines of the Southern Region.

Exhibits identified as number R-11 and R-12 were offered by counsel (Mr. Kaier) at an earlier hearing but they have not been received because not verified by a witness. These figures were taken by me from the reports of the railroads to the Interstate Commerce Commission and are true and correct.

In rebuttal of Mr. De Butt's V.S. 14, Mr. Smith's V.S. 16, Mr. Cole's V.S. 39, Mr. Luckett's V.S. 36 and exhibits thereto, and of the contention of Southern lines that 1956 costs and statistics for that and other years shown in Exhibit A to my Verified Statement No. 3 are not proper because of such factors as the effect on costs of capital improvements and other changes since that time, as well as the alleged abnormally high locomotive repair expense of the New York Central and car

[2]

maintenance expense of the Pennsylvania in 1956 and other recent years shown in our opening testimony, I submit my Exhibit J-2 and my Exhibit J-3.

The first of these exhibits shows certain statistics for 1959 and, as far as available, for 1960, similar to statistics shown in Exhibit A to my Verified Statement No. 3.

The second exhibit shows the application of unit costs for the years 1956, 1957, 1958, and 1959 as developed by the ICC's Cost Finding Section, to Mr. Butler's two-month (five months as to perishables) traffic study, his study for the entire year 1956, and Southern lines' traffic study.

Exhibit J-3:

[1]

ALL TRAFFIC

(Except Citrus Fruits and Fresh or Green Vegetables, Not Frozen—Northbound and Coal and Coke, Made from Coal)
Between Points in Official Territory and Points in Southern Territory

COSTS AND REVENUES
COSTS - YEAR 1956

	Eastern District	Southern Region	Total	Official Territory	Southern Region	Total
	March and September—1956					
Terminal	6,156,959	3,664,634	9,821,593	5,711,766	3,664,634	9,376,400
Line Haul	23,237,876	25,433,829	48,671,705	21,417,931	25,433,829	46,851,760
Loss & Damage	231,778	317,001	548,779	231,778	317,001	548,779
Total	29,626,613	29,415,464	59,042,077	27,361,475	29,415,464	56,776,939
Percentage of Total Costs	50.18	49.82	100.00	48.19	51.81	100.00
Revenue as Settled	34,148,248	41,003,310	75,151,558	34,148,248	41,003,310	75,151,558
Percentage of Revenue	45.44	54.56	100.00	45.44	54.56	100.00
Revenue on Cost Basis	37,711,052	37,440,506	75,151,558	36,215,536	38,936,022	75,151,558

CITRUS FRUITS AND FRESH OR GREEN VEGETABLES, NOT FROZEN

Between Points in Official Territory and Points in Southern Territory
Northbound

COSTS AND REVENUES
COSTS - YEAR 1956

	Eastern District	Southern Region	Total	Official Territory	Southern Region	Total
	January to May, Inc., 1956					
Terminal	1,313,374	775,103	2,088,477	1,228,379	775,103	2,003,482
Line Haul	6,557,673	13,587,692	20,145,365	6,208,780	13,587,692	19,796,472
Loss & Damage	169,253	402,740	571,993	169,253	402,740	571,993
Total	8,040,300	14,765,535	22,805,835	7,606,412	14,765,535	22,371,947
Percentage of Total Costs	35.26	64.74	100.00	34.00	66.00	100.00
Revenue as Settled	6,561,951	13,098,892	19,660,843	6,561,951	13,098,892	19,660,843
Percentage of Revenue	33.38	66.62	100.00	33.38	66.62	100.00
Revenue on Cost Basis	6,932,413	12,728,430	19,660,843	6,684,687	12,976,156	19,660,843

Traffic Units from Exhibit A and Exhibit B to V.S. No. 1
Unit Costs from I.C.C. Applications of Rail Form "A" Underlying Statement 2-58

• • •

[9]

ALL TRAFFIC
(Except Citrus Fruits and Fresh or Green Vegetables, Not Frozen—Northbound and Coal and Coke, Made from Coal)

COSTS AND REVENUES
COSTS - YEAR 1956

	Eastern District	Southern Region	Total	Official Territory	Southern Region	Total
Terminal	35,098,880	20,858,287	55,957,167	32,554,562	20,858,287	53,412,849
Line Haul	139,668,104	158,207,853	297,875,957	128,761,323	158,207,853	286,969,176
Loss & Damage	2,029,941	2,664,650	4,694,591	2,029,941	2,664,650	4,694,591
Total	176,796,925	181,730,790	358,527,715	163,345,826	181,730,790	345,076,616
Percentage of Total Costs	49.31	50.69	100.00	47.34	52.66	100.00
Revenue as Settled	215,915,212	264,245,105	480,160,317	215,915,212	264,245,105	480,160,317
Percentage of Revenue	44.97	55.03	100.00	44.97	55.03	100.00

CITRUS FRUITS AND FRESH OR GREEN VEGETABLES, NOT FROZEN—NORTHBOUND

COSTS AND REVENUES
COSTS - YEAR 1956

	Eastern District	Southern Region	Total	Official Territory	Southern Region	Total
Terminal	1,127,037	661,927	1,788,964	1,052,645	661,927	1,714,572
Line Haul	5,429,642	11,452,045	16,881,687	5,134,495	11,452,045	16,586,540
Loss & Damage	143,264	347,702	490,966	143,264	347,702	490,966
Total	6,699,943	12,461,674	19,161,617	6,330,404	12,461,674	18,792,078
Percentage of Total Costs	34.97	65.03	100.00	33.69	66.31	100.00
Revenue as Settled	5,516,496	10,412,467	15,928,963	5,516,496	10,412,467	15,928,963
Percentage of Revenue	34.63	65.37	100.00	34.63	65.37	100.00

Traffic Units and Revenue from Exhibit 4 to V.S. 36
Unit Costs from I.C.C. Applications of Rail Form "A" Underlying Statement 2-58

Section L

Debt Reduction

In rebuttal of Mr. DeButt's Verified Statement No. 14 I show in my Exhibit No. L-1 excerpts from Annual Reports of the Southern Railway concerning debt reduction programs of that road. The total debt reduction of the Pennsylvania in the period 1953 through 1958 was $203,300,000, of which only $65,800,000 was voluntary, the remainder being required by the operation of sinking funds and the maturity of bonds and equipment obligations. The figures for the period 1953 through 1959 are $233,500,000 total, of which only $76,900,000 was voluntary, the balance being the result of the factors which I have just mentioned.

Exhibit L-1

[1]

Excerpts From Annual Reports of Southern Railway Company

1953

Debt Reduction

The maturities of long-term debt of the years 1953 and 1956, which amounted to $89,605,000 as of December 31, 1952, and had been reduced to $66,660,000 as of February 12, 1953, through the financing described in the Annual Report for 1952, were still further reduced by December 31, 1953, to $59,286,000, consisting of an aggregate balance outstanding as of that date of the Development and General Mortgage Bonds maturing April 1, 1956, in the aggregate amount of $50,990,000, and $8,296,000 remaining principal amount of the East Tennessee, Virginia and Georgia 5's maturing November 1, 1956.

The Company expects to pay these maturing bonds (less any acquired in the interim) at maturity from treasury cash, or from the proceeds of such new refunding issues as might be determined to be advantageous or advisable, although it has no present plan for any such financing.

[2]

1954

USE IN 1954 OF THE COMPANY'S FINANCIAL RESOURCES

In addition to meeting all of its current expenses, taxes and fixed payments, the Company paid from its treasury cash the following conspicuous items:

(1) For capital improvements to Road and Structures, $7,541,885; for Equipment, $13,780,111, consisting of installments of Equipment Obligations, $9,525,860 and for additions and betterments to equipment $4,254,251, making an aggregate of $21,321,996 capital expenditures for the year, as compared with $21,979,076 in 1953;

(2) For dividends, $12,087,400, being $2,596,400 more than in 1953;

(3) For advances to its real estate subsidiary of moneys for the acquisition and construction of new industrial facilities to produce income to the Company, $916,405; and

(4) For the acquisition and cancellation of $2,605,000, principal amount of the Company's Development and General Mortgage Bonds, and the acquisition by a subsidiary of $45,000, principal amount of the Company's East Tennessee, Virginia and Georgia Bonds, both issues maturing in 1956, $2,744,059.

The Company had left on December 31, 1954, (a) investments in United States Government securities in the principal amount of $71,601,500, held in reserve for the acquisition of debt or reduction of maturing obligations, subject to further order of the Board of Directors, and (b) cash of $28,811,809, as shown in the balance sheet, the latter being reducible by items which were not cleared through the banks at the close of business for the year.

[3]

1954

DEBT REDUCTION AND THE 1956 MATURITIES

From January 1, 1938, to December 31, 1954, inclusive, the Company and its affiliates retired securities, on which they were required to pay fixed charges, theretofore outstanding in the hands of the public in the amount of approximately $168,786,500.

Included in this aggregate were $62,948,000 principal amount of the Company's Development and General Mortgage 4%, 6% and 6½% Bonds due April 1, 1956, and $4,519,000 principal amount of its East Tennessee, Virginia and Georgia 5% Bonds due November 1, 1956.

There remained of these two issues, originally outstanding on January 1, 1942, in the aggregate principal amount of $124,103,000, a balance of $56,636,000 at December 31, 1954, a reduction during 1954 of $2,650,000.

The Company expects to pay these bonds (less any acquired in the meantime), at their respective maturities, from treasury cash. If this be done, fixed charges will be reduced by approximately $2,785,000 annually from this source.

[4]

1955

DEBT REDUCTION AND THE 1956 MATURITIES

Long-term debt (exclusive of equipment debt) and securities on Leasehold Estates were reduced in the principal amount of $17,300,400 during 1955.

Included in this amount was the acquisition and cancellation of $15,582,000, principal amount of the Development and General Mortgage Bonds, maturing April 1, 1956 ($10,576,000 thereof having been acquired under the Company's Offer, effective between July 1, 1955, and October 31, 1955, to purchase any or all of such outstanding Bonds on the basis of a yield of 2% to maturity), thereby reducing the amount of this issue outstanding to $32,803,000 at December

31, 1955, as compared with $111,333,000 outstanding on January 1, 1942.

Also included in 1955 debt reduction was the acquisition by a subsidiary of $788,000 of the East Tennessee, Virginia and Georgia Bonds maturing November 1, 1956, reducing the amount outstanding in the hands of the public to $7,463,000 at December 31, 1955, as compared with the original maturity of $12,770,000.

The maturities of 1956 were thus reduced to an aggregate principal amount outstanding on December 31, 1955, of $40,266,000.

United States Government securities, included in the Company's reserves, and appropriately maturing, are held in the Company's treasury to pay this aggregate off in cash. Such payment will effect a further reduction in the Company's annual fixed charges in the amount of $2,007,840.

1956

NET FUNDED DEBT AND FIXED CHARGES

The Company's fixed charges, as defined by the Interstate Commerce Commission (less charges on the Company's bonds held by a subsidiary and income from securities of its Leasehold Estates owned by the Company), were at the annual rate of approximately $10,648,000 on December 31, 1956, as compared with $11,810,000 at the end of 1955. These totals exclude charges on the Company's bonds held by a subsidiary.

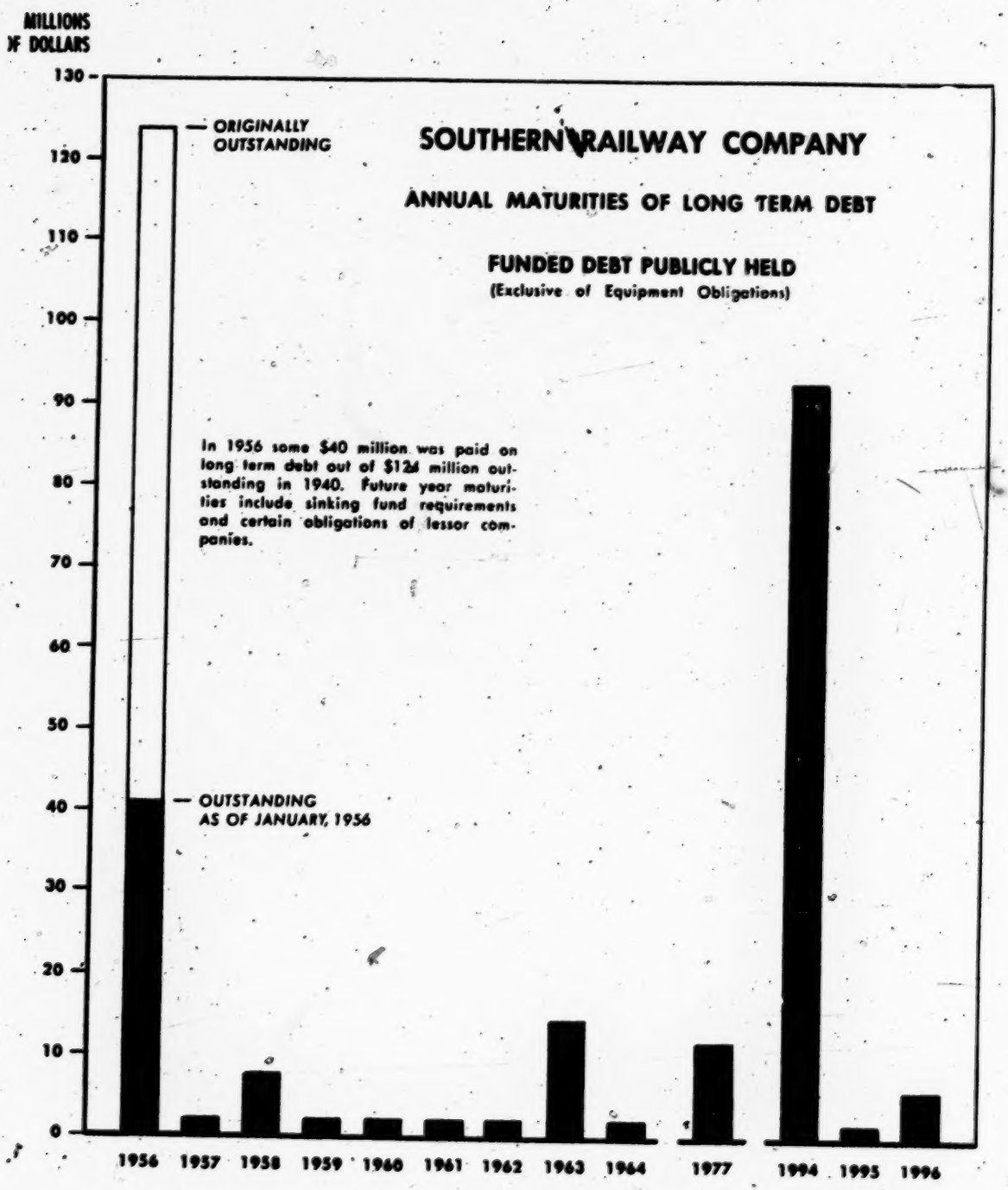
The all-time high for the Company's net fixed charges was approximately $18,000,000 in 1930, to be serviced out of gross revenue at that time of $118,868,608. The current figure of $10,648,000 not only shows a reduction of more than 40% from the all-time high of fixed charges but the reduced amount is payable out of gross revenue which for the last five years has averaged $269,643,070.

The current net fixed charges are equivalent to 3.87% of the 1956 gross revenues, as compared with 4.26% in 1955 and 4.93% in 1954. Fixed charges were equivalent to more than 15% of gross revenue in 1930.

[5]

1956

The debt of the Company outstanding in the hands of the public at December 31, 1956, amounted to $125,926,500 of Funded Debt, as compared with $166,995,500 of such debt at December 31, 1955, and $75,513,255 of Equipment Obligations, as compared with $86,482,460 of such obligations at the end of the previous year. Payments and accruals for interest, rent for leased lines, Equipment Obligation maturities and Sinking Fund payments to be provided in the year 1957 amounted to approximately $22,700,000, as compared with $23,166,778 for the year 1956.


MILLIONS OF DOLLARS
130
120
110
100
90
80
70
60
50
40
30
20
10
0
ORIGINALLY OUTSTANDING
OUTSTANDING AS OF JANUARY, 1956
SOUTHERN RAILWAY COMPANY
ANNUAL MATURITIES OF LONG TERM DEBT
FUNDED DEBT PUBLICLY HELD
(Exclusive of Equipment Obligations)
In 1956 some $40 million was paid on long term debt out of $124 million outstanding in 1940. Future year maturities include sinking fund requirements and certain obligations of lessor companies.
1956
1957
1958
1959
1960
1961
1962
1963
1964
1977
1994
1995
1996

[6]

1957

NET FUNDED DEBT AND FIXED CHARGES

The Company's fixed charges, as defined by the Interstate Commerce Commission (less charges on the Company's bonds held by a subsidiary and income from securities of its Leasehold Estates owned by the Company), were at the annual rate of approximately $10,332,000 on December 31, 1957, as compared with $10,648,000 at the end of 1956, and $11,810,000 at the end of 1955.

The current net fixed charges are equivalent to 3.9% of the 1957 gross revenues, as compared with 3.9% in 1956 and 4.4% on the average over the five years, 1952-56. Fixed charges were equivalent to more than 15% of gross revenue in 1930.

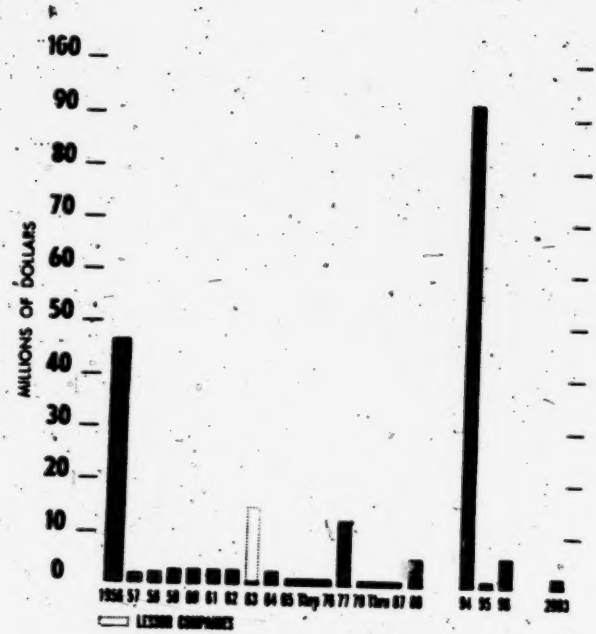
The funded debt of the Company outstanding in the hands of the public at December 31, 1957, amounted to $124,012,500 as compared with $125,926,500 at the end of 1956 and $166,995,500 at the end of 1955. Payments and accruals for interest, rent for leased lines, Equipment Obligation maturities and Sinking Fund payments to be provided in the year 1958 amount to approximately $23,150,000 as compared with $22,550,000 for the year 1957 and $23,166,778 for the year 1956.

[7]

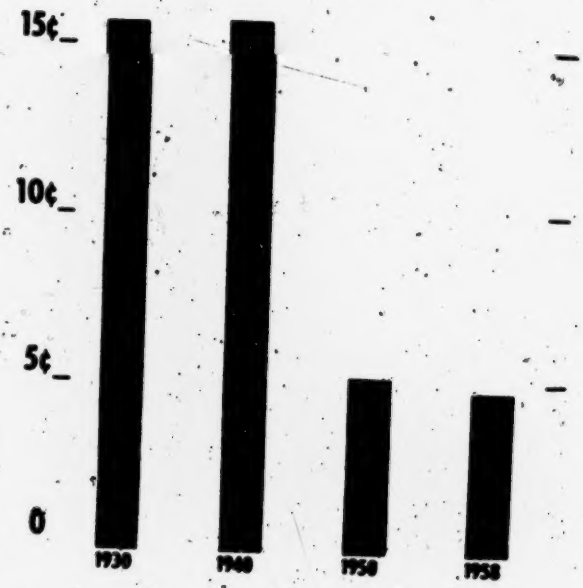
1958

The funded debt of the Company outstanding in the hands of the public at December 31, 1958, amounted to $144,099,500 as compared with $124,012,500 at the end of 1957. Payments and accruals for interest, rent for leased lines, Equipment Obligation maturities and Sinking Fund payments to be provided in the year 1959 amount to approximately $22,100,000 as compared with $23,450,000 for the year 1958 and $22,826,300 on the average for the years 1954-58.

ANNUAL MATURITIES OF LONG TERM DEBT



FIXED CHARGES PER DOLLAR GROSS REVENUE



[8]

1959

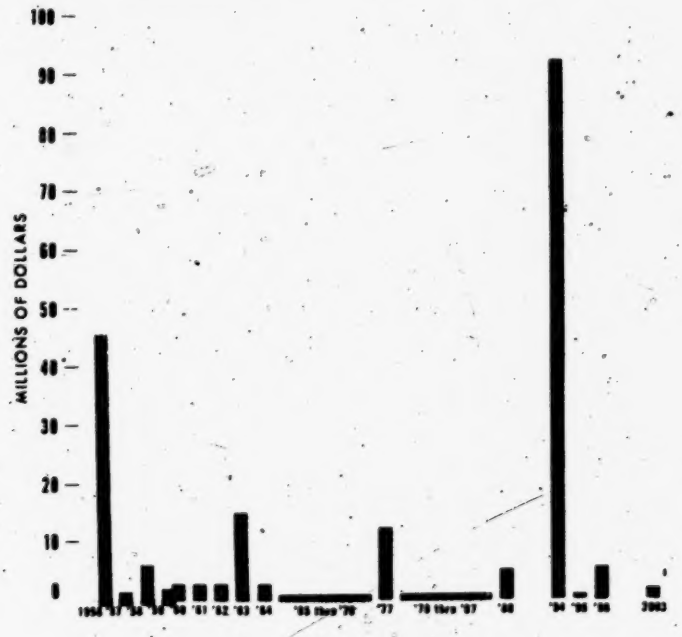
NET FUNDED DEBT AND FIXED CHARGES

The Company's fixed charges, as defined by the Interstate Commerce Commission (less charges on the Company's bonds held by a subsidiary and income from securities of its Leasehold Estates owned by the Company), were at the annual rate of approximately $10,998,000 on December 31, 1959, as compared with $11,317,000 at the end of 1958 and $12,312,000 at the post-war high point which was reached in 1953.

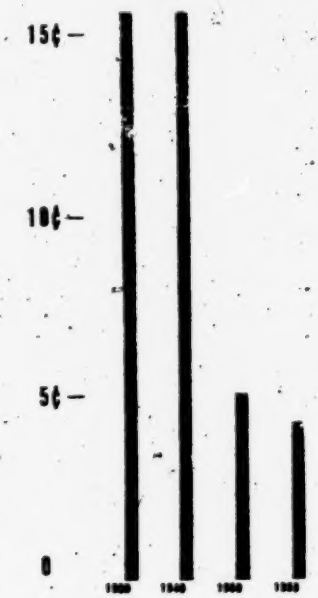
The current net fixed charges are equivalent to 4.04% of the 1959 gross revenues, as compared with 4.41% in 1958 and 4.08% on the average over the five years 1955-59.

The funded debt of the Company outstanding in the hands of the public at December 31, 1959, amounted to $141,476,500 as compared with $144,099,500 at the end of 1958. Payments and accruals for interest, rent for leased lines, Equipment Obligation maturities and Sinking Fund payments to be provided in the year 1960 amount to approximately $22,014,000 as compared with $22,100,000 for the year 1959 and $22,787,000, on the average, for the years 1955-59.

Annual Maturity of Long Term Debt



Fixed Charges Per Dollar Gross Revenue



COUNSEL EXHIBIT R. 11: E. A. KAIER

[1]

INTERSTATE COMMERCE COMMISSION
Bureau of Transport, Economics and Statistics
WASHINGTON

August 23, 1948

TO THE CHIEF ACCOUNTING OFFICER
OF THE CLASS I RAILROAD ADDRESSED:

Please refer to our letter of June 25, 1947, requesting a brief statement each month showing the grand total of carloads terminated on line, separated between those originated on line and those received from connecting carriers. The purpose of this request was to secure a total to which we could compare the results of the carload waybill sample in order to check the completeness of the sample. Further experience has shown that certain adjustments are sometimes required to make the totals as reported in the freight commodity statistics agree with the terminations as reported on the waybills. The waybill data are based on the billed origin and destination so most of the differences are caused by

(a) Rebilling the traffic either at point of receipt or point of delivery to connecting carrier.

(b) Lake or tidewater traffic reported in freight commodity statistics as received from or delivered to connecting carrier.

(c) Traffic moving on revenue bills not reported in freight commodity statistics.

(d) Revenue traffic moving on cards or memo bills.

Various combinations of these causes will affect the sample results differently and it is suggested that the following

form be used in reporting the carloads terminated on line in order to make allowances for the differences in reporting for the freight commodity statistics. One percent of the number of cars shown for "waybill termination" should give us the expected value of the waybill sample.

Carloads terminated on line for the month of ...., 1948.

Item	Originated on line	Received connections from
Reported in Freight Commodity Statistics ...		
Additions		
Deductions		
Waybill terminations		

It will not be necessary for our purpose to report the details of adjustment figures, but if you wish to do so, they may be included in a footnote. Where there is no difference between the method of reporting for the commodity statistics and the waybill data, the present form will be satisfactory with the statement "no adjustments required" added.

Additions to local terminations will include traffic reported as received from connecting carriers in the freight commodity satistics.

[2]

but terminating on local bills because of rebilling or receipt at a lake or tidewater port. Deductions from local terminations will include traffic reported as originated and terminated on line in freight commodity statistics but which moves on a foreign bill such as traffic received from a small road under a switching arrangement.

Additions to interline terminations include traffic which would be reported as received from connecting carriers and delivered to connecting carriers but which would be terminated on an interline waybill because of delivery to a lake

or tidewater port, or because of rebilling by the connecting carrier at the junction. It might also include company material moving on interline revenue bills which would not be reported in the freight commodity statistics. Deductions to the interline terminations would be made for that traffic reported as received from connecting carriers and terminated on line which moved on a local waybill because of receipt at a lake or tidewater port having been rebilled at a junction.

These reasons are not exhaustive but include the major causes determined so far for the apparent discrepancies between the sample and the commodity statistics. The adjustment figures should include all that traffic which would show in the waybill sample as a local or interline termination but which would be reported under a different category in the commodity statistics.

There may be cases where the desired information is not readily available. In this event a reasonably accurate estimate of the volume will be satisfactory for our sole purpose is to get a figure against which we can check the waybill sample. Significant differences between the sample and the check figure will have to be investigated but, since the sample is on a one percent basis, differences of less than 50 cars in the check total would not be reflected in the comparison.

We will appreciate your cooperation in this matter and will be glad to answer any questions you may have.

Very truly yours,

W. H. S. STEVENS,
Director.

COUNSEL EXHIBIT R. 12: E. A. KAIER

[1]

RATES OF RETURN

1954 to 1959

	Eastern District excluding Poca. Region less NYC & PRR	Southern Region	Southern Railway Co.
Net Investment—End of Year			
1954	$5,431,100,815	$3,594,152,848	$691,101,042
1955	5,452,397,943	3,634,383,882	702,902,828
1956	5,407,231,528	3,704,767,995	707,606,168
1957	5,517,361,175	3,789,998,225	728,345,392
1958	5,477,709,689	3,786,950,096	718,423,713
1959	5,383,812,326	3,787,229,939	713,441,290
Net Railway Operating Income			
1954	164,059,047	161,024,627	34,557,054
1955	215,431,123	197,102,589	48,430,035
1956	202,770,256	184,034,606	45,691,368
1957	167,703,607	155,255,698	40,530,797
1958	87,263,238	139,525,494	37,476,162
1959	84,801,836	137,547,227	39,692,248
Rate of Return			
1954	3.02%	4.48%	5.00%
1955	3.95	5.42	6.89
1956	3.75	4.97	6.46
1957	3.04	4.10	5.56
1958	1.59	3.68	5.22
1959	1.58	3.63	5.56

Source: Annual Reports of Railroads to the Interstate Commerce Commission.

[2]

RATES OF RETURN

1954 to 1959

	Eastern District including Poca. Region less NYC & PRR
Net Investment—End of Year	
1954	$7,053,530,387
1955	7,097,353,611
1956	7,170,155,236
1957	7,412,010,963
1958	7,344,771,155
1959	7,251,475,717
Net Railway Operating Income	
1954	253,513,295
1955	338,590,302
1956	341,276,477
1957	312,591,455
1958	211,180,634
1959	208,302,931
Rate of Return	
1954	3.59%
1955	4.77
1956	4.76
1957	4.22
1958	2.87
1959	2.87

Source: Annual Reports of Railroads to the Interstate Commerce Commission.

COUNSEL EXHIBIT R. 13: E. A. KAIER

[1]

PASSENGER SERVICE REVENUES AND EXPENSES

Year	Passenger Revenue	Passenger Expenses	
		Total	Solely Related
Eastern District Excluding Pocahontas Region			
1956	$616,148,463	$709,126,517	$605,301,362
1957	597,056,879	764,201,802	599,730,551
1958	585,705,891	693,064,237	542,930,118
1959	571,828,636	651,842,540	512,913,020
Eastern District Including Pocahontas Region			
1958	$618,035,576	$741,140,564	$577,549,564
1959	602,199,956	696,717,420	545,661,252

[2]

PASSENGER SERVICE REVENUES AND EXPENSES

Year	Passenger Revenue	Passenger Expenses	
		Total	Solely Related
New York Central Railroad Co.			
1956	$167,950,511	$200,511,205	$162,132,951
1957	152,529,162	190,929,195	152,786,951
1958	149,999,932	168,354,076	135,662,251
1959	146,561,562	157,155,623	126,205,910
New York, New Haven & Hartford R.R. Co.			
1956	$ 67,207,674	$ 68,696,419	$ 48,187,814
1957	69,021,306	70,216,453	50,746,646
1958	67,601,873	64,607,521	47,053,718
1959	63,017,565	61,918,448	44,592,296
Pennsylvania Railroad Co.			
1956	$189,652,839	$225,474,916	$189,277,039
1957	186,339,640	224,575,548	187,059,950
1958	180,722,441	204,848,797	169,632,550
1959	181,161,378	197,566,384	164,443,032

[3]

PASSENGER SERVICE REVENUES AND EXPENSES

Year	Passenger Revenue	Passenger Expenses	
		Total	Solely Related
Southern Region			
1956	$169,991,291	$241,124,267	$181,293,423
1957	164,457,257	243,870,375	184,417,067
1958	152,812,281	223,834,643	167,632,363
1959	155,314,803	211,169,619	159,706,283
Southern Railway Company			
1956	$ 29,437,842	$ 42,662,881	$ 31,499,726
1957	28,323,631	43,299,978	31,345,095
1958	26,574,695	41,214,889	29,307,330
1959	26,385,737	38,805,530	28,241,526

COUNSEL EXHIBIT R. 14: J. R. CLARK

ANALYSIS OF PRELIMINARY SAMPLE SWITCHING STUDY

Batch Number	Months Shipped	Direction		Switching		
		SB	NB	Yard Engine	Train Engine	Total
1	1/59- 2/59	33	28	34	27	61
2	1/59- 4/59	32	25	28	29	57
3	3/59- 6/59	12	38	29	21	50
4	4/59- 6/59	33	27	37	23	60
5	7/58- 6/59	31	35	41	25	66
6	7/58- 6/59	20	32	30	22	52
7	7/58-12/58	46	60	61	45	106
8	7/58-12/58	25	20	36	9	45
	Total	232	265	296	201	497
	Percent	40.6	59.4	59.8	40.2	100

Source: Southern Lines' Work Papers

COUNSEL EXHIBIT R. 15: J. R. CLARK

ANALYSIS OF DEMING SUBSAMPLE OF PRELIMINARY SAMPLE SWITCHING STUDY

Batch Number	Direction		Switching		
	SB	NB	Yard Engine	Train Engine	Total
1	5	5	6	4	10
2	5	4	5	4	9
3	3	6	5	4	9
4	6	4	6	4	10
5	5	6	7	4	11
6	3	6	5	4	9
7	6	11	9	8	17
8	6	2	6	2	8
Total	39	44	49	34	83
Percent	47.0	53.0	59.0	41.0	100

Source: Southern Lines' Work Papers

COUNSEL EXHIBIT R. 16: J. R. CLARK

ANALYSIS OF SEIGLER-REMINGTON SUBSAMPLE OF DEMING SUBSAMPLE OF PRELIMINARY SAMPLE SWITCHING STUDY

Batch Number	Direction		Switching		
	SB	NB	Yard Engine	Train Engine	Total
1	3	2	3	2	5
2	1	4	3	2	5
3	2	2	3	1	4
4	3	2	3	2	5
5	2	4	4	2	6
6	1	3	2	2	4
7	2	7	5	4	9
8	2	1	3	0	3
Total	16	25	26	15	41
Percent	39.0	61.0	63.4	36.6	100

Source: Appendix A, V.S. No. 41, Witness Seigler, and Southern Lines' Working Papers.

TESTIMONY OF NORTHERN LINES' WITNESS MR. NANCARROW

Cross Examination (November 18, 1959):

* * *

[R-459]

Q. [By Mr. Trienens] As far as the Pennsylvania Railroad's service, are we correct in reading Exhibit "M", that you had 135 cars in the train as it was made up in Potomac Yard?

Mr. Clark: Look at your chart, Exhibit "M", Mr. Nancarrow.

The Witness: 132 loads and three empties.

Q. [By Mr. Trienens] That is the way the train was made up in Potomac Yard for you?

[R-460]

A. Yes, sir.

Q. It goes through Baltimore, it says relay. What does the term "relay" mean?

A. Through train.

Q. What did they do to it at Baltimore, if anything?

A. Nothing.

Q. Does it mean the same thing at Philadelphia?

A. Yes, sir.

Q. Trenton?

A. Yes, sir.

Q. Newark?

A. Yes, sir.

Exam. Barber: Don't you change crews or take off the caboose or anything?

The Witness: No, sir.

Exam. Barber: Go right through.

The Witness: Through crews.

Q. [By Mr. Trienens] What is your system average train in cars per train, Mr. Nancarrow?

A. I don't know from memory and I don't have the supporting papers to answer that.

Q. Would 135 be maybe about double the size of your average train?

A. No.

Q. System average? I am not talking about your—

[R-461]

Mr. Clark: He heard you.

Mr. Kaier: I think it shows in Mr. Heywood's Exhibit "A".

Mr. Trienens: We will check that.

Q. [By Mr. Trienens] How many miles is this between Potomac Yard and Greenville, about 230, maybe?

A. Potomac Yard and Greenville? Roughly 233 miles.

Q. Of the 135 cars that went through that distance untouched, you show 95 were Southern-Official cars, correct?

A. Yes, sir.

Q. Let's turn to MD-18, which is Exhibit "K".

A. MD-18?

Q. Yes, sir, "K".

A. Yes, sir.

Q. It goes without saying these aren't drawn to scale?

A. No, sir.

Q. Give us an idea of the geography here. You have 113 cars going from Potomac Yard to Greenville, ultimately?

A. Yes, sir.

Q. You don't have the word "relay" in there for Baltimore, Philadelphia, and Trenton, but is there anything different about this operation than there was from MD-6, at those points?

A. No, sir.

Q. Give us some idea of the geography, how far Waverly Yard is from Greenville?

A. About six miles.

[R-462]

Q. So that it would be about 227 miles from Potomac Yard to Waverly, roughly?

A. Yes, roughly.

Q. All right. Let's look at Exhibit "G" which is MD-12.

A. Yes, sir.

Q. Again we have the train, this time it is 110 cars, 109 loads and one empty, 97 of the loads are Southern-Official?

A. Yes, sir.

Q. Again is the situation the same that we have that train made up in that form in Potomac Yard, goes through Baltimore, Philadelphia, Trenton, untouched to Waverly?

A. That is correct.

• • •

[R-495]

A. I am talking about some, not all of the accounts.

Q. What classes of expense are you talking about when you use the term costs?

A. Train operation, floating service.

Q. Would that—you said train operations, floating service. Would your costs include origin and destination terminal costs?

A. Certainly, all of it is involved in the movement of your traffic.

Q. Would it include interchange costs?

A. Yes, sir.

Q. It would include the train costs such as wages, fuel?

A. Yes, sir.

Q. And the maintenance-of-way costs?

A. Yes, sir.

Q. Would it include car repairs, depreciation and return?

A. Yes, sir.

Q. Would it include platform costs?

A. Yes, sir.

Q. Would the costs be included in any way by the empty return ratios?

A. The empty return what?

Q. The ratio of empty to loaded movements?

A. Well, it would depend on whether or not it was on a loaded car or an empty car basis. You could determine that by a special study but on the Pennsylvania we use average costs.

• • •

[R-499]

I want to find out specifically, as to the elements when we get to the cost issue, what kind of average costs he is talking about, if he knows.

I am asking about the extent to which empty return enters into his use of average cost and I think I am entitled to an answer.

Exam. Barber: Do you know anything about that, Mr. Nancarrow? Do you know anything about empty return ratio in the determination of average costs?

The Witness: No, sir, I do not.

Q. [By Mr. Trienens] So that to conclude that subject entirely, you have no knowledge on whether average costs should commingle all types of cars, reefers, box and hoppers together, whether there should be a separation by type of car or what, if any, separation should be made? You have no knowledge or information on that subject whatever?

A. No, sir. I think Mr. Heywood is qualified to give you that.

Exam. Barber: Is your statement there, "In my opinion Eastern lines are fully justified in attributing to the Official-Southern traffic the average costs of handling all traffic,"—

• • •

(November 19, 1959):

[R-548]

Q. [By Mr. Trienens] I want to get the operating facts as to one other point, Mr. Nancarrow. You referred yester-

day to an important volume of interchange work between the L&N and the Pennsylvania at Cincinnati. You have no joint facility at Cincinnati, do you?

A. No, sir.

Q. Please tell us just from an operating and physical point of view what happens in the interchange at Cincinnati?

A. First, the L&N handles the interchange from January to June, inclusive, in both directions. P.R.R. handles July to December, inclusive, in both directions. The interchange run is between the

[R-549]

L&N, South Louisville Yard, and the P.R.R. at Jeffersonville, Indiana, Yard.

Mr. Kaier: Pardon me, Mr. Witness, but aren't you describing Louisville rather than Cincinnati?

The Witness: Oh, yes. Excuse me, excuse me.

The interchange is between the DeCoursey Yard of the L&N located in Kentucky and the Under Cliff Yard, Cincinnati.

Q. (By Mr. Trienens) Which crews handle that interchange?

A. Both.

Q. How is a separation made?

A. The record is kept of the time passing the O.A. tower, north of the Ohio River bridge and an endeavor is made to keep the times on each side of O.A. balanced by the adjustment of crews and power as required.

Q. In other words, you have an arrangement whereby you equalize the engine hours in interchanging this traffic?

A. To the best of our ability.

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TESTIMONY OF NORTHERN LINES' WITNESS J. L. HEYWOOD

Direct Examination (November 19, 1959):

[R-569]

Q. (By Mr. Eshelman) And that Appendix E, which was an application of composite costs from page 17 of your Exhibit B, to Butler's traffic study, and Exhibit C, of Verified Statement No. 1, that there was only one work sheet needed in addition to the actual Appendix E, itself?

A. Yes, sir.

Q. Is there anything complex about your cost showing?

A. No, we think not.

Q. Well, are they not the customary Form A territorial costs which you have used?

A. Yes, sir; they are.

Q. And would it be a simple matter, for example, to check a Form A result either against the Commission's Form A results, or against Southern Lines' Form A results to determine readily whether your results were out of line with the Commission's or with theirs?

A. That is true.

Mr. Eshelman: Mr. Examiner, at this time I should like to submit that there is no good reason why Mr. Heywood's cross-examination should be deferred.

Exam. Barber: Do we know for sure it is going to be?

Mr. Eshelman: No. Perhaps I am ahead of my story. Thank

• • •

Cross-Examination (January 12, 1960):

[R-777]

Q. (By Mr. Trienens) Page 13.

A. Page 13?

Q. Last paragraph, dealing with loss and damage.

A. Wait a minute. Page 13. Did I understand you to say page 13 of Exhibit C?

Q. No, page 13 of your verified statement, the text.

A. Oh, I beg your pardon. I am looking at C.

Q. You might as well have page 10 of C in front of you, too. That is what we are talking about.

A. This is starting with page 10.

Q. In other words, you throw it in separately on a separate line, beginning at page 10, don't you?

A. That is what I am trying to find. Just a moment, please, until I get that page 10. Oh, yes, we throw that in separately there. I was thinking back in the scales when I said none.

Q. All right. So let's go back to the first question now.

Now, when the cost section is pricing out this car of north-south traffic they are dealing only with the total haul and they put in a certain dollar figure per ton. Now, you speak at page 13 of your development of a figure per ton based on work papers for ICC Statement 2-58. That is a cost section statement, is it not?

A. Yes, sir.

• • •

(January 13, 1960):

[R-841]

Q. Does the proportion of the car miles in special purpose boxcars, meaning those with special devices rendering them unfit for return loading, does the proportion of the—

Mr. Kaier: Pardon me, what was that? That were unfit—

Mr. Trienens: For return loading.

Mr. Kaier: I don't think it has been established that any of these cars are unfit for return loading. I submit it has not been.

Mr. Eshelman: You also agreed that there are special cars that are suitable for return loading.

Mr. Trienens: My question deals with the type of car with which we are all familiar, that is equipped with racks for fenders or racks for motors and that is used exclusively in that service to Metuchen and Linden, New Jersey, for example, and is returned in assigned service back to Detroit

for some more motors or fenders. That is the only car I am talking about.

Mr. Kaier: As to which I submit there is no foundation in the record.

Mr. Trienens: Other than the testimony of Mr. Nancarrow.

Q. (By Mr. Trienens) Now, you recognize, Mr. Heywood, that the proportion that the car miles of such special device cars bear to the total boxcar miles would influence the system average boxcar figure which you applied in your study?

[R-842]

A. Yes, it will influence it, certainly.

Q. And just as a hypothetical calculation of the effect of the proportions, we find on page 2 of the illustration marked as Exhibit R-10 that given special purpose boxcars that move 100 percent empty and given boxcars, which we assume here move at a 30 percent empty return ratio for such general purpose cars, that it is the proportion of the special purpose cars to the total that makes the system average box, say, 39 percent for the group indicated as north on page 2 and substantially less or 33 percent for the group headed south. It is the proportions alone that cause that, isn't that correct, as a matter of arithmetic?

Mr. Kaier: I object to the question and to the use of page 2 of Exhibit R-10 on the ground that the facts have been developed that this does not relate to direct examination, and it is a hypothetical case, obviously slanted in favor of the south.

Mr. Trienens: Well, I am asking a witness about the arithmetic of what he has done. He said generally, yes. I ask him in specific example terms if that isn't the same arithmetic and all of a sudden I can't ask a hypothetical question of an expert witness. I don't quite understand that limitation on the right of cross-examination.

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STATEMENT BY COUNSEL FOR SOUTHERN LINES (January 13, 1960):

[R-845]

Mr. Trienens: Mr. Examiner, we have a request to make. It is a request that bears upon this subject we have just been through with the Witness, based upon the facts developed of record.

I would like to make a short statement of our request on the record. I would like, so there be no ambiguity about it, so that the Eastern Lines can give it careful consideration, I would like to put it in their hands in writing and I will state briefly what our request is.

I am not asking this be an exhibit or offered in the record. I want everyone to see what it is and then we will state it briefly on the record.

Our request is that the Northern Lines join with us in developing a breakdown of the data now shown for boxcars as a group in the form shown on Exhibit R-9, that the data be developed, on, I believe, a much shorter period than would be required for all of the data covered by the 7-day request, and that further, to reduce the burden of developing this necessary data, that three days in the very near future be used as a test.

Now, specifically we are asking that the form that appears at the third page of this exhibit be filled out using the same definition of days and trains and miles as was used in the Commission's order,

[R-846]

the 7-day study order, instructions of which are Exhibit R-9. The data requested is very simple. The data requested would be for each train—which is the same basis upon which the 7-day study was made—for each train the carriers simply list the boxcars by initial and number and, for each, fill out the loaded, empty and total car-miles which would be required in any event for a 7-day study.

It is a very abbreviated 7-day study, the sole purpose of which is to carry one step further the refinement that the Cost Section has already made from its 1948 study in breaking apart flatcars and breaking apart hopper cars.

We are asking that the boxcar traffic, which is extremely important in this particular case, be simply broken.

Now, I ask the Eastern Lines to give this request their careful and cooperative consideration in developing these facts. I call the Eastern Roads' attention to page 2 which is a calculation based upon annual reports and which they can check our data, check it, themselves, quite readily.

It shows very vividly, we believe, the necessity for this separation, because it shows that instead of the very much higher empty return ratio which has been applied in the Heywood exhibits based on the total Official and Southern Region figures, that in reality, there are two types of carriers within the north. There are those that

[R-847]

have the heavy proportion of this vehicle parts traffic that has these special device cars that are going back and forth 100 percent empty, and that those five roads which you will recognize as Detroit roads, and just looking at the geography, you will notice those roads would have a greater proportion of this traffic, those roads have an empty return ration that very greatly increases the Official Territory average.

Now, there is a strong correlation as you will see, in the high empty return ratios to the percent that the vehicle parts boxcar traffic is to their total boxcar traffic.

Now, when you exclude those heavy vehicle parts roads as we have done, just to illustrate the necessity for the request we are making, you find that the differences between the other Official roads and the Southern Region roads in the boxcar empty return ratio is nil, despite the fact that the remaining Eastern Roads still have a somewhat higher proportion of this vehicle parts traffic to their total.

Now, we believe that we could put on a witness who would testify that as a matter of judgment, these figures show that the empty return ratio is not higher in the north, but is 32 percent in both territories for general purpose and 100 for special purpose.

Now, in order that this not be left a matter of opinion and expert judgment, just as the present separation of hopper cars between

[R-848]

covered and open top is not left to judgment and opinion, we think in this case, which involves so much boxcar traffic, and where a comparison, not the level, but the comparison of the Official and the Southern carriers, that these figures illustrate, just as a knowledge of the auto parts movement and its concentration in Detroit would indicate, that a separation of this character is critical in a case involving comparisons.

Now, rather than leave this as a matter of opinion or leave at loose ends in any way, we ask the Northern Lines to join with us in carrying the Cost Section's refinement of these empty return ratios one step further and to do to boxes what they have done to hopper and flatcars already in their 1956 study as compared with their '48 study.

Now, if the data is completed and furnished by each road for the several days indicated—and we would be glad to accommodate the days to the convenience of the roads—just a listing of the boxcar initials and number together with the loaded and empty characterization and the miles as called for by the 7-day study form, will permit the calculation with reference to the equipment register, of how many of the loaded and empty boxcar miles are general purpose and how many are auto parts of a particular type and how many are of any other character of boxcar.

We feel that that information will be clearly in the same direction as the breakdowns that have already been made in these empty

[R-849]

return ratios. And we feel that the relationships shown by the system figures we have analyzed indicate the necessity of it.

Now, it is only to get a precise measure of it, so there won't be any controversy as to the direction and magnitudes of the numbers to be used that we ask this. We think that that will provide the figures and will end that controversy in a proceeding where there is no question of principle, it is just carrying out the refinement that the Cost Section made, one step further.

We ask that the East give it their careful consideration and join with us in this endeavor.

Exam. Barber: All right. Go ahead.

Mr. Trienens: Yes.

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TESTIMONY OF SOUTHERN LINES' WITNESS HARRY A. DE BUTTS

Cross-Examination (August 2, 1960):

[R-919]

Q. [By Mr. Kaier] I would like to show you a photostat of an article from the July, 1957 issue of that magazine. I wonder if you would recall seeing that?

A. Yes.

Q. Does that show a picture of you pointing to a chart which is headed "Annual Maturities of Long-Term Debt"?

A. Right.

Q. Now, down in the bottom, the last line on page 5, does it say that you and your operating vice president, Mr. Brosnan, Mr. King, your traffic vice president, Mr. Davison, your vice president for finance, and Mr. Curry, your comptroller, sketched a clear and detailed picture of the Railway's prospects, accomplishments, and problems?

A. Yes.

Q. Does it then say, "Some of the highlights:", and then a colon after that?

A. Right.

Q. What is the first fact that is listed under the "highlights"? Will you please read that first paragraph?

A. "Reduction of debt and fixed charges places Southern in a position to devote more of its earnings to building up the railway.

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[R-945]

Q. Aren't they put into your annual report of the Southern Railway every year?

A. I am not an accountant, and I'm sure I wouldn't be familiar with the detail of our accounts.

Q. Would you regard that as a detail?

A. Well, the way it is put in, yes.

Q. The passenger service deficit, isn't that one of the most important problems of the railroads today?

A. Yes, that is a fact.

Q. You wouldn't characterize it as a detail, a fact which—

A. As to how the figures are put in, yes.

Q. Not how, but what they are.

A. You asked me if they were not put in that way.

Q. You do have in the south, don't you, Mr. DeButts, local and branch line passenger trains which represent a serious drain against the railroad's other revenues?

A. Yes.

However, I might add that the Southern has found the state commissions in the south very reasonable. We have our differences, it is true, but we haven't bothered the Interstate Commerce Commission with any of our passenger problems, and we have been successful in taking off a number of local passenger trains. We have a number remaining that are losing lots of money, but we made considerable headway.

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MOTIONS MADE BY COUNSEL FOR THE SOUTHERN LINES

(August 5, 1960):

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[R-1486]

Mr. Smith: Mr. Examiner, the southern roads want to make and record three motions to the Examiners. Would this be an appropriate time to get that record?

Exam. Barber: I presume so, go ahead.

Mr. Smith: In view of the primary importance of the cost evidence which I think is acknowledged now by both sides, either explicitly or tacitly, we ask the Examiners, by motion, to request the Com-

[R-1487]

mission's cost finding section to review and analyze the cost evidence in the case when the record is completed, and to report their conclusions of their review and study and analysis to the Examiners.

We request and move separately and independently that that report to the cost section on its analysis of the cost evidence be made a part of the record and subject to examination by any counsel and to rebuttal.

Third, we wish to offer here and now at this time the underlying calculations or memoranda corollary to the cost exhibits which have been offered in the case.

We wish to have those a part of the record for the use of all parties, and indeed they have been already handed to the eastern roads.

We want them in the record likewise for the purpose of permitting the cost section to have the same data, information, and record which the parties here have.

I should like to state those motions in somewhat different sequence, in more precise and formal language, and we have done that quite briefly on a page and a half, and I will be

glad to have the reporter copy that in the record rather than read it, although I can do the latter if it is desired.

Exam. Barber: Has Mr. Kaier a copy?

Mr. Smith: Yes.

(The document referred to follows:)

[R-1488]

The cost evidence of the Southern lines has been presented through the Verified Statements of Messrs. Cole, Wooden, Seigler, Burroughs and Remington. The Verified Statements explain the bases used in applying Rail Form A so as to reflect the costs of the Official-Southern traffic here at issue and also show the results of applying those costs to our traffic study.

I.

The preparation of the cost evidence necessarily involves certain drawoff sheets and subsidiary calculations which trace the development of the cost results set forth in the Verified Statements. Copies of such papers, commonly referred to as "working papers" have been made and furnished to the Northern lines in the weeks preceding this hearing. In order that the Commission, the Examiners and the Cost Finding Section may also have ready access to these papers, the Southern lines herewith offer as an exhibit a set of the basic cost study working papers. The exhibit has been handed to the reporter and a copy is herewith furnished to the Examiners.

II.

In view of the primacy of the cost issues in this proceeding, the Southern lines move and request that the Cost Finding Section of the Commission's Bureau of Accounts, Cost Finding and valuation fully consider the cost evidence in this record and present for the use of the Examiners and the Commission in review, analysis, advice and report in respect to this evidence.

III.

[R-1489]

The Southern lines move and request that such advice, report, consultation, or any other communication of the Commission's Cost Finding Section, or of any other technical staff of the Commission, relating to, or expressing opinions with respect to, any of the issues in this proceeding be made part of the record, subject to cross-examination and rebuttal.

The making of such consultation or communication a matter of record as requested is an essential part of the full and fair hearing required by law, as provided in Section 15 of the Interstate Commerce Act, Sections 5 and 7 of the Administrative Procedure Act and the Fifth Amendment of the Constitution.

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TESTIMONY OF SOUTHERN LINES' WITNESS DR. W. EDWARD DEMING

Cross-Examination (September 27, 1960):

[R-1563]

Q. [By Mr. Clark] When you began selecting for the purposes of study, and this selection was for the cars that were actually to be studied, was it not—

A. Yes, sir.

Q. When you began selecting for that purpose, you didn't have the "X" and "Y" breakdown at all, did you?

A. No, I didn't, sir.

Q. That didn't come along until after you had selected six batches?

A. I am sure that you are right, sir.

Q. And what caused this changing of sample design in terms of the volume in midstream, so to speak, Dr. Deming?

A. Mr. Remington informed me that the study of switching was moving a bit slow, and he would like to cut down

the size of the sample. I was prepared, and in my book I state that it is a good idea to have such a sample prepared in two batches, and to do the first batch, the first portion, I call it, to study it, to see the information in it, to proceed into the second portion if you require it.

I thereupon had already provided myself with random numbers, and the procedure by which to break this sample of one in six into two portions, which I called "X" and "Y".

Q. That is small "x" and small "y", isn't it, to be distinguished from the large "Y" on the work papers which you indicated yard switching?

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[R-1569]

A. Sir, you don't need to conjecture what it would be, because I have the results of the 83 cars here, and the result of the entire sample of 83 cars is 25.0 minutes per car.

Q. You mean there has been made switching studies on the entire 83 cars?

A. This was handed to me, sir, for the results of the 83 cars. You do not need to conjecture, I know what it is.

Mr. Trienens: What is the standard error?

The Witness: 1.7.

Mr. Trienens: Thank you.

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[R-1580]

[Q.] . . . is it your professional opinion that this Commission can make reliable estimates or predictions based on this 41 car sample out of Witness Wolford's projected estimate of 906,554 cars?

A. The 900,000 cars has nothing to do with the usability, utility, or reliability of the 41 cars. The sampling variation of the 41 cars I have computed as 2.2 minutes for standard error. That is merely a mathematical consequence. I care not how many cars were in the original pile.

Q. Does the fact that the Witness Seigler's Appendix A shows a variation in minutes based upon his studies from somewhat over three minutes per car to 72 indicate the desirability of a greater sample or larger sample before making any predictions?

A. Well, sir, I know what the standard error is of the 41, and I don't need to conjecture. I could compute from the distribution of the 41 cars the size sample required to get a standard error of 2.2 by the method I prescribed, and it would turn out to be 41 cars.

Q. You are satisfied, then, Doctor, that the 41 cars are representative of official Southern traffic?

A. Sir. I do not use the word "representative", and I do not know what it means. I can tell you the standard error of the 41 cars, 2.2 minutes, and that has a certain interpretation.

• • •

(Recross Examination September 27, 1960):

[R-1602]

Exam. Barber: Well, I will permit Mr. Deming to make a statement as to what that 83 cars indicated to him, and we will let it go at that.

Mr. Kaier: Pardon me, sir, may I have what you said?

Exam. Barber: what is from his investigation or sampling study on the 83 cars was indicated as compared with the 41. Is that what you wanted to know?

Mr. Smith: Yes, I want him to have an opportunity to finish his answer that the second study of 42 cars showed a slightly smaller sample error, but one that was close enough to vindicate the integrity of the standard error that he got from the first 41.

Exam. Barber: Do you agree with that?

The Witness: Yes, I do.

Exam. Barber: All right, that is all.

Is there anything else? How about the exhibits?

Mr. Clark: I offer Exhibits E-14, 15 and 16, Mr. Examiner.

Exam. Barber: They are received.

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TESTIMONY OF SOUTHERN LINES' WITNESS JOHN P. COLE

Cross-Examination (September 28, 1960):

[R-1694]

Mr. Trienens: And general purpose cars. That goes to both of them, does it not?

The Witness: Yes.

Mr. Clark: When you say "both", you mean both territories?

Mr. Trienens: You say applicable to this traffic. One hundred per cent is applicable to this traffic if it is auto parts in special device cars, and thirty per cent if it is in general purpose cars.

Mr. Clark: Yes, I understand that. Thank you, Mr. Trienens, we are talking about the thirty per cent developed for general purpose cars.

Q. (By Mr. Clark) Now, I had difficulty—although I follow you fairly well, Mr. Cole—I had difficulty in making the jump with you from 32.53 per cent to 30 per cent for the north. You make that giant stride at page 32.

A. Well, you have to take into consideration that the north is more highly industrialized than the south, and there are many commodities other than vehicle parts that move in special device cars, or assigned service, and I don't think it is unreasonable to assume that those cars would further reduce the eastern or northern percentage by two and a half percentage points.

Q. Well, you have used the word "assume". Then I take it this is an assumption. You haven't made any calculation that would lead you from 32½ to 30 per cent?

[R-1695]

A. It is an assumption.

Q. And the basis of that assumption is that there is assigned box car service within the north, on traffic moving within the north?

A. To a greater extent than in the south.

Q. And you have made an investigation of that in both territories?

A. I have not.

Q. So that is another assumption?

A. Yes.

Q. Will you turn to page 36, please, Mr. Cole? You have a table at the top of page 36, and I simply wanted to clarify what it shows.

Do I understand the table at the top of page 36 is based upon southern lines traffic study?

A. Yes.

Q. And the miles shown by car ownership are the miles both north and south?

A. Yes.

[R-1699]

Q. The figure that you are referring to is a figure for the refrigerator cars of one car owning company for all categories of traffic made by that car owning company, isn't that right?

A. That is correct, but you will have to bear in mind that in all of the northern lines cost studies presented by Mr. Halen, the assumption is that the north-south traffic has the same empty ratio as all of the traffic which includes the transcontinental traffic, and the traffic entirely local to Official Territory.

Q. And so you have counted that with your own assumption that the empty return ratio is more properly the ratio made by Fruit Growers Express cars alone on these same categories of all inclusive traffic?

A. Because the Fruit Growers Express cars predominate in the north-south traffic.

Q. Well, if they predominate in north-south traffic, Mr. Cole, how did they make 17 or 18 million miles on the Great Northern?

A. I don't say that they didn't make 17 or 18 million miles on the Great Northern, but those 17 or 18 million miles are not included in the calculation of the 75 per cent.

Q. Yes, but the other end of those miles is included, isn't it, Mr. Cole—the Great Northern didn't terminate those cars. You know that, don't you? They all moved into the east, very largely?

• • •

TESTIMONY OF SOUTHERN LINES' WITNESS M. G. SEIGLER

Direct Examination (September 28, 1960):

[R-1819]

Q. [By Mr. Trienens] And with the devotion of that energy to this project, when was it that you actually completed the switching studies of the 41 points and 41 cars indicated in your Appendix A?

A. During the latter part of the last week in July.

Q. Now, are these the same cars that are covered by an exhibit that has been identified and received as R-16 of Counsel Clark?

A. Yes, sir, they are.

Q. Subsequent to the August 2 hearing, did you develop the data as to the 83 cars covered by Exhibit R-15, also of Counsel Clark?

Mr. Clark: I object.

Mr. Kaier: Objection, Mr. Examiner.

Exam. Barber: Sustained.

Mr. Trienens: Your Honor, at this time I would like to offer in evidence, or ask that there be marked and received, Appendices A and B supplemented to include the 83 cars, and I want to state in that connection, sir, that these 83 cars are the cars covered by Exhibit R-15. They show in detail, car by car, the results of each of the 83 cars covered by Exhibit R-15.

Now, this is a Commission investigation. We have the facts as to each of those cars. We have the witness here that prepared the

[R-1820]

details on them, and we want to offer for the record, so that there will be no conjecture or speculation about the results as to the cars covered by R-15, just exactly all the facts in our possession. We feel that in this Commission investigation it is our obligation to tender to the Commission facts bearing on the handling of this traffic, and that that is particularly so as to a contest that has arisen as to the particular 83.

Now, in addition to forestalling any claim that when the witness was on the stand we did not offer the details as to these 83 cars, in addition to avoiding that problem we feel that the Commission ought to have every fact that we can develop pertaining to this traffic. We feel that we can show, and will offer to prove through this witness the utmost diligence finishing this additional refinement, this additional detail bearing on this traffic.

We can't see the slightest prejudice to the Northern lines by having the facts laid out on the record at this time, and on that basis I would like to ask that there be marked as an exhibit Appendix A and Appendix B, A consisting of three sheets and B consisting of one, that shows the detail as to each of these 83 cars that were drawn in question.

Mr. Kaier: If Your Honor please, there is an obvious prejudice to the Eastern lines in what Mr. Trienens requests, and that prejudice is that it will take the Eastern lines additional time to check this

[R-1821]

additional information that is now tendered, and time to the Eastern lines in this case, if they prevail, means a very large amount of money.

Dates were fixed for the Southern lines to present their evidence, dates which when they were fixed were characterized Your Honor as being a very liberal allotment of time. The evidence should have been in on that date.

Mr. Trienens says they are anxious to give the Commission every fact that they can give them. Certainly they are, if it is going to be at our expense. We therefore object to the offer.

Mr. Trienens: I want it perfectly plain, Your Honor, that we stand on Exhibit 42, on the result, not only the switching result but the testimony of Dr. Deming as to the reliability of the sample.

This additional detail is a slight refinement. It is our interest to block off any claim that when this witness was on the stand we didn't give to the Commission the full facts as to each of these 83 cars.

Now, we think it is desirable information for the record to have, and I also state in connection with the absence of prejudice to the Northern lines that in connection with the 41 cars covered by Statement 42, there was a request of course at the time for the work papers. There was a meeting in the offices of Mr. Seigler with Mr. F. H. Clark as to the working papers. The working papers were made

[R-1822]

available as to those 41 cars, but not to this day, seven weeks after, has anyone asked to see them after they were told they were available.

I can't see it is the slightest prejudice to them. It isn't any different than if they had had it for seven weeks.

Mr. Clark: Mr. Examiner, while our treatment of Southern lines evidence might not accord with the timetable and procedure that Mr. Trienens thinks appropriate, I think we should be permitted to proceed with our examination of the work papers and our examination of the witnesses in the order in which we think is appropriate, and I am prepared to do so now on the basis of the evidence that has been submitted in this proceeding.

Exam. Barber: I believe the benefit to the Commission from the submission of this material would not be as great as the damage that might be done by delay. Whether there would be damage or not, there would be delay according to Mr. Kaier, and I don't think it should be received in evidence.

It is further my understanding that at the close of the August 5 session, that is the August 2 session on August 5, the Southern lines indicated that they had at that time rested.

Mr. Trienens: And we stand on the Verified Statement 42, and the integrity of that result.

Exam. Barber: I think to receive anything more at this time would violate that understanding.

* * *

Cross-Examination (September 28, 1960):

[R-1834]

Q. [By Mr. Clark] You, then, studied other cars, obviously, moving in 1960?

A. We had to.

Q. Yes, and you undertook on the basis of your study of the other cars in 1960 to select cars that you believed had received a movement similar to that given the study cars in 1958 and 1959?

A. That is completely incorrect, Mr. Clark, and let me straighten that out for the record.

Q. Yes, I wish you would.

A. In the switching study we selected no cars. We made a study of the switching that was done with respect to all cars that were switched in any manner whatsoever during the switching study period. No cars were selected.

Q. So at a given point for a given railroad—let's take the first one in your Appendix A, the Southern station shown is Memphis, Tennessee.

You studied all cars at Memphis, Tennessee, on the S&LSF.

A. That factor there was based on a Rail Form S switching cost study made by the Frisco from which we were able to get the necessary minute factors, and thereby save having to make a new switching cost study, or switching cost survey at Memphis.

Q. I believe I selected one of the situations that is not typical of the other stations, isn't that so?

A. That is quite correct.

* * *

[R-1839]

Q. And then you undertook in 1960 to determine the switching minutes attributable to each of the services at the 41 stations in which you were interested?

A. That is correct, on the basis of the studies made in 1960, we could establish minute factors to show what minutes were required to move a car from the point at which it was broken out of a road train to the industry, and back again.

Q. Assuming there were no differences in the operation between 1958, 1959 and 1960?

A. Well, I didn't assume that. I am in no position to assume that, and I don't think anybody else is.

Q. How did you check that?

A. I didn't check it. We made a study and based it on what factors were produced in our 1960 study. How could we produce a factor on the traffic in 1960 to indicate what it actually was in 1958? That is out of all reason. In fact it is impossible.

Q. I don't think we are understanding each other here, Mr. Seigler. When you develop a factor for a particular operation based upon all of the cars moving in 1960, you then assumed that when one of the study cars received that identical service, it might be charged with the same number of minutes, isn't that right?

A. That is right.

• • •

(September 29, 1960):

[R-1886]

Q. Do you mean that in studying one of the sample cars at a particular point, you studied a complete cycle of switching and did not attempt to develop whether or not the particular study car had been terminated or originated?

A. The people that made these studies, Mr. Clark, at the time they were made had no idea whatsoever what industry was involved, in no single instance when I asked for a switch study did I inform the railroad what the study car was, or what industry was involved.

I wanted a switching study which would adhere strictly to the facts, regardless of who they switched.

Q. So that you would have in the pot, so to speak, at this study point, all of the switching service, whether attributable to an originated car or a terminated car.

A. Absolutely. You couldn't get an accurate factor otherwise.

Q. You made no effort, then, to further define the scope of your study so that if a car were terminated at a particular

[R-1887]

plant, a study car were terminated at a particular plant, you made no effort to study terminations at that plant?

A. No, on the contrary, when the switching study was finished, and the summarization was run off, we knew how many minutes to charge against that study car for breaking it out of a train on the yard. We knew how many minutes to charge it in transfer movement up to the study industry. We know how many minutes it took to spot the car. When it was released, if it was released, we knew how many minutes it took to go back and pull the car, how many minutes to transfer it back to the yard, and so forth. Those are factors the switching study develops.

Q. I think perhaps we have been misunderstanding each other. I think what you are telling me, Mr. Seigler, is this, isn't it, that initially in making your study and developing minutes for various operations, you studied all the cars in the terminal.

A. Every single minute of operation of the switch engine on every car it handled.

Q. Then you determined, or you developed in this manner minutes for various operations?

A. That is right.

* * *

TESTIMONY OF SOUTHERN LINES' WITNESS J. J. REMINGTON.

Cross-Examination (September 29, 1960):

* * *

[R-1968]

Q. Is this true, that without discussing the question as to the propriety of your reason, but just assuming your reason for the purpose of the question, the fact is, is it not, in the way in which you apply the costs to the traffic that whatever amount of money is thereby included, we will say for the Chicago or East St. Louis operation for the southern

region roads, that amount would be in their costs for the pricing out of traffic south as distinguished from north, is that not so?

A. Sir, I believe I will have to hear that question.

Q. If you didn't understand that, maybe I can state it more plainly.

A. All right.

Q. As I understand your explanation, the certain monies

[R-1969]

which Mr. Cole or yourself thought ought to be taken from Eastern district allocation of switching and terminal company monies and be placed in the Southern Region, for whatever reasons you or he may have had?

A. Yes, sir.

Q. When you came to apply that to the traffic, as I understand it, you applied—whatever unit costs you applied to north and south of the present gateway primary break points, isn't that right?

A. Yes, sir.

Q. For example, none—

A. In some of the tables.

Q. Well, were there any exceptions to that? Did you make any primary split of divisions, for example, on Chicago in the case of the Illinois Central?

A. I had nothing to do with the divisions.

Q. I mean the application of costs.

A. When I apply costs, I apply—on some of the tables, Illinois Central costs on a movement—

Q. Let's take the regional ones, sir, first. Wouldn't that be simpler?

A. All right. For example, table 6 on page 13.

Q. That is based on Exhibit B, page 3, is it not?

A. Yes, sir.

• • • •

TESTIMONY OF NORTHERN LINES' WITNESS R. C. GILL

Cross-Examination (February 8, 1961):

[R-2297]

Q. [By Mr. Trienens] Yes. What number does it show?
A. $104.
Q. $104 million?
A. $104 million, yes.
Q. Is the routing of outbound iron and steel from steel plants in the north and, by outbound routing, I mean whether by rail or truck determined by whether the railroad or the trucks brought the commodity coal into that steel plant?
A. No.
Q. By whether the railroads, trucks or other means brought the commodity, fluxing steel, into the steel plant?
A. No.
Q. Coke?
A. No.
Q. Iron ore?
A. No.
Q. Any of the commodities listed on page 1?
A. No, the outbound rates on iron and steel are not conditioned on the regular run of rates. They are basically prescribed by the Commission and do not require that.

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TESTIMONY OF NORTHERN LINES' WITNESS F. H. CLARK

(Cross-Examination February 9, 1961):

[R-2355]

Q. [By Mr. Trienens] I would like to have the record clear at the outset as to what the term "assignment" means and I would like to contrast that, if I may, with your general discussion at page 5 about cars designed for General roading.

You will notice at the top of page 5 you are talking about box cars and you say particularly those designed for general loading.

A. Yes, sir.

[R-2356]

Q. You talk about these cars gravitating toward the area of potential demand and so forth.

A. Yes, sir.

Q. Assigned cars have a somewhat different experience, do they not? They do not simply gravitate—they are assigned to go back to a particular plant?

A. They would depend upon conditions. I have known in my experience of assigned cars not gravitating back in volume.

Q. Let us see, we are going to go at some length in your experience and studies as to exceptions from this. But let us describe the physical situation on assigned cars and we will use as an example vehicle parts and we will get to refrigerators. We were furnished as part of our working sheets a list of—a photostat that I gather is a photograph of a series of cards.

A. That is right.

Q. And that is from a card file you maintain of your assigned cars?

A. Assigned and unassigned.

Q. But the card file does show the assignments, if any.

A. Yes, sir, and unassigned.

Q. I will take the first card that happens to be on this photostat. Perhaps you will read it and explain just what that language means.

A. This is car 604-301, Pennsylvania Car 2155, equipped at

[R-2357]

Altoona with 19-Belt DF fittings for loading by Fisher Body Company; Grand Rapids, Michigan 6-4-59 Class No. 3 re-

pairs Fort Wayne shop found stenciled, returned when empty to Pennsylvania Railroad, Grand Rapids, Michigan.

Q. Do you recognize by the 19-belt D.F. Fitting that would probably be an XL Car?

A. I would prefer to check the equipment register on it before.

Q. I thought you would know from the description?

A. No.

Q. We can check at the recess and advise you. This "Return when empty Grand Rapids, Michigan" means that it is assigned to a particular Fisher Body Plant at Grand Rapids?

A. It is assigned to Grand Rapids.

Q. The assignments are to the Parts Plants where the engines or transmissions or the fenders are made.

A. It is assigned to the area in which that particular production plant is located.

Q. As a matter of fact, it is assigned to a particular plant, is it not—one of your cars that on May 13, 1960 the car was transferred from plant 1 Grand Rapids Michigan to plant 2, Grand Rapids, Michigan?

A. It is used by that particular party; that particular firm.

[R-2358]

A. That particular plant?

A. This particular office makes that assignment because ordinarily that car would go to the Fisher Body Company.

Q. Plant No. 1 or 2, Grand Rapids.

A. Right, but the assignment is generally to the location, that does not mean John Smith can not use that car.

Q. But it does mean when that car filled with fenders reaches Atlanta, the Southern Railway cannot load it with textiles going to Texas.

A. Sure, they can if they want to. If they want to abide by the instructions to return it, that is one thing. If they want to load it somewheres else, what is to stop them?

Q. Mr. L. L. Waters of the Southern Railway, who testified in this proceeding, Verified Statement 30, page 16, testified that the assigned cars were returned to origin. Do you question the testimony as to what he does with the cars or do you testify he regularly appropriates them for other loading?

A. It is an unfair question.

Q. It is prompted by your answers.

A. No, Mr. Waters is testifying for himself and I am testifying for myself.

The fact that our exhibits show that those cars are used for

[R-2359]

other than the assignments they are used for shows that they are used for other than auto parts.

Q. We will get to that in just a moment as to what your samples show and do not show in just a moment.

The particular car that I showed you from your assignment records being a D.F. car was physically suitable for the loading of other commodities.

A. It can be, yes.

Q. There are, in fact, other cars assigned to particular vehicle parts plants which are so constructed that only engines or transmissions or axles or some particular part can be set in the racks, is that correct?

A. While they are confined to the auto parts movement, yes.

Q. And while the racks are in the car?

A. Other commodities can fit in the same racks that are not auto parts.

Q. Let us see whether you have any examples of that. Take a typical car and we will talk in the "XAP" class.

This code that we are forced to deal with in connection with these cars. I think it would be convenient for all concerned if we have in the record and have in front us the definitions copied out of the Equipment Register which this

witness has used, and, subject to check as to its being accurately quoted. I would like to have this marked as an exhibit.

[R-2360]

Exam. Barber: Any objection?

Mr. Clark: No objection.

Exam. Barber: R-28, counsel Trienens.

(Exhibit R-28, Counsel Trienens is marked for identification.)

Q. (By Mr. Trienens) Refer to the top one on the list you gave us, Mr. Clark.

Mr. Clark: While we are doing that, may I ask a question?

You called five so-called—you called them special service—previously you called them "special device cars." My recollection is that there are six.

Mr. Trienens: There is an "XT". We copied only the Code in those exhibits.

There are no "XT"s involved in this exhibit.

I am trying to define the ones in which—the ones which this witness is using as an example.

Mr. Clark: I was just inquiring.

Mr. Kaier: I take it, Mr. Trienens, this is designed simply to show definitions and you are not trying to establish facts by this exhibit.

Mr. Trienens: No, the only fact I am trying to establish, that this is a true copy of definitions in the equipment register.

Mr. Clark: On that basis, it is marked.

The Witness: Apparently that is an XM car.

[R-2361]

Q. (By Mr. Trienens) XML.

A. No, sir. XM. It does not appear in the notes.

Q. Yes, it does. Mr. Remington will point out where it appears in the notes.

Exam. Barber: Off the record.

(Discussion was off the record.)

The Witness: I stand corrected. It is an XML car.

Q. By it we mean the first car in your photostat of cards from which you read previously.

Exam. Barber: XML.

Q. (By Mr. Trienens) I believe you stated that is SML car. And that it is such a car as can load other commodities, canned goods or what-have you. I want to turn now to the "XAP" cars and I will ask you to give us a physical description of what these racks are. Take any part you want, engines or transmission or anything. Give us a physical description of what the racks are, what they weigh and how they are used.

A. They can be fitted—the cars are equipped with belts along the sides of the cars to which cross bars can be fitted to form compartments, either varying in size of what they are to be used for, whether for motors or transmissions or fenders or whatever it may be.

Q. As a matter of fact, the particular fittings and racks are in many cases especially destined to handle a particular 1960 model Ford rancher station wagon fender.

[R-2362]

A. That is right, and when they change their model, they have to vary the car.

Q. How do they go about that when they come out with a 1961 Ford rancher station wagon with a different fender, what do you do with the car? Do you send it some place to be refitted?

A. It can be adjusted to change the alignment of the cross bars—well, your belts are permanent.

Q. Don't the roads actually have to take a volume of these cars and contract with some outside firm such as Evans to have them refitted to handle the next year's model?

A. I do not know whether our road has done that. It is a motor power department responsibility.

Q. So you do not know if or how that is done on the Pennsylvania?

A. No, I do not.

Q. In some instance these racks which are installed in these cars that are then designated "XAP" do not the racks themselves weigh something like ten tons in some instances?

A. I cannot answer that question.

Q. I will give you a waybill out of your work sheets and ask you whether the particular car that is coming back from one of the assembly plants to one of the parts plants does not have a figure of 21,000 pounds with the designation "free".

[R-2363]

A. Well, that also includes crating and so forth.

Approximately it would average out what you state there.

Q. Could you tell us why it is, what the economics of the situation are that calls for the assignment and special fitting of these cars. I will suggest this to you, Mr. Clark, and you suggest if we are right about it, that in the economical operation of these vehicle assembly plants at Linden or Atlanta or, indeed, in California, it would be a serious additional cost if the manufacturer of the parts had to do sufficient packing of the engines and fenders to ship them in ordinary box cars and that the assembly plant can use the fenders or engines with a substantially lesser transportation cost if they can get racks in these cars especially designed for the engines or fenders and thus eliminate packaging cost in transit, is that the reason for the operation?

A. Yes.

Q. And because of that saving in the intransit packaging the railroads at shipper request do furnish these special rack cars and tailor the fittings to meet the needs of the automobile industry?

A. That is a fair statement.

Q. Now, once a car is shipped, I will take a car that is specially fitted for these Ford fenders of a particular year, when that car

[R-2364]

is shipped from Detroit, to an automobile assembly plant either in New Jersey or Georgia, what is the normal practice of the line terminating the car, is it to return it to the plant to which it is assigned or is it to make it available for general loading?

A. The normal practice would be to return it, itself.

Q. We made a request that the northern lines cooperate with us in developing car-miles loaded and empty for special device cars during three study periods and you address yourself to that statement, do you not?

A. Yes, sir.

Q. I want to be first perfectly clear that you understand what the request was. We asked you to list, did we not, for every train moving during the study days, the box cars by car initial and number?

A. Yes, sir.

Q. And for each such box car to indicate whether it was loaded or empty?

A. Yes, sir.

Q. And to give the miles?

A. Right.

Q. You give me two such—two reasons for opposing such a request and I understand it is your opinion that such a study if made, would not be of any value.

A. For this particular purpose.

Yes.

[R-2365]

Q. What purpose did you have in mind.

A. The purpose as stated in my exhibit here or verified statement for use in offsetting the cars as prepared by the northern carriers.

Q. You are not suggesting then that it would not be useful for the purpose of showing the facts as to the loaded and empty carmiles of box cars other than special device cars?

A. I say that you can not compute empty car-mile ratio to loaded car-miles of this category that is mentioned here of auto parts, for example.

Q. Let us go back.

A. I do not care whether it is related to this particular case or not.

Q. I am trying to relate it to this particular request as to which you are devoting your attention at pages 3 and 4 of your verified statement. Would the request, if complied with, have had value in showing the empty return ratio for box cars other than special device cars?

A. No, it would not have value for this case—

Q. I am not asking but this—I do not mean this case. Would this have value as showing accurately, assuming this sample period, the loaded and empty car-miles of box cars other than special device cars?

A. It would simply indicate the ordinary box cars per-
[R-2366]
centage relationship was so and so, whatever it turned out to be.

Q. And on the other side, it would also permit you to calculate as to the special device cars what the empty return relationship was?

A. Assuming you used the classifications that the Commission says are special device cars, it would give you a figure practically of an empty. As to its practical use, that is something else.

Q. And, as a matter of fact, if you had complied with the request, we could have calculated separate for XAP and XML the empty returns.

A. It could be done.

Q. And it would give you an empty return ratio.

A. Of those classes.

Q. Of those classes. Your criticism is two-fold. First, you say it is error to assume an inevitable relationship between a commodity and a type of equipment, is that your first reason?

A. Yes.

Q. What assumption as to inevitable relationship between commodity class and equipment was reflected in the request that you are discussing?

A. The fact that you are trying to determine the relationship of empty to loaded for, say, auto parts, you are tying up auto

[R-2367]

parts with a class of car in which it is used, whereas in other words, you are trying it up with the special device car whereas, in actual fact, auto parts are moved in general purpose cars.

Q. Where in this request—I am talking about the request that was made upon you in January and I am not talking about the reasons as to why we expect the answers to be different. I am talking about the request as such. Where, in the request is there any assumption or any determination whatever as to what commodity moves in what vehicle?

A. The ultimate objective is what I have stated.

You are bound to get into general-purpose cars auto parts movements.

Q. I am not talking about ultimate movements. I know why it would hurt you. I know the purpose. It is all in the record. We know this issue amounts to two or three million dollars between us—the proper treatment of empty return ratio. We know that. We also have our ideas what causes the difference. I am not asking you about this at all.

I am asking you only about the request. The request asked you to list by car initial and number the loaded or empty miles and I am asking you why, in complying with that request, you had to make any assumption whatever as to any relationship inevitable or otherwise between commodity and class of equipment.

[R-2368]

A. I would say it follows the natural consequences. Your request also gave examples in which you showed a class of cars, XM's and XAP's. The conclusion would be the XAP would be an auto part car and the other three XM's would be general. That is not a fact. The XM cars also handle auto parts.

Q. To that extent this separation would not have made a complete allocation as between the assigned or unassigned cars but I am not asking you about that. Let me pause for a moment.

What are you referring to in these notes?

Are you referring to the notes at the bottom of the example in the request?

A. Yes, on page 4.

Q. I think maybe, if we get into the detail of format, since this request as such, is pretty thoroughly described but not physically in the record, we might as well get it all before us.

You have a copy of it?

A. Yes, sir.

Mr. Clark: I think the request is in the pleadings almost ad nauseam. I have seen it twice. The request speaks for itself.

Mr. Sutherland: You really hate it, don't you?

Mr. Trienens: It is a matter of no moment since the record

[R-2369]

does explain the matters, since the witness has now discussed what the note shows.

A. In answer to your question, yes.

Q. (By Mr. Trienens) Let me describe—our request specifically—here is what we asked you to do.

We asked you to take your wheel report as you do in the 7-day study, and we asked you to list from each report the box cars by initial and number.

A. Yes.

Q. We asked you to indicate whether loaded or empty.

A. Right.

Q. We asked you to indicate mileage?

A. Right.

Q. We suggested in the note under the heading "Equipment Register Shows" that the equipment register does contain definitions of these cars, that is true?

A. Yes.

Q. It is also true that the term generally is a shortcut description of an XM car which is referred to in the equipment register as a house car for general service.

A. It is a general purpose car.

Q. Now, as I gather, you are questioning the cryptic designation of an XAP car as an auto parts automotive loading?

A. No, in answering your question about what this would

[R-2370]

show in the segregation between general-purpose and auto parts cars.

Q. All right. Excuse me if I misunderstand. Let us see what it would show. If you had complied, we would have had the basis for calculating for northern roads and Southern roads the loaded and empty car-miles for cars other than special device cars.

A. You would have that as one item, yes.

Q. And you would have the basis for calculating as a second item the loaded and empty car-miles for all these groups of five or six special-device cars.

A. Right.

Q. You would have the further opportunity of developing a more refined breakdown showing the loaded and empty car-miles for XAP cars.

A. For what?

Q. XAP cars?

A. Yes.

Q. Are you saying that such a series of empty ratios broken down from the average box car and presumably in the north if the 7-day study was representative and if this study was also representative you would have had an aggregate for all box cars of about 40 per cent; you would have gotten separate numbers, separate rates for the special service and the special service cars.

[R-2371]

A. You are asking me whether we would have gotten that.

Q. That would have been the product of this request.

A. We could have gotten it, yes.

Q. In obtaining those separate figures for loaded and empty car-miles, would it have been necessary to make any prior assumptions as to commodity?

A. Certainly.

Q. Why?

A. When this request is made, it is made for a definite purpose. We have to consider the object when we consider whether we want to comply. You have not considered how you are going to allocate the empty miles when you come to how you are going to use those cars.

Q. Let me ask you this as a matter of principle. Let us forget box cars completely for a moment and let us assume that you have a lump figure from the 7-day study as we once had of hopper cars, all hopper cars, one loaded, one empty and one empty return ratio for all hopper cars. We then make a refinement. We take all the hopper cars and we break them into two pieces, open and closed hopper, and we develop separate loaded, separate empty and separate ratio for open tops and we go through the same process for the closed top and we get two empty return ratios; what assumption had to be made in doing that as to any inevitable relationship between any commodity in any car.

[R-2372]

A. The fact that an open top car could not be used for cement.

A. Why did I have to assume that. Tell me why, in going through the wheel reports in getting the separate numbers I had to assume anything as to commodity?

A. Outside of this case you would not but when you make a decision in this case as to whether you are going to do a job, you have to take into consideration the ultimate use we made of the figures.

Q. Let me see if I understand what you mean by the ultimate use. You are starting with an aggregate figure of some 40 per cent as the box car empty return ratio in the north. As a matter of mechanics that can be separated into two or more pieces by the making of a more refined study separating box general and box special device. That might have produced two figures exactly the same both 40 per cent and shown they were both average cars.

It might have produced a figure of 98 per cent for a special device and 92 per cent for the general. You knew enough about the facts as to the Detroit roads and as to the proportion of vehicle parts to total traffic in the north and south to know that the ultimate objective of the Southern lines was to show just that, did you not?

Mr. Kaier: We knew it from your testimony.

Q. (By Mr. Trienens) The request, from the request before—

[R-2373]

Mr. Kaier: We knew it from the testimony.

Mr. Trienens: You knew the request before you had the testimony.

Mr. Clark: There was quite a bit of testimony in your request.

Q. (By Mr. Trienens) So you knew it. The counsel knew it so I guess the witness knew it.

A. I guess I have average intelligence.

Q. I do not doubt that.

Mr. Clark: May I ask a question that will perhaps assist you?

Mr. Trienens: Maybe it will.

Mr. Clark: All these questions directed to the possibility of making computations, do I understand you are directing your attention merely to the computation based on the class of car without any idea of the commodity that is in these cars?

Mr. Trienens: Yes, sir. That is exactly what our request was.

Mr. Clark: Thank you. I think that will clarify it.

Q. (By Mr. Trienens) I distinguished between what our request was and what the other facts were that shed some light on how the result would appear. I want to turn to your second separate reason for rejecting the study which we suggested. As I gather your

[R-2374]

second reason is that we wanted to do it promptly.

A. Wanted to do what?

Q. Wanted to do it promptly.

Mr. Kaier: I do not think he said that.

Mr. Trienens: Meaning that we wanted to make a study proposed in January of 1960 and we wanted it to start almost immediately and to take place in January and February of 1960.

You said that that would have been an unrepresentative period. Is that your second reason?

The Witness: Unrepresentative in this particular year, yes.

Q. (By Mr. Trienens) That is because we would have picked up a period in which the movement of auto parts was heavy.

A. Yes, unusually heavy for that particular section of the year. They should have moved them in the fall of the previous year.

Q. So, if we were trying to determine the empty return ratio of special device equipment and to use that in pricing out traffic in the official Southern traffic study which moved in such special device equipment, this would be an unrepresentative period because a great deal of the traffic we were interested in was moving?

A. Right.

[R-2375]

Mr. Kaier: His testimony says also because of the short span.

The second reason was the matter of the steel strike. Page 4.

Q. (By Mr. Trienens) Did you make any counter proposal as to the other days to be studied?

A. No, sir.

• • •

TESTIMONY OF NORTHERN LINES' WITNESS F. F. COATES

Direct Examination (February 9, 1961):

[R-2456]

Q. (By Mr. Eshelman) Mr. Coates, you are the maker of Verified Statements 76 and 77?

A. Yes, I am.

Q. Is it a fact that the supplemental information furnished by Witness Remington in connection with Verified Statements Numbers 40 or 40-A, contain figures which in order to be reflected in the statement would have to be substituted for certain figures you have used at page one?

A. Yes, sir, that is correct.

Q. Would you state what those figures are as taken from the Remington supplemental statement?

A. On the first page—

Q. I refer to Verified Statement 76.

A. On the first page in the second paragraph, the fifth line, I have a figure of $4,554,454 and from the supplement to Mr. Remington's Verified Statement that figure would become $5,592,936.

In the next line, the first word "increases" would become "reduces." And the figure at the end of the sentence of $4,203 becomes

[R-2457]

$215,266.

Mr. Trienens: It doesn't change the proportion?

The Witness: It does not change the proportion.

Q. (By Mr. Eshelman) In order that those figures may be properly documented should you add something at the end of that paragraph?

A. These substitutions have been made for the same exhibit and page numbers reflected at the end of that paragraph in the supplement to Verified Statements 40 and 40-A.

* * *

[R-2491]

TESTIMONY OF NORTHERN LINES' WITNESS F. F. COATES

(Cross Examination, February 10, 1960):

Q. (By Mr. Trienens) . . . Now, at page 19, again in connection with these miles-per car factors, you state in your only full paragraph on that page that the car miles per serviceable car day are 49.3 for Southern Region and 39.4 for Official Territory.

A. Yes, sir.

Q. You are speaking in that same paragraph of the car miles in North-South traffic, and I want the record to be perfectly clear that these figures, these numbers that you

have used are for the system experience or the Southern region roads and for the system experience for the Official Territory roads as to all traffic in all types of cars and without separation of line haul and terminal.

[R-2492]

A. Yes, sir.

Q. In respect to the north-south traffic, have you made any analysis, either of data available to you as an officer of the Pennsylvania Railroad or on data available to all of us in the operating testimony in this case, as to the car miles per car day of typical movements of official southern traffic on your railroad.

A. I do not know of any—well, the answer is no. I do not know where I might have gotten that information.

Q. Let me ask you specifically: Did you examine Nan Carrow's testimony that official southern cars in what we would regard as a typical train movement would go from Huron to Cincinnati in one day. You did not look at this material?

A. No, sir. I have used these averages as representing just what they say, that they represent the total effort expended in doing business in each of the territories on all traffic, and I think that that is a fairly substantial guide to the situation that exists.

Q. I understand your theory. Immediately following on page 19 you have stated Mr. Heywood's Exhibit F-2 in which he is showing compensation for employees, and you have asked that our attention be called particularly to the maintenance of equipment employes. Are you suggesting there that you have a higher rate of pay for maintenance of equipment employees north than on the Southern

[R-2493]

roads?

A. Yes, particularly with the classes that we can associate most closely with maintenance.

Q. I think we find having had our attention called to that particular exhibit, that there is approximately a 3 per cent difference in the wage rates; is that your understanding of the magnitude of this differential?

A. I have not computed any percentage on it.

Q. That is on the face of the exhibit. It can be computed from the exhibit that you have called attention to.

A. I might say that I would refer you in that list on page 2 specifically to divisions 57, 64, 70 and 71.

Q. What is the per cent difference in the wage rates?

A. I have not computed the percentage of the difference.

Q. What percent of the car costs that are in rail Form A consists of wages for the maintenance of equipment?

A. I do not know.

Q. Depreciation expense would not be affected at all by this, would it?

A. No, sir.

Q. Nor return on investment?

A. No.

Q. As to car repairs themselves, do you know from your analysis of the general committees' work in costs the proper portion of Account 314 what is wages—I should say a portion of Account

[R-2494]

314—associated with repair of cars as contrasted with used cars?

A. No, sir, I do not.

Q. Can you tell us—

A. What committee are you referring to when you say the general committee?

Q. The committee that fixes the per diem rates.

A. Oh.

Q. You know they get out the questionnaires regularly to the roads to supply information for use in fixing per diem rates.

A. I will see if I do have that.

Q. Would you know the proportion of the repair expenses that is attributable to material costs, such as steel, car wheels, such materials as that?

A. No, sir.

Q. Not knowing—excuse me.

A. I would like to say, Mr. Trienens, that this suggestion that has been made by the Southern lines that we use a national average, I feel that among other criticisms, it does, in fact, ignore differences which exist as among the several territories and that is why I have used these illustrations.

Q. Exactly. To contrast that point you recognize that what Mr. Cole and Mr. Remington are trying to do is to take a statistical result which produces 41 per cent higher costs in the north, and know-

[R-2495]

ing from the physical facts of car movement that that cannot be so as to any one, or any hundred, or any thousand box cars in Official Southern traffic, they are trying to explain what those differences are that account for the 41 per cent and whether they have anything in the world to do with the relative cost of that traffic.

Now, my question, since you have called our attention to differences in wage rates and you do not know the extent of the difference and you do not know the proportion of the total car costs that are influenced by such minor differences, I am asking you whether you take—whether you have taken any look whatever at the other costs that would be reflected in Account 314, namely, the prices of steel, car wheels and other materials that appear in that account?

A. I have not made no analysis of Account 314 for any item which may be included in it.

Q. In view of your effort to show that there are, indeed territorial differences of as little as 3 per cent or weighted for the total car costs as little as 1 per cent, that there are truly territorial differences as contrasted with the 41 per cent we are dealing with, why is it you select wages without

any examination of the other factor as to which there may be differences, namely, prices?

A. The reason I select wages is because the figures were

[R-2496]

available to me.

Q. Through Witness Heywood?

A. Yes, sir.

Q. In other words, he is the man who decided we would look at wages instead of prices?

A. I do not know whether that was his decision at all.

Q. It was not yours?

A. Had I been able to develop differences for prices, I would have done so. I was not able to.

Q. Don't you have access to the returns regularly supplied to the AAR that show the different price levels paid for car wheels and steel and other components of the Account 314?

A. I do not know that I do.

Q. But you made no such inquiry?

A. No, sir.

• • •

[R-2509]

Q. And is it conceivable that the use of such a national factor of 16 per cent might wipe out territorial differences in the percentage that user costs are of the total account No. 314?

A. I do not know. The National factor is a percentage that is related to the total repairs.

Q. Is it conceivable that there are territorial differences in the percentage that user costs are to total repairs?

A. When you are speaking of user costs, you are talking about the 16 per cent?

Q. Yes, sir. Whatever is covered by the 16 per cent.

A. That could conceivably be given by territories. I do not know of any studies that show what that figure is by territories, but we have been using that 16 per cent for a long

time in our rail form A and also the Commission uses the same figure in its applications.

I would assume that is because there is nothing better to use.

Q. I would like to ask you whether you are familiar with the Commission's orders in what you will probably recognize as the per diem litigation; are you familiar with the Commission's orders and

[R-2510]

questionnaires calling upon the individual railroads to develop facts, both as to costs and as to operating data, respecting car costs?

A. I would say I know that there are orders on that subject. I am not familiar with them.

Q. You are sufficiently familiar, are you, with them to know whether the Pennsylvania, as an example, has already completed and filed with this Commission a statement for at least one-quarter of the year showing the per cent that user car costs are of Account 314?

A. I do not know. I do not even know whether it has been filed.

Q. I take it that an assembly of data is being handled in some other department of the Pennsylvania Railroad, or is it being handled in your accounting department, if you know?

A. I really do not know. I believe that the forms connected with that study are being sent to the Commission by our department. Who is actually compiling the information, I do not have any idea.

But those forms have not been made available to me.

Q. Let me ask you this, Mr. Coates, since apparently you are not familiar with the detail of these Commission orders.

In analyzing the problem of car costs and in analyzing the proportion of user costs to Account 314 and in analyzing the problems of unfair use or improper connection, so-called

non-reimbursable costs, and in analyzing utilization by type of car, indeed, in analyz-

[R-2511]

ing all of factors covered by your verified statement 76, did you make any inquiry whatever into the data showing the facts as to each of these items currently being developed and filed with this Commission by your railroad?

A. No, I did not because I did not have any way to use it. The information that I have studied has been the Commission Form A applications which have been used in this case by territories and also the work papers that Mr. Remington submitted.

Q. I take it in your search for the facts as to these particular items that, while you did not make such an inquiry at this time, you do welcome the thought that in the near future, both as to your road and as to all roads, we will no longer have to make an assumption like a national figure of 16 per cent on a system figure of car utilization by type of car but rather that we will have the facts as developed by this rather detailed questionnaire.

Mr. Eshelman: Is that a legitimate question? Does he welcome this? Is that related to something he has done?

Mr. Trienens: I am sorry if that welcome affects the sense of the question.

I will ask him whether he has an opinion comparable to Mr. Clark's yesterday, that such an inquiry, such a development of the facts by such a questionnaire would have no useful value.

[R-2512]

The Witness: When all of the facts would become available to me or to any one else and when I could understand those facts and know that I was able to use them properly, they could be of value. But they have not been available to me; they will not be available for a long time—in fact you

said that the figure that was furnished so far was one-quarter of the year or represents one quarter of the year, I forget how it was phrased. But that information still would have only been available to me for one quarter for the Pennsylvania Railroad and not for all railroads.

Q. (By Mr. Trienens) It is because we are in this interim period awaiting the results of that study that we are compelled in this proceeding to deal with such matters as the national factor of 16 per cent that you used in the Form A's?

A. Because we do not have anything better, yes, sir.

Mr. Trienens: That is all the questions that I have.

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TESTIMONY OF NORTHERN LINES' WITNESS J. L. HEYWOOD

Cross-Examination (February 10, 1961):

[R-2629]

Q. (By Mr. Trienens) In your Section F, in which you say you are responding to Mr. Luckett's Exhibit 3, pages 2 and 3, Luckett was showing certain data by territory in terms of index numbers.

Now, you show certain absolute figures for the year 1956. You do not show absolute figures for each of the items covered by Mr. Luckett, do you?

A. No, here we show purely wages and taxes.

Q. So you have not shown any thing as to prices, and you have added the subject of taxes, is that correct?

A. That is correct.

I think it says here that there was nothing stated in the thing absolute in figures in the form of wages and taxes, so that is why I put that in here.

Mr. Kaier: He wasn't just responding to Mr. Luckett.

The Witness: No, I was after two or three other fellows.

Q. (By Mr. Trienens) Would it be in accordance with your understanding of these Form A's that you have applied for the year 1956 that the aggregate costs for the official railroads in dollars would be about three and a half billion dollars?

A. Now, wait a minute until I understand what you are get-

[R-2630]

ting to.

Do you mean when I made application of the unit cost to any particular traffic study?

Q. No, not unit cost at all, just the aggregate dollar cost that entered into your official territory rail Form.

In other words, you got total dollars of expenses, total dollars of return.

A. You mean what I started with or wound up with?

Q. Started with.

A. I don't know what the total was offhand.

Do you mean Eastern territory or official?

Q. Official territory was the one I suggested as three and a half billion.

A. I don't know what—to expedite this, I will agree with your figure on it with the privilege of checking it.

Mr. Kaier: If it is not right, it will have to be written in. If it is important to have it in —

The Witness: If you want me to check it, I—

Q. (By Mr. Trienens) Within a couple of hundred thousand dollars. I will take anything between three and four million dollars.

A. So will we.

You were putting the east and the south together, I assume?

Q. No, official territory.

[R-2631]

A. I can't check that figure. I can give you the east, but I can't give you the official.

Q. Qive me the east.

A. About $276,601,203.

Q. That would be two and three-quarter million dollars?

A. I beg your pardon, $2,723,987,283.

Q. Thank you.

You tell us in Section F—I will shift to eastern district because this is the only figure we have in front of us—you tell us if in the year 1956 these eastern district lines had the same wage levels as did the southern lines, their total wages would have been $52 million less.

Are you saying then that if you had paid your presidents at the same wage rates as the southern roads paid their presidents, and similarly through the professional employees, which is the most important item, and similarly through the other employees, which also enter into this—

Mr. Kaier: That is all employees?

Mr. Trienens: That is right.

Q. (By Mr. Trienens) —that the cost would have been 2 percent lower in the north, is that correct?

A. Well, I didn't work the percent out. That is about what it looks like.

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ORDER

INTERSTATE COMMERCE COMMISSION

No. 29885

OFFICIAL-SOUTHERN DIVISIONS

IN THE MATTER OF DIVISIONS OF JOINT RATES
BETWEEN OFFICIAL AND SOUTHERN TERRITORIES

No. 29799

THE AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, ET AL.

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.

PRESENT: DONALD P. MCPHERSON, Commissioner, to whom the matter which is the subject of this order has been referred for action thereon.

Upon consideration of the record in the above-entitled proceedings, of a petition dated February 15, 1960, filed by the respondent Southern Railroads requesting that certain data lodged with the Bureau of Transport Economics and Statistics, relating to car counts for the year 1956, as set forth in said petition, be made available to the parties, and of a letter dated March 8, 1960, addressed to the Examiners, whereby the Northern Railroads consent to Southern Lines having access to said data:

It is ordered, That the Bureau of Transport Economics and Statistics be, and it is hereby, directed to make available to the parties the data requested in said petition.

Dated at Washington, D. C., this 18th day of March A. D., 1960,

By the Commission, Commissioner McPherson.

HAROLD D. MCCOY,

Secretary.

(SEAL)

BRIEF ON BEHALF OF SOUTHERN TERRITORY RAILROADS

[65]

The Southern lines' proportion of fresh meat refrigerator cars to total refrigerator cars (7.1%) is much less than that of the Official lines (19.1%); only about 2 percent of the total refrigerator cars moving between Official territory and the South are fresh meat refrigerator cars (V.S. 39, pp. 34-35). To the extent the meat traffic moves between Official and Southern territories, the costs of both Official and Southern lines should reflect the high empty return movement experienced thereon. But the Southern lines should not be called upon to share in the costs of the empty return movement of refrigerator cars handling traffic in which the Southern lines do not participate (V.S. 39, p. 35).

The proper cost approach is to apply separately the almost 100 percent empty return on fresh meat traffic* which moves between Official territory and Southern Region, and to develop appropriate empty return ratios for the movement of traffic in general purpose refrigerator cars between Official and Southern territories which are not influenced by the extremely high empty return ratios for refrigerator cars handling specialized commodities.

A further problem raised by the use of the seven-day study of refrigerator car empty return ratios is the unreliability of a seven-day study in measuring the seasonal and variable refrigerator car movement. The 1956-1957 study produced an average figure of 76% for refrigerator cars on Southern lines, this being an average of ratios varying from 96% to 66% on individual days (V.S. 39, p. 38). The 76%

* Similarly, 100% should be applied to bananas originating on the Illinois Central at New Orleans which also move in special assigned cars owned or leased by the Illinois Central experiencing 100 percent empty return movement (V.S. 33, p. 20).

average for seven-days is to be contrasted with the 84% average for Southern lines based on actual records of all refrigerator loaded and empty miles on Southern lines for the full year 1956 (V.S. 39, p. 38 and Appx. H). There is no possible justification for using the results of a study based on 7/365ths of a year when, as in the case of refrigerator cars, records are available showing the loaded and empty miles for the full year.

The problem of obtaining appropriate and reliable empty return ratios for application to Official-Southern traffic moving in refrigerator cars was met in the Southern lines' study by using 100% for such

[66]

cars handling the specialized movement of meat and IC banana traffic as appeared in the traffic study, and applying for the balance of the refrigerator cars the empty return ratios based on the records for the car ownerships that handled the other Official-Southern refrigerator car traffic. The bulk of this traffic moves in Fruit Growers Express cars, as the Northern lines' operating witness conceded (Tr. R 464), because the Southern lines are obligated to load FGE cars to the extent available before using other ownerships (V.S. 28, p. 50 and Ex. M; V.S. 29, p. 30). The loaded and empty car miles of FGE cars on Official lines and Southern lines were made available by the FGE Company (V.S. 39, p. 36 and Appx. F). These data, together with the empty and loaded mileages experienced by the other car ownerships important to the handling of Official-Southern traffic on Southern lines, were weighted together to produce the empty return ratio for the refrigerator cars actually handling Official-Southern traffic (V.S. 39, p. 37). For the Northern lines, FGE empty return ratios were used; data showing the empty return ratios for the less important car ownerships were not available and the Northern lines did not produce such data from their records, presumably be-

cause the empty return ratios for such cars were lower than the empty return ratio for FGE cars.*

In their rebuttal evidence, the Northern lines did not question in any respect the refrigerator car empty return ratios applied in the Southern lines' cost study. The cost principles and the availability of reliable data from the records maintained for refrigerator car owners are thus conceded by the Northern lines, as they must be in light of the use by those lines of the same approach in other cases before the Commission. This is illustrated by Witness Heywood's cost study in Docket 32356, *Fresh Meats—Midwest to East*, described as follows in the Commission's report (313 I.C.C. 345, 366):

> "Line-haul costs computed by respondents [Witness Heywood] were based on through train movements at territorial average weight of through freight trains, with an empty-return ratio of 98 percent for the refrigerator cars. This ratio was obtained from a special study of the car-mile records of 10 large meat packers, owners of the refrigerator cars."

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[70]

a. The Territorial Average Car Costs Which Commingle All the Costs of the Car Fleets Owned by Each Territorial Group Are Improper Because the Consists of the Car Fleets of Each Territory Are Vastly Different from the Cars Carrying Official-Southern Traffic.

One basic reason why an application of Rail Form A by territories produces the higher car unit costs in the North than in the South and why a territorial application of Rail Form A produces results which are inappropriate for use

* Data available for an earlier year indicated that for the second most important car ownership in which Official-Southern refrigerator car traffic moves, Western Fruit Express, the empty return ratio on Offical lines was substantially below the FGE ratio used in the Southern lines' cost study (V.S. 39, p. 39).

in this proceeding is that such an application is not to the cars in which North-South traffic moves but to the conglomerate mixture of all types of cars owned by the carriers assigned to each territory, many of which are not used to any appreciable degree in the handling of North-South traffic (V.S. 39, p. 44).

Over 81 percent of the railroad owned cars, i.e., other than refrigerator or tank cars, carrying the Official-Southern traffic are box cars, whereas only 0.9 percent of the cars are open hopper cars (V.S. 39, pp. 43-44). On the other hand, the total Official territory car fleet is made up of over 40 percent open hopper cars and less than 37 percent

[71]

box cars (V.S. 39, p. 45). Thus, an application of Rail Form A produces average costs for car fleets in both Official territory and Southern territory which have consists vastly different from the consist of the cars used to transport the Official-Southern traffic here involved, moving in the identical car both North and South of the territorial gateways.

If each class of car moved the same number of miles per year, and involved the same total amount of repairs, in each territory, the differences in the car fleets would be of little significance in an application of Rail Form A. However, differences by types of cars do exist. One significant difference as between types of cars is their degree of utilization, as shown in the following table (V.S. 39, p. 46):

Car Type	Car Miles Per Year United States Average
Box	19,635
Gondola	9,503
Hopper, Open	11,827
Hopper, Covered	13,816
Stock	16,953
Flat	18,996

As shown, open top cars rank lowest in utilization of railroad owned cars. The utilization of such cars is especially low in the Eastern District. The Pennsylvania's Chief of Transportation made this plain in his testimony before the

Commission in another proceeding (V.S. 37, Appx. D, Sec. H, p. 25):

> "Here is demonstrated statistically that, notwithstanding the greater proportionate ownership of coal (hopper) cars than any other class of car on the Pennsylvania Railroad, the number of shipments originated per year per coal car owned by and available to the Pennsylvania Railroad is considerably less than the number of shipments originating per year per car of any other class of car."

The reasons for this very low utilization of open hoppers on Eastern District roads were fully explained by the Pennsylvania's witness (V.S. 37, Appx. D, Sec. H, pp. 24-31). Such differences in utilization have an important effect on the unit costs per car and car-mile for the different types of cars, and the system average cost for all types of

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cars reflects the utilization of the average car, not the box cars primarily handling the Official-Southern traffic.*

Whatever differences do exist as between the utilization of different classes of equipment, the record does not indicate that any such differences exist in respect to Official-Southern traffic herein involved.** The Official territory

* The effect of differences in utilization on car costs may be illustrated using the car repair costs furnished by Witness Symes. With a repair cost of about $1 per day for both hopper and box cars (Tr. R 213), the repair cost per car and car-mile for box cars would be approximately half of the cost per car and car-mile for hopper cars if, as has been shown, box cars run about twice as many miles per day as hopper cars.

** The only utilization figures shown by Witness Coates not only commingled all types of cars but also covered both line-haul and terminal services, and thus had no bearing on either the line haul or the terminal service performed in handling Official-Southern traffic (V.S. 76, p. 19; Tr. R-2491-92). Witness Coates' further use of the term "utilization" is in an entirely different and misleading sense that does not measure car-miles per day at all (V.S. 76, p. 20; Tr. R 2496-2504).

carriers handle this traffic over long distances in fast through trains (V.S. 8, Exs. H and M). These trains compare with the fast through trains of the Southern carriers (V.S. 28, pp. 26-28; V.S. 29, pp. 9-13; V.S. 30, p. 8). Thus, whatever differences in utilization are created by fast through trains, such utilization affects the movement of Official-Southern traffic in both territories.

Rail Form A separates car repair costs between mileage and time for all cars on a national 70-30 basis and car return and depreciation between mileage and time for all cars on a national 45-55 basis. In the engineering analysis underlying these factors, the same percentage separations were applied to the comparable portions of each type of car, without regard to any differences in utilization as between the types of cars (Tr. R 2504-07). Having been developed in this manner, the separation factors used in Rail Form A can validly be applied only on a national basis unless adjusted to reflect differences in utilization as between types of cars, as was done in the Southern lines' cost study (V.S. 40, Ex. C, pp. 13-19).

Another significant difference in the car fleets is that the age of Official Territory cars in 1956 was considerably greater than that of the Southern territory cars. This is shown by the following table (V.S. 39, p. 47):

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	Percent Owned Cars in Excess of 25 Years Old	
	Open Hopper Cars	All Freight Cars
Eastern Division	48.60	41.71
Official Territory	40.04	38.52
Southern Region	27.68	29.74

Particularly significant is the fact that 94 percent of the Pennsylvania Railroad's open hopper cars in 1956 were in excess of 25 years old (V.S. 39, p. 47). Unquestionably, the repair costs on the older open hopper cars in Official territory are contributing heavily to the car costs in that terri-

tory.* However, since open hopper cars are of negligible importance in the movement of the Official-Southern traffic herein, the high repair costs on these cars should not be permitted to influence the relative car costs for application to Official-Southern traffic.

Witness Coates states that the average ages of the cars have no meaning because many of the cars have been rebuilt since their original purchase and therefore "the repair costs incurred in connection with these alleged old cars are not as great as Mr. Cole would lead us to believe" (V.S. 76, p. 9). Witness Coates, as has been typical of Official carriers' presentation in this entire proceeding, submitted no statistics concerning the cars which had been rebuilt by the Pennsylvania or by the Official lines as a group. The witness excuses his failure to furnish such evidence by saying that "Unfortunately, statistics are not avail-

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able to show this information" (V.S. 76, p. 10). Certainly information is available showing the number of cars re-

* Witness DeButts testified that it "is a well known fact that the cost of car repairs increases with the age of the cars" and that the average age of the Pennsylvania's open hopper cars is nearly three times the average age of the Southern Railway's open hoppers (V.S. 14, p. 9).

The effect of age of equipment on car repair costs was emphasized by the Commission in its 61st Annual Report (1947), pp. 4-5:

> "We are concerned about the increasing age of railroad freight cars. The average age of such cars, other than cars owned by private car lines, was about 18.95 years at the end of 1939; at the end of 1946 it had reached about 20.72 years. Cars over 25 years of age increased in this period from about 400,000 to about 548,000 and from 24.5 to 31.4 percent of all cars owned. * * * Use of this older equipment results in higher maintenance and operating costs and less efficient adaptation of cars to shippers' needs than would be possible with newer equipment. Shippers are called upon to pay the bill caused by this over-age equipment. We feel that in this respect the railroads are falling below the full measure of their common-carrier responsibility, but that the rate increases they have received may make it possible to correct this situation in large part, provided material for rehabilitation and new construction is made available."

built, and the failure to show even that meager information must be interpreted to mean that the number of cars rebuilt has not materially changed the situation.*

Witness Coates attempts to meet the argument that differences in utilization by type of car justify the use of the national box car figures by showing that the national average proportion of box cars does not approach the proportion of box cars handling the Official-Southern traffic and he concludes therefrom that it would thus be improper to use the national average car costs (V.S. 76, pp. 7-8). The use of U.S. average car costs eliminates the distorting influences of differing car fleets in each territory. However, the Southern lines' study did not, as Witness Coates suggests, apply a U.S. cost averaging all types of cars to Official-Southern traffic without separation by type of car. Instead, the study separated the car costs and thus produced U.S. car costs by type of car consistent with the use of U.S. tare weights by type of car. This resulted in the use, for a box car moving between Southern and Official territories, of a box car unit cost and a box car tare weight that remained the same as the traffic moved from origin to destination in the same car. The use of national car costs by type of car takes into consideration the utilization of each type of car. The fact that the national car fleet is not made of 81 percent box cars does not bear upon the use of national average *box* car costs.

A Rail Form A application to the carriers in the North, which develops the same car costs for all the cars of those

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* Witness Coates showed that Pocahontas Region car-mile costs are lower than Eastern District in spite of its heavy ownership of open hopper cars (V.S. 76, p. 10), and concluded therefrom that hopper cars do not cause the high Eastern District car costs. This is no answer to the point that the unusually high age and low utilization of Eastern District hopper cars cause the high average expenses, since the average age of Pocahontas hopper cars is substantially less than Eastern District hopper cars and their utilization is greater (V.S. 39, p. 47; V.S. 76, p. 20). The per diem credit position of the Pocahontas Region also explains the relatively low level of car costs on Pocahontas lines as discussed at page 76, footnote, *infra*.

carriers irespective of consist, utilization, or age, reflects to a substantial extent the expenses incurred for the handling of open hopper cars within Official Territory. It is improper to apply such costs to Official-Southern traffic, less than one percent of which moves in open hopper cars (V.S. 39, p. 44). Car costs for application to the Official-Southern

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traffic should reflect the same consist of cars North and South and should further reflect the fact that the Official-Southern traffic moves predominantly in box cars.

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For Official Teritory, for example, the dollar figure for car costs is $422,786,401. The line-haul portion of the total cost is $292,806,480, which is related to 9,956,671,001 car-miles run by all cars irrespective of ownership on Official Territory railroads. Of these car-miles entering into the divisor, it is not possible to determine how many were contributed by home cars. However, we do know from the traffic study that, on the Official-Southern traffic, only 12 percent of the car-miles are made by home cars on home line (V.S. 39, p. 55). To develop the car cost per mile for Official Territory cars would require the use as a divisor of the miles made by those cars while on and off home lines and eliminating the use as part of the total miles in the divisor miles made, for example, by a Union Pacific car while on the Pennsylvania Railroad.

Since the costs per car-mile of repair, depreciation and return on a national basis are made up of the miles creating those costs, the numerator and denominator are on the same basis. The use of national average car costs is necessary to avoid the improper influences that territorial averages impute to Official and Southern Territories.

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d. U. S. Car Costs, Separated by Type of Car, Are Proper for Application to Official-Southern Traffic.

The use of car costs on a national basis eliminates the foregoing distortions resulting from the use of territorial average car costs. In using national car costs, the Southern lines made the further refinement of separating the costs by type of car. This separation is important because different type cars have different utilizations and thus affect the proportion of car repairs and depreciation which are as-

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signed on the basis of mileage and time. (V.S. 40, Ex. C, p. 17).*

In explaining the use of U. S. tare weights,** the Cost Finding Section stated (V.S. 39, p. 56):

> "In the development of costs for the various types of cars the same tare weights were used for all territories. This procedure was followed as cars are not restricted to use in any territory but are used interchangeably for movements in all areas."

Witness Heywood also used national average tare weights by type of car (V.S. 3, p. 12). Quite obviously a car does not change its tare weight upon crossing the territorial boundary and just as obviously the car cost on such a car does not change upon crossing the same territorial boundary. Clearly, the Cost Finding Section's change to a national

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* This meets the criticism in Ex Parte No. 223 (Sub No. 1), *Minimum Charges per Car*, ... I.C.C. .... (decided April 24, 1961), of the use of "an average cost for the typical car rather than separate costs by car types" (sheet 7). It is the Rail Form A unadjusted average car costs that commingle all types of railroad owned cars and thus fail to "separate costs by car types."

** Prior to 1955, applications of Rail Form A by territories used different tare weights in each territory for each type car. This meant a different tare weight was used on a particular car for each of the several groups of roads (V.S. 39, p. 56).

average tare weight for each type of car was proper, and likewise the use of national average car cost by type of car is proper in this proceeding.

The approach of the Official carriers in their rebuttal of the Southern carrier's use of national average car costs by type of car, instead of a territorial average car cost, is illuminating. The following colloquy typifies their approach (Tr. R 2460):

> "Q. I want to understand the position you take, Mr. Coates, and I gather you would recommend the use of the car-mile costs based on the unadjusted rail form "A" and I refer you to the figures at the middle of page 15 [of V.S. 76]. Those are the costs you would use?
>
> A. [By Mr. Coates] It is the purpose of my statement to say that I certainly would not use the U.S. average car cost.
>
> Q. What would you use?
>
> A. I have not undertaken to say that I would specifically use Eastern District or Official Territory. I tried to confine my comparisons to the bases that were used by Mr. Cole and Mr. Remington."

[83]

Nowhere does Witness Coates offer any reasons why territorial average car costs, that become 46 percent higher where a car crosses the territorial border, may rationally be applied to Official-Southern traffic.*

The only reason given for use of territorial average car costs was summarized by Witness Coates on cross-examination (Tr. R 2490-91):

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* Witness Coates refers to a difference of 3% in maintenance of equipment wage rates (V.S. 76, pp. 19-20, referring to V.S. 80, Ex. F-2), but does not mention the offsetting prices of maintenance material (Tr. R 2494-96).

"Q. I am asking you why, in developing a figure of miles per car for the cars that incur those costs [depreciation and return], why you would exclude unserviceable cars.

A. Well, they are costs that are incurred by the railroads, and the only way that the railroads can recover these costs is on the basis of the traffic that it handles in the cars that are serviceable for one thing. Well, that is all I can think of now.

Q. This factor of miles—mileage, including unserviceable cars was used by Mr. Remington to separate the U.S. car costs as between the different types of cars, was it not?

A. To separate the car costs between types of cars both as to running and switching costs.

Q. If you are attempting to separate the car costs as between hopper cars and box cars, for example, am I to understand your answer to my question to be that *you want to associate the cost of unserviceable hopper cars with the cost per mile on box cars?*

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The Witness: I think that is a proper way to develop costs when we are trying to price out traffic, whether it be for a division case or a rate case, these are costs that are incurred by these railroads."

This effort to defend territorial average car costs is tantamount to a confession that the car costs used by the Northern lines do not reflect the costs of handling Official-Southern traffic. The use of average costs is not only improper as a matter of principle, but the Northern lines' purported separations of empty return ratios by type of car handling Official-Southern traffic, tare weights by type of car handling Official-Southern traffic and net loads of the

Official-Southern traffic have taken those lines too far down the road toward associating the costs with the traffic here at issue to permit the Northern lines now to defend average

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car costs on the theory that it is proper to average hopper car and box car costs (as discussed at pages 21-22, *supra*).

If railroad cars were restricted to the territory in which the owning railroad was located and all expenses covering repairs, depreciation and return were confined to that territory and were separated as between the types of cars handling particular movements of traffic, justification would exist for using a territorial basis for computing car costs. However, the railroad cars carrying Official-Southern traffic move indiscriminately among the various territories, repairs performed on these cars are charged to the owner on a national basis, the return and depreciation are prorated between time and mileage on a national basis, the tare weight for the car is on a national basis, the car repair costs are prorated between time and mileage on a national basis, the private car line cars are leased on a national mileage basis, and the per diem rate charged or collected by each railroad is on a uniform national basis. The use of national car cost by type of car in the Southern lines' cost study more accurately reflects the costs of repair, depreciation and return of the railroad owned cars carrying Official-Southern traffic, and most certainly is a more accurate reflection of the actual car costs experienced in both Official and Southern territories on Official-Southern traffic than territorial car costs, dominated by types of cars of negligible importance in handling the Official-Southern traffic, and reflecting expenses incurred and repairs performed in other territories, and mileages of cars owned by rail carriers of other territories.

The Commission, in its Per Diem Investigation, I.C.C. Dockets 33145 and 33158, ordered a comprehensive assembly of data for the year 1960 to provide for the accurate

determination of car costs by type of car. In its orders in those proceedings, the Commission has required a separation of car costs by type of car for the year 1960 (the major data are required by orders dated December 18 and 23, 1959). When these data are released by the Commission, further refinement in the separation of car costs by type of car will be possible. The substantial accuracy of the separation used in the Southern lines' cost study is confirmed by the fact that the Northern lines' rebuttal evidence avoided any use of this refined data, separated by type of car in response to the Commission order, showing the facts as to the car costs for box cars on Northern lines. Despite the availability of

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these data, the Northern lines presented a witness in rebuttal who produced no facts of any constructive nature, but criticized any separations of car costs. Witness Coates disclaimed any knowledge of the contents of even the returns to questionnaire prepared by his own department on the Pennsylvania (Tr. R 2509-12). It may safely be assumed that if returns of the Pennsylvania had contained information which would have been favorable to its position in this proceeding such specific data would have been submitted in lieu of general criticism of the entire effort to refine the average car costs for application to Official-Southern traffic.

Accordingly, national car costs, separated by type of car, provide the best evidence of the car costs incurred in handling Official-Southern traffic.

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The Commission has long recognized that the use of the uncorrected freight commodity statistics for the development of the count of cars for Official Territory is erroneous. The data necessary to accomplish

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this correction are regularly collected by the Bureau of Transport Economics and Statistics in order to reconcile the freight commodity statistics and the waybill statistics (V.S. 40, Ex. C, pp. 9-10). By Petition dated February 15, 1960, the Southern lines requested that this data be made available to the parties for the purpose of correcting the car count in the freight commodity statistics, and the request was granted by the Commission's order dated March 18, 1960. Witness Heywood asserts that Witness Remington's correction of car counts relied upon estimates because the data upon which it is based are allegedly incomplete (V.S. 80, Sec. A, p. 5). There is no basis for this assertion since the data regularly furnished by the railroads to the Bureau of Transport Economics and Statistics, in compliance with the request of the Bureau dated August 23, 1948 (Ex. R-11), provides adequate detail for the adjustment reflected in the Southern lines' cost study (V.S. 40, Ex. C, pp. 10-12), and the Northern lines have not produced a single instance in which the data filed by them has been improperly applied in correcting the count of cars in the Southern lines' cost study. Accordingly, the corrections in the count of cars must be reflected in measuring the relative costs of Official-Southern traffic.

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The Northern lines' fully distributed cost applications do not include

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pasenger and less-carload deficits or the return on property devoted to such services (V.S. 3, p. 8; Tr. R 769-70), whereas the Cost Finding Section's applications of fully distributed costs include passenger and less-carload deficits, with an

allowance for a 4 percent return on the property devoted to those services (V.S. 40, p. 12).*

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Accordingly, the Northern lines' study is defective in computing constant costs without consideration of passenger deficits, contrary to the practice of the Cost Finding Section.

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been submitted in lieu of general criticism of the entire effort to refine the average car costs for application to Official-Southern traffic.

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IV.

THE SOUTHERN LINES' COST STUDY SHOULD BE REVISED TO TAKE ACCOUNT OF OVERSTATEMENTS IN THE COSTS OF THE NORTHERN LINES RELATIVE TO THE COSTS OF THE SOUTHERN LINES IN THE HANDLING OF OFFICIAL-SOUTHERN TRAFFIC.

As has been shown, the Southern lines' cost study contains basic adjustments made in accordance with cost principles established by the Cost Finding Section in order that the Rail Form A costs reflect more closely the costs actually incurred in handling the Official-Southern traffic at issue in this proceeding. However, the cost study as such does not reflect other evidence affecting cost of service. The evaluation of these additional factors bearing upon costs establishes that the Southern lines' cost study overstates the costs of the Official lines relative to the cost in the South, for the several reasons to be discussed herein.

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* Less-carload deficits, a relatively minor factor, are subject to the principles applicable to the intercity passenger deficits, hereinafter discussed, in view of the large proportion of costs common to less-carload and carload freight service.

A. The Southern Lines' Cost Study Overstates the Line Haul Costs on Northern Lines.

Analysis of the data relating to train operations presented by Northern lines' Witness Nancarrow indicates that the average factors used in the Southern lines' cost study overstate the costs of handling Official-Southern traffic on Northern lines.

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Since the operations have been changed, traffic to and from Cincinnati is blocked to and from Conway, with a separate block for L&N interchange, for example, and without the intermediate service indicated in the obsolete diagrams presented by Witness Nancarrow (Tr. R 452-53).*

To the extent Witness Nancarrow's schematic diagrams cast any light on the cost of through train operations, they indicate that those through trains in Official Territory which handle Official-Southern traffic in important volume are longer and occasion less intermediate handling than is reflected in the averages underlying both the Northern lines and the Southern lines' cost studies, and thus the Southern lines' cost studies overstate the line haul portion of the Northern lines' costs.

B. Costs of Interchanges Between Northern and Southern Carriers.

The Rail Form A system average costs for the year 1956 improperly attribute to the Official carriers an average cost per interchange handling which is 58 per cent higher than the average cost per interchange handling attributed to the

* A further problem, particularly as to the diagrams of trains to and from the Cincinnati gateway, arises from Witness Nancarrow's designation of Official-Southern loaded cars as excluding coal, but the designation of Official-Southern empties as including all empties destined to interchange with Southern carriers, even though they included a large number of empty L&N hopper cars that had obviously carried coal into Official Territory (Tr. R 423-27).

Southern lines at the same gateways ($4.95 v. $3.14) (V.S. 31, pp. 12-13). The uncontroverted testimony of operating witnesses for the Southern lines clearly establishes that, contrary to the cost relationship imputed in the 1956 Rail Form A system averages, the Northern lines actually perform no more onerous or extensive service than do the Southern lines in interchanging Official-Southern traffic, and that there is no factual justification for the use of different costs per interchange in accomplishing the mutual interchange of Official-Southern traffic at the same gateways. In fact, the Southern lines in several instances perform more burdensome and extensive services in accomplishing the interchange of Official-Southern traffic than those performed by the Northern lines.

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C. The Northern Lines' Costs are Overstated Relative to Southern Lines' Costs As a Result of Differences in the Timing of the Modernization Program in Each Territory.

Present cost levels which reflect different degrees of modernization in the two territories do not provide a proper measure of future cost relationships. The Commission has emphasized the modernization taking place on the various carriers in its report in *Increased Freight Rates, E., W., and S. Territories, 1956,* 300 I.C.C., 633, 685:

> "The record is replete with examples of the construction of modern 'push button' yards, mechanized maintenance and other technological improvements which in the first few years save substantially all of the cost incurred in providing them. The record shows that, by use of machines, track gangs can be very substantially reduced. We expect the railroads to continue the technological advances that many of them are now making. We appreciate that these improvements require the expenditure of funds which many of them

find it difficult to provide. Nevertheless, with opportunities for savings such as are shown on this record, we are not impressed with contentions that funds are not available at prevailing interest rates."

Obviously, the comparison of the costs incurred by carriers which have only begun to modernize and have yet to realize the savings produced by modernization with the costs of carriers which have already realized the operating economies and efficiencies flowing from modern facilities is not indicative of the cost relationships which will prevail when both groups of carriers are modernized in equal degree.

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	North	South
1. Costs as Shown in Southern Lines' Cost Study (V.S. 40A, Ex. J, p. 4, item 6)	$152,807,787	$201,915,582
2. Five Percent of Northern Lines' Costs	7,640,389	—
3. Costs Reflecting the Further Evidence of Record (line 1 — line 2)	145,167,398	201,915,582
4. Percent of Total Cost (line 3 as percent of total)	41.82%	58.18%

As reduced by five percent to reflect all the cost evidence of record, the Northern lines' incur 41.82% of the total cost of handling Official-Southern traffic. Of the reduction of $7,640,389 in the Northern lines' costs, the equalization of gateway interchange alone justifies $1,594,086, or 21%, of the reduction (see page 146, *supra*). With respect to the balance, upon which a precise cost figure cannot be placed, the vast potential savings available to the Northern lines' modernization and elimination of duplicate facilities, together with the other factors discussed herein showing the overstatement of Northern lines' costs relative to Southern lines' costs as shown in the cost study, amply justify the reduction in the Northern lines' costs by at least five percent.

These factors affecting costs must be considered by the Commission in prescribing just, reasonable and equitable divisions for future application to the traffic involved in this proceeding. The Commission may not refuse to give effective consideration to these differences in costs established by the evidence simply because it has not been possible to measure them precisely in dollars and cents.

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(1) Divisions of joint interterritorial rates on coal and coke made from coal were eliminated by common consent of the parties (Tr. R 2022, R 2695-96).

(2) Divisions of joint interterritorial rates on trailer-on-flatcar traffic moving entirely over the lines of the ACL, SAL, FEC, B&O, B&M, NYC, NYNH&H, PRR, Reading, RF&P were excluded from the scope of the reopened proceeding by stipulation of the parties (Tr. R 2700-01).*

(3) Divisions of joint proportional rates on grain and grain products from E. St. Louis, Ill., Louisville, Ky., or Cincinnati, O., to points in Southern territory are not at issue in this proceeding. A separate specific scale of divisions was prescribed on this traffic in the original report to

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* The divisions on all other traffic originally subject to the prescribed divisions on which the Commission vacated its orders to allow the carriers to establish agreed divisions were placed in issue by the Commission's order of general reopening and have not been excluded by agreement of the parties. The so-called vacated order traffic at issue in this reopened proceeding includes (1) liquid soda and soda ash from Saltville, Va. to Kingsport and Port Rayon, Tenn.; (2) peaches and fresh vegetables moving on per car rates to Piers 22, 27, 28 and 29 in New York City; and (3) all trailer-on-flatcar traffic not covered by stipulation of the parties.

The first two categories of traffic represent only 1,209 cars out of an annual movement of 967,554 cars of Official-Southern traffic (V.S. 11, Ex. 1, Tab. A) and their inclusion works against the Southern lines slightly since under the agreed divisions the Southern lines are presently receiveing $7,760 per year more than they would under the present Docket 29885 divisional basis (V.S. 11, p. 9).

reflect the particular transportation characteristics of that traffic, including the characteristic that the "service performed by the northern lines on this traffic is typically that of an intermediate carrier" (287 ICC at 543). No evidence relating to this traffic has been offered in the reopened case.

(4) In its Fourth Supplemental Report (298 ICC at 84), the Commission specifically held that its orders prescribing divisions in Docket 29885 did not apply to traffic between border points and points in Official territory. This traffic was the subject of a separate proceeding (Docket 32055) in which the Commission rejected unadjusted Rail Form A costs and prescribed the Docket 29885 Column 1 scale as the basis of divisions (*Louisville & Nashville R. Co.* v. *Akron, Canton & Youngstown R. Co.*, 309 ICC 491, 509, 511). The Commission's order of November 23, 1959, denied the Northern lines' petition to consoli-

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On the basis of Witness Wallace's statement alone, the Western Trunk Lines now ask that the Commission prescribe divisions on the traffic which had been excluded from the Commission's order effective July 15, 1953. There is no basis of record for such prescription. The Commission refused to prescribe divisions on this traffic in 1953 "Because of doubt whether the record would support findings requiring revised divisions on [this] traffic" (291 ICC at 91). The situation is precisely the same on this reopened record.

The situation has not been changed at all by Witness Wallace's Verified Statement 44. All the Commission knows from Verified Statement 44 is that there is a movement of Official-Southern traffic interchanged directly between Western Trunk Lines and Southern lines. Presumably much of the traffic thus shown is not covered by the Commission-prescribed divisions, but the volume is not shown. Even if it were, the Commission would only know that such traffic

exists, which was assumed when the Commission refused to prescribe divisions on such traffic on November 2, 1953 (291 ICC 90, 91).

Most significantly, Verified Statement 44 does not even make a start at furnishing the Commission information essential to any prescription of divisions:

(1) The record does not even show what the divisions are on the traffic on which the Western Trunk Lines ask the Commission to find unlawful.

(2) The record does not give the slightest indication as to the service performed by the Southern lines or by Western Trunk Lines north and south of the gateways, or over any other point, on the traffic on which the Western Trunk Lines seek a prescription.

The record thus does not contain even the beginning of a basis for finding the present divisions unlawful or for prescribing new divisions. Without even a rudimentary beginning showing the present divisions and relative services, the record obviously contains no evidence as to the vital relationship of relative costs to present divisions. The Western Trunk lines have not undertaken to meet, much less satisfy any of the standards of Section 15(6). Until such standards have been satisfied on the basis of evidence of record, the Commission is without power to prescribe new divisions. *United States* v. *Abilene & So. Ry.*, 265 U.S. 274, 290-291; *Brimstone R. Co.* v. *United States*, 276 U.S. 104, 115.

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B. The Southern Lines' Traffic Study is Based on a Scientific Sample Which Provides Current Reliable Data Covering the Precise Traffic at Issue in These Proceedings.

The Southern lines' traffic study accurately measures the transportation characteristics of the precise traffic against which the Docket 29885 equal factor divisions were pre-

scribed to apply, and against which any prescribed change in those divisions would hereafter apply The Southern lines' traffic study, presented by Witness W. W. Wolford, provides the most current data available with respect to the normal annual movement of Official-Southern traffic and supplies all the traffic data required for the Commission's determination of just, reasonable and equitable divisions.

The utilization of modern data processing equipment and techniques has permitted the Southern lines to develop the most complete information pertaining to the movement of Official-Southern traffic ever presented to the Commission. This information shows the services performed and revenue received by each carrier participating in the movement of the precise traffic at issue. It measures the participation of Class I and Class II railroads, individually and as groups, in each territory, and shows the relative importance of Official-Southern revenues and ton-miles to the railroad groups and individual carriers (V.S. 36, Exs. 4 and 5). The distribution of revenue by mileage blocks north and south of the gateways is shown (V.S. 11, Ex. 2). Other information provided by the Southern lines' traffic study includes the volume and consist of Official-Southern traffic, average hauls, distribution by gateways, states of origin and destination, and similar information (V.S. 11 and V.S. 11A).

The Southern lines' traffic study is based on a scientific sample of interline abstracts (the regularly maintained basic records on which interline revenues are divided) for the constructive year July, 1958 through June, 1959 (V.S. 11, p. 2). The use of a full year assures

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that the sample will contain the proper proportion of every commodity regardless of seasonality and, thus, will provide a reliable measure of the annual movement of Official-Southern traffic. A shorter test period (as shown more fully in relation to the Northern lines' traffic study at pages 191-192, *infra*) is certain to be deficient in its coverage of

seasonal commodities which constitute a large movement of Official-Southern traffic. However, as Witness Butler has admitted (Tr. R 649-50), the random selection of abstracts covering an entire year's traffic, such as the Southern lines used in making their traffic study, forecloses any criticism that the study is not representative of an entire year's traffic.

The next question that arises is whether the test period represents the normal movement of Official-Southern traffic under present conditions. The Southern lines' traffic study provides the most current available data covering the normal annual movement of Official-Southern traffic. The constructive year July 1, 1958 through June 30, 1959 was selected as a representative test year in which the normal movement of Official-Southern traffic was not affected by economic recession or strikes. The latter part of the year 1957 and the first half of 1958 were adversely affected by a severe economic recession. On the other hand, the 116-day steel strike during the latter half of 1959 drastically curtailed industrial production and rail traffic, rendering the last half of 1959 unrepresentative of normal conditions (V.S. 36, pp. 1-2; V.S. 52). Thus, the constructive year July 1, 1958 through June 30, 1959 covered by the Southern lines' traffic study represents the most recent period in which Official-Southern traffic moved under normal conditions.

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C. Deficiencies Impairing the Reliability of the Northern Lines' Traffic Study.

The Northern lines' traffic study cannot be accepted as a reliable measure of the characteristics of Official-Southern traffic because of serious deficiencies in representativeness and coverage. Furthermore, the Northern lines' traffic study does not provide certain data which is necessary to the determination of fair divisions.

1. The Northern Lines' Traffic Study Is Not Representative of the Annual Movement of Official-Southern Traffic.

The Northern lines' traffic study fails to meet the standards of reliability which their own traffic officials established as essential to the acceptability of a study as being representative of the annual movement of Official-Southern traffic. On April 8, 1957, the Traffic Executive Association-Eastern Railroads authorized the preparation of a traffic study for an entire year for presentation in this proceeding (Tr. 629-30), in accordance with the following recommendation of Witness Butler and other representatives of the Northern lines (Tr. R 627-28):

> "It is essential that the Eastern Lines have a reliable traffic study for use in the proposed Official-Southern Territory Divisions case. In previous inter-territorial divisions cases, Eastern Lines have studied all traffic moving in one or more months. This has always raised a question as to whether the selected periods were fairly representative of a year's business. In the pending Transcontinental Divisions case, the Mountain-Pacific Lines used a sampling method based on procedures established by a recognized expert to determine the consist and movement of a year's business. We believe that the sampling method produces a more satisfactory and sustainable result than for a single or several months and that it would be more acceptable to the Commission. In addition, the actual processing of the traffic study by Mr. Butler, after the sample was obtained, would be reduced at least fifty percent, thus, resulting in greater expedition and substantial reduction in expense. Also, valuable experience would be gained for future requirements of this nature."

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The fatal deficiencies in the representativeness and coverage of the Northern lines' traffic study preclude its accept-

ance as a reliable basis for the development of costs and other evidence relating to Official-Southern traffic. On the other hand, the Southern lines' traffic study provides all of the data required for the Commission's determination of fair divisions. The data were developed in accordance with scientific procedures under strict statistical controls which assured their reliability. No substantial criticisms of the reliability of the Southern lines' traffic study were made by the Northern lines * who themselves accepted its reliability by using it as the basis for Witness Heywood's final cost applications (V.S. 80, Ex. J-3, p. 9).

IX.

THE CONSTRUCTION AND APPLICATION OF A BASIS OF DIVISIONS TO PRODUCE A FAIR DISTRIBUTION OF THE OFFICIAL-SOUTHERN REVENUES.

Previous sections of this Brief have dealt with the substantive considerations which govern the distribution of the joint revenue from Official-Southern traffic. Upon the resolution of these issues with appropriate findings, the remaining problem is to translate the findings into divisional scales for application to the traffic. This final section of the Brief deals with the mechanics of constructing and applying divisional scales to accomplish a fair distribution of the joint revenue from Official-Southern traffic.

A. The Divisional Scale Must Reflect Cost Relationships in Order To Produce Fair Divisions on Official-Southern Traffic.

The mechanics of scale construction are important in the present proceedings because of the relatively great difference in the average hauls of the two territories. The Southern lines' traffic study shows that the average haul on

* The sole criticism (V.S. 68, pp. 1-2) was withdrawn by the Northern lines (Tr. R 2103-14).

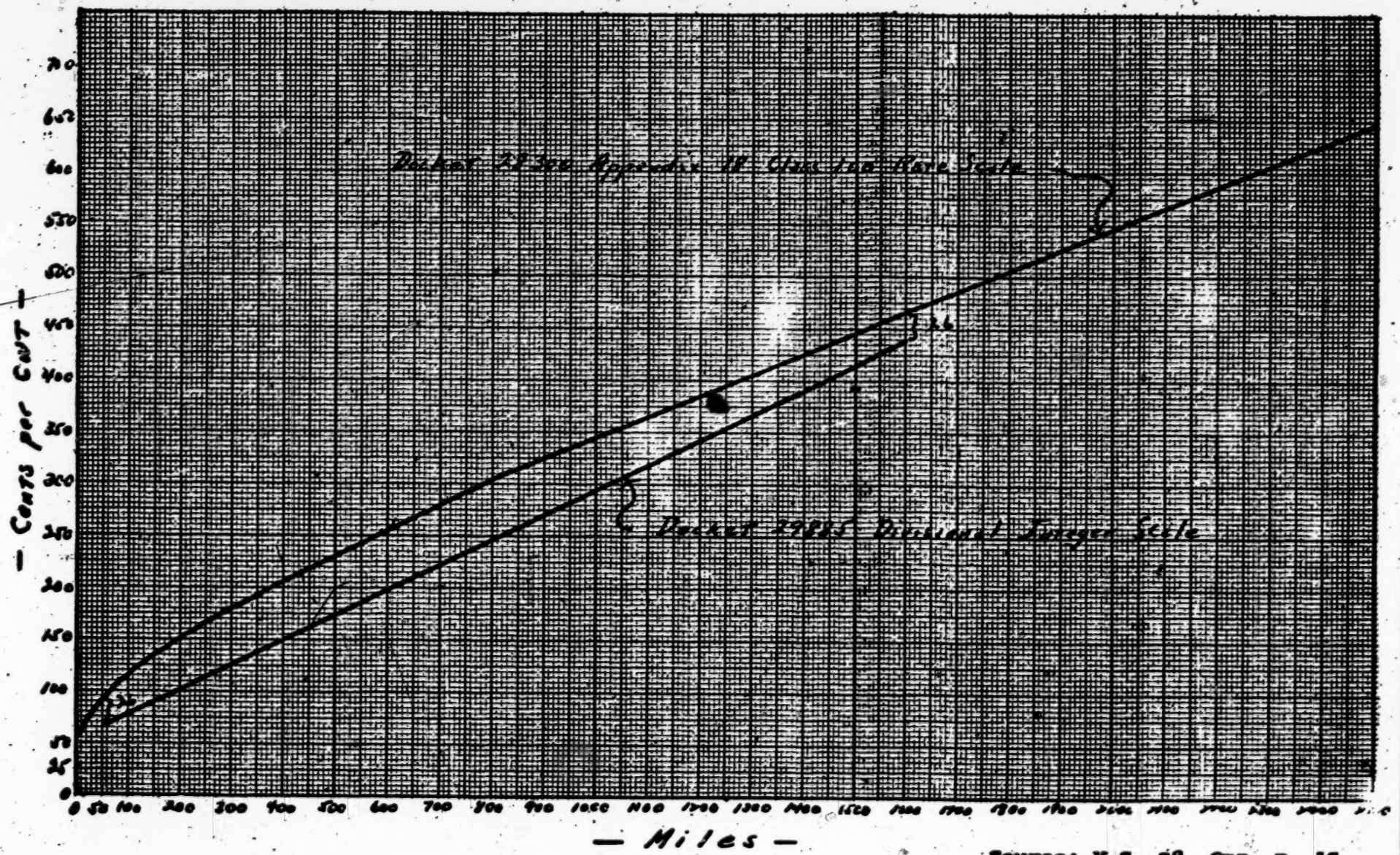
Official-Southern traffic is 511 short-line miles South of the gateways and only 361 short-line miles North of the gateways (V.S. 11, Ex. 1, Tab. A). Whenever such a disparity in lengths of average hauls exists, the magnitude of the integer assigned to the first mileage block determines to a large degree the distribution of the joint revenue between the participating carriers.

For example, the present Docket 29885 divisional scale divides each $100 of joint revenue from a shipment having hauls of 350 miles in the North and 500 miles in the South, the approximate average hauls of Official-Southern traffic, as follows (V.S. 38, p. 2):

Revenue Distribution Resulting from the Application of the Present Docket 29885 Scale (287 I.C.C. at 552, Col. 1)

	Haul	Factors	Percentage Division	Revenue Division
North	350	137	44%	$ 44
South	500	174	56%	$ 56
Total	850	311	100%	$100

Docket 29885 Divisional Integer Scale vs. Docket 28300 Appendix 18 Class 100 Rate Scale



Source: V.S. 38, Opp. p. 15

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2. The Use of Divisional Scales Derived from Rate Scales.

Analysis of the construction of the present Docket 29885 divisional scale shows that it was derived from the Appendix 18 rate scale prescribed in Docket 28300, *Class Rate Investigation, 1939*, 281 I.C.C. 213, 328. The graph on the opposite page shows the mechanics of the construction of the Docket 29885 divisional scale: 26 units representing one terminal handling (half of what the rate would be at zero mileage on the Appendix 18 rate scale for two terminal handlings),* were subtracted from the rates at 50 and 1600 miles, respectively, of the Appendix 18 rate scale. The figures thus derived (65 at 50 miles and 439 at 1,600 miles) became the values for the initial and last mileage blocks, respectively, of the present Docket 29885 divisional scale. The progression of the Docket 29885 scale was determined by drawing a straight line between the value for the initial 50-mile block (65) and the value for the 1,600-mile block (439). Thus, the present Docket 29885 divisional scale strongly reflects the construction of the Appendix 18 rate scale which has a depressed progression, or taper, designed to facilitate the movement of long-haul traffic. This characteristic of a rate scale, which has no bearing whatever upon the relative contribution of the carriers to the joint service, severely and unfairly depresses the divisions of the long-haul carrier group if a rate scale is used as the basis for constructing a divisional scale (V.S. 20, pp. 3-5).

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Correction of the divisional basis to reflect assumed equality of costs as between Official and Southern carriers would not, however, reflect properly and with precision the costs of handling Official-Southern traffic shown by the specific cost evidence in this record because of the relatively higher

* At 10 miles the Appendix 18 class rate is 64 cents, and at 5 miles 58 cents, indicating by the retrogression that at zero miles the rate would be 52 cents, one-half of which is 26 cents (V.S. 38, p. 15).

costs of the Southern lines' service. Accordingly, in the next section, we describe the mechanics of constructing divisional scales based directly on the evidence of record in these reopened proceedings.

C. Divisional Scales Proposed by Southern Lines.

The objective of a divisional scale is to divide the joint revenue in relation to the amount and cost of service which each side has contributed. In *New England Divisions*, 66 ICC 196, 198, the Commission ruled:

> "The thought dominates the law, as it is now framed, that a paramount consideration in determining the equitable share of joint revenue which any carrier shall receive must be the relative amount and cost of the service which it renders, . . ."

The further decisions reaffirming this rule have been reviewed previously (pages 6-9, *supra*). We now discuss the mechanics by which the decisive cost evidence can be translated into divisional scales to be used in dividing the Official-Southern joint revenues.

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PROPOSED FINDINGS*

1. We find that, except as hereinafter provided, the present primary divisions of joint all-rail class and commodity rates (except those on coal and coke made from coal; and certain trailer-on-flat car rates eliminated by stipulation) between official and southern territories, in which northern

* Not applicable to: traffic originating or terminating on the Norfolk Southern, Atlantic and East Carolina or Beaufort and Morehead, as to which a separate brief is being filed by Norfolk Southern; traffic originating or terminating on Atlantic and Danville, as to which a separate presentation has been made by the Atlantic and Danville; nor to traffic originating or terminating on the Georgia and Florida, as to which a separate brief is being filed by the Georgia and Florida.

and southern lines** participate are unjust, unreasonable and inequitable.

2. We find that just, reasonable and equitable primary divisions of the rates referred to in finding 1 (including aggregate or intermediate rates which automatically displace single-factor joint rates) would be determined by use of the prorating factors set forth in Columns 1 and 2 of the Appendix, in computing percentages expressed as integers, the factor for the southern haul being that shown in Column 1 for the short-line distance south of the dividing point, and the factor for the northern haul being that shown in Column 2 for the short-line distance north of the dividing point. The percentages so produced will not be subject to any minimum percentage for either the southern haul or the northern haul.

Provided, that if the joint rate being divided is a factor of a combination rate, and the resulting absence of an origination or termination terminal service is in the southern haul, the prorating factor set forth in Column 1 shall first be reduced by 119 before making percentages; and if the resulting absence of origination or termination terminal service is in the northern haul, the prorating factors set forth in Column 2 shall first be reduced by 104 before making percentages.

3. We find that there is no evidence in the record made in these re-

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opened cases directed to the reasonableness of the divisions heretofore prescribed in the original report, as amended by supplemental reports, to apply against the joint propor-

** Northern lines are as defined in footnote (2) to page 498 of original report herein, 287 ICC 497, as amended to include Toledo Peoria & Western Ry. in Second Supplemental Report, 291 ICC 90, and as hereby further amended to exclude Atlantic and Danville Ry.

Southern lines are as defined in same footnote, as amended by Report on Reargument, 289 ICC 4, to include lines of St. Louis-San Francisco Ry. in Southern Territory, and as hereby further amended to include the line of the Atlantic and Danville Ry. west of Suffolk, Va.

tional or reshipping rates on grain and grain products from E. St. Louis, Ill., Louisville, Ky., or Cincinnati, Ohio to points in southern territory, and we affirm the findings made and resulting divisions prescribed in the original report as amended by supplemental reports.

4. We find that the evidence offered in the hearings in these reopened cases is not sufficient to support conclusions directed to the reasonableness of the existing divisions of the joint rates published between points on southern lines, on the one hand, and points on western lines in official territory, on the other hand, where a northern line does not participate in the movement north of the divisional gateways, and we find the existing divisions not shown to be unreasonable.

5. We affirm our prior finding in Report of the Commission on Reargument, 289 ICC 4, that the dividing points to and from which the prescribed primary divisions shall apply are the existing primary dividing points.

6. We affirm our finding in the original report, 287 ICC 497, that before the divisions herein prescribed are applied, differentials or arbitraries which are included in the joint rates so as to cause them to exceed standard rates, for hauls in either official or southern territory, whether for short or weak lines or otherwise, shall be deducted before prorating and added to the share of the carrier or carriers in the territory in which the differentials apply, provided, however, that in respect of rates on citrus fruit from Florida to official territory which include an arbitrary one percentage point shall be deducted from the northern division and added to the southern division in lieu of specific apportionment of the arbitrary.

7. We affirm our prior finding in the original report, 287 ICC 497, that in determining the primary divisions in whole percents, in disposing of fractions of 1 percent the odd 1 percent should be added to the percentage which contains the larger decimal, or if the percentages contain equal decimals, 1 percent should be added to the smaller percentage.

8. Subject to the foregoing findings, we affirm the conclusions and findings in our original report, as amended by supplemental reports.

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APPENDIX

(Proposed Scales of Prorating Factors)

Distance	Column 1 (South)	Column 2 (North)
50 Miles	155	137
100 "	214	194
150 "	272	251
200 "	330	307
250 "	389	364
300 "	447	421
350 "	505	478
400 "	563	535
450 "	622	591
500 "	680	648
550 "	738	705
600 "	797	762
650 "	855	819
700 "	913	875
750 "	972	932
800 "	1030	989
850 "	1088	1046
900 "	1146	1102
950 "	1205	1159
1000 "	1263	1216
1050 "	1321	1273
1100 "	1380	1330
1150 "	1438	1386
1200 "	1496	1443
1250 "	1555	1500
1300 "	1613	1557
1350 "	1671	1613
1400 "	1730	1670
1450 "	1788	1727
1500 "	1846	1784
1550 "	1904	1841
1600 "	1963	1897

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* * *

d. *Count of Cars.*

Under the heading "Consistent Count of Cars Originated and Terminated," Mr. Remington, in Exhibit C of his Verified Statement No. 40, makes certain adjustments in the count of cars developed from the Freight Commodity Statistics, which are used in computing costs under Rail Form A. These adjustments add a portion of the cars therein reported as interchanged to the number of cars reported as receiving terminal handling. The effect of thus increasing the number of cars counted as terminated and decreasing the number counted as interchanged under Rail Form A, is to assign less switching expense to interchange service, which is a linehaul item, and thereby to reduce linehaul costs. The transfer of switching expense to terminal service, however, does not significantly affect the terminal unit cost per car, because of the accompanying increase in the count of cars given terminal service (V.S. 80, Sec. A, p. 1).

Mr. Remington's Exhibit G, p. 9 shows the effect of this adjustment to be an increase of 0.16% in the Southern lines' share of the total cost of the North-South traffic. His corrected page 9 (which includes the

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missing "A" cars, and to which Eastern lines object) shows the effect of this adjustment to be 0.23% instead of 0.16%. The result of an increase of 0.23% would be to increase Southern lines' share of the cost by almost $1,250,000.

This adjustment relates principally to lake cargo coal, tidewater coal and ex-lake ore. It is based upon the theory that, "For cost purposes a car is originated when lading is placed in a car for outbound movement, and car terminated is a car in which lading is removed and the car is made

empty." (Ex. C, p. 5 to V.S. 40). Thus, his sole test as to whether a shipment is interchanged or is originated or terminated is whether the lading was put into or taken from a car. All other characteristics of the operation would be disregarded. Such a test obviously has no relation to cost. It has no relation to whether a given operation is more like an interchange from the standpoint of the service performed and, hence, of the costs incurred, or whether its transportation characteristics are more nearly those of terminal service.

Mr. Heywood testified (V.S. 80, Section A, p. 2):

> "That the service at tidewater ports on coal, and at the lake ports on coal and ore, is interchange rather than terminal is apparent from the facts with respect to these services. Taking lake cargo coal as an example, the coal trains go to the railroads' lake front yards at the ports. Unlike cars which are to be terminated, the lake cargo coal cars are not then moved to various industries in transfer runs and then switched to effect delivery at the consignee's plant. Rather, they are moved to a dumping machine at the railroads' water front yards and there dumped into the lake vessel. It is obvious that this service is much more akin to a movement to an interchange track than to a transfer and switching movement to effect delivery to a consignee. The fact that the car is not given over to the boat line along with the lading cannot, in itself, mean that the shipment is not interchanged. The interchange of an l.c.l. shipment between railroads is not accompanied by a delivery of the car which carried the shipment; but, nevertheless, it is an interchange. Also, the fact that the interchange is with a boat rather than with a railroad—that the movement is to a dumping machine rather than to an interchange track with another railroad—cannot detract from the essentials of the operation and their significance from a cost standpoint."

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Mr. Heywood also pointed out that in *Lake Cargo Coal Rates, 1925,* 126 I.C.C. 309, 313, the Commission stated, with respect to lake cargo coal rates:

> "The rates thereon apply from the mines to the raised or hump tracks beyond the classification yards at the Lake Erie ports. From these tracks the loaded cars are dropped by gravity to dumping machines at the docks. A separate tariff charge for transferring the coal from cars to vessels is not in issue. The rates on lake-cargo coal are treated as in the nature of proportional rates to the ports for part of a through movement to cross-lake destinations. They include no terminal delivery to consignees at the ports. The local rates on so-called commercial coal to the port cities cover such delivery. For this and other reasons as, for example, concentrated movement at times when commercial coal is not moving heavily, rates on lake-cargo coal always have been lower than the local rates on commercial coal."

Even the rates on lake cargo coal indicate interchange rather than delivery service. They are either (1) proportional rates, differing from the rates to the port cities for local deliveries, the application of which is conditioned upon further movement from the port by water; (2) lower proportionals than those just mentioned, if the shipment is to have a further movement at the termination of the water haul; or (of more recent origin) (3) joint rail-water, or rail-water and rail rates (V.S. 80, Sec. A, p. 3).

The facts with respect to lake cargo coal as set forth above are true also in their essentials as to iron ore (which moves in the reverse direction to lake cargo coal) and tidewater coal (V.S. 80, Section A, p. 3).

Witness Remington stated (V.S. 40, Ex. C, p. 5) that in many instances, cars which are originated or terminated "in every sense of the word so far as rail services are con-

cerned'' are nevertheless counted as cars interchanged in the Freight Commodity Statistics. In this connection, he was referring to lake cargo and tidewater coal and ex-lake iron ore. He did not, however, give any facts to support this statement or show that he had any knowledge whatever regarding the services rendered on this traffic. It is clear, from the foregoing, that his statement is not in accordance with the facts.

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Mr. Remington also stated that export coal through the North Atlantic Ports is treated as terminated in the Freight Commodity Statistics, while coal that is dumped into a vessel bound for New England is treated as interchanged and, here again, he stated that certainly there was no difference in the switching service. It does not appear that Mr. Remington has the slightest knowledge of switching operations on tidewater coal. While export traffic does move over the Pocahontas lines to Hampton Roads, there is no showing that there is any movement, not to mention any substantial movement over Eastern District lines.

Moreover, as is demonstrated above, the operations with respect to coal do not have the characteristics of terminated traffic, but rather of interchange and, therefore, even if there were any inconsistency between the classifications assigned to export coal and that dumped for movement to New England, the result would be that Eastern lines' costs, as developed by Form A, are understated because the export cars should be treated as interchanged rather than terminated.

In reporting the Freight Commodity Statistics, the Commission instructed that shipments delivered to water lines be regarded as terminated on line, and shipments received from water lines be classified as having originated on line; but, in the same order, it required that ''lake cargo coal delivered to Lower Lake and St. Lawrence River ports for transshipment by vessel'' and ''tidewater coal to Atlantic ports'', and ''iron ore received at Lower Lake and St. Law-

rence River ports" all be classified as "interchange traffic" (V.S. 40, Ex. C, p. 6). This careful differentiation of these movements of lake cargo and tidewater coal and iron ore from ordinary movements to and from water lines attest to the fact that they are different in character from those ordinary movements. The differentiation could only mean that the Commission considered the facts with respect to this traffic and recognized it to be interchange traffic.

Southern lines also cite certain statements made by a representative of the Commission's Cost Finding Section in I.C.C. Docket No. 28300 as being in agreement with their contention (V.S. 40, Appendix C, p. 8). In answer to this argument, it should be observed that the Cost Finding Section itself continues to use the figures from the Freight Commodity Statistics in arriving at unit costs (V.S. 80, Sec. A, p. 7), and that the Commission did not adopt the change suggested

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in the statement of the cost witness in 28300. Indeed, in *Class Rates, Mountain-Pacific Territory,* 296 I.C.C. 555, 604, the Commission stated:

> "The effect of counting cars of coal and iron ore having a rail-water or rail-water-rail movement as origination or destination traffic was checked in the prior Docket 28300 cost studies and it was found that 1 percent of the cars in the eastern district and approximately 5 percent in the western district as a whole would be eliminated as interchange cars and included as origin and destination cars. This change had a very small effect on the costs depending upon the weight of the load and distance moved. The range was from 1 to 3 percent in the western district. No adjustment was made in the Cost Finding Section study for the reason that the effect on the costs is very small, and the subject requires further study as to the relative switching service performed for the coal and iron ore traffic as compared with other carload traffic."

As pointed out above, in the present case, Southern lines made no attempt to compare "relative switching service performed for the coal and iron ore traffic as compared with other carload traffic." Indeed, the Commission's conclusions in *Lake Cargo Coal Investigation* and the statements in that case, as quoted above, show that the switching service is not comparable to delivery, but rather to interchange service.

The Remington car-count adjustment is unsound not only in theory but in application. Based on information furnished by the carriers to the Commission at its request to enable it to reconcile its One Percent Waybill statistics with the Freight Commodity Statistics, Witness Remington transferred to an originated or terminated basis certain cars which were reported as interchanged. But the information so requested by the Commission and furnished by the carriers is not sufficiently complete to permit the making of the adjustment even if it were otherwise appropriate, which it is not. Because such information is not complete, Witness Remington's method of re-stating the car-count involves the estimating of a substantial portion of the cars which, according to his theory, should be classified as having been given terminal rather than interchange service. But these esti-

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mates along with other computations made by the witness in developing the adjustment of the car-count used by him in his revised I.C.C. cost applications involve many assumptions which make his resulting conclusions wholly unreliable (V.S. 80, p. 5).

The fact is that, even if it were desired to make the adjustments along the line of the Remington theory, it would be impossible to do so because the information to accomplish the adjustment is not available. In addition to using certain figures reported to the Commission in connection with the One Percent Waybill sample, Mr. Remington re-

sorted to estimates which cannot be accorded any probative value; and moreover while Company material cars are not in the Freight Commodity Statistics, they do appear in the figures that Mr. Remington used in making his adjustment.

As above stated, certain information furnished to the Commission by the railroads, and used by the Commission for the purpose of checking its One Percent Waybill estimates, was used by Mr. Remington (along with his assumptions mentioned above) in making this adjustment. This information was never intended to provide a means of "correcting" the Freight Commodity Statistics. If such statistics as now reported were regarded by the Commission as improperly stated as between cars reported as receiving interchange or terminal service, it could readily revise its requirements for the reporting of such information. But the fact is that although the Commission has from time to time issued orders relating to the reporting of Freight Commodity Statistics, it has never sought to change the car counts along the lines Witness Remington suggests. On the contrary, throughout the period its Cost Section has been issuing annual statements of relative costs for the several carrier groups, the Commission has continued to require the reporting of freight commodity statistics in the same fashion as is currently done.

Further, the lack of value of such an adjustment, even if all necessary information were secured, is indicated by the fact that since the Cost Section of the Commission began its annual issuance of group cost data, beginning with the year 1947, it has never required the carriers to furnish such information and has continued to compute its regularly issued data on group costs with reference to the car counts derived from the Freight Commodity Statistics (V.S. 80, Sec. A, pp. 6, 7).

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The Southern lines also contend that there is an inconsistency between the treatment of the Northern coal and

ore, as interchanged and phosphate rock delivered to water lines in Florida, as terminated. No effort, however, was made by Southern lines to show that the operations are comparable. There was no evidence whatever comparing them. No reason has been shown to support changing the reporting of the phosphate rock cars, as now prescribed by the instructions in the Commodity Statistics, just as no reason was shown for changing the lake cargo and tidewater coal and iron ore reporting as there prescribed, quite deliberately prescribed, and prescribed in harmony with the service as the Commission found it on lake cargo coal in its formal investigation of the rates thereon, those being proportional rates which include no terminal service.

The Commission should find that the adjustment on count of cars, for which the Southern lines contend, should not be made and that the count of cars from the Commodity Statistics should continue to be used, as it always has been. This adjustment should not only be rejected on its own account, but like that relating to switching and terminal companies because of its unwarranted effect upon switching minutes as well, to be discussed hereinafter.

e. *National Car Costs.*

Although generally professing, in justification of most of the adjustments here urged in an effort to alter demonstrated cost relationships, to "refine" the group Form A costs to bring them more close to the handling of the particular traffic involved, Southern lines quite inconsistently depart from this principle when their purpose is better served thereby. To this end they disregard the car costs for the two territories and substitute average car costs for the United States, thereby greatly reducing the costs shown for Eastern lines below the actual expenses incurred in this account while at the same time increasing their own. In fact this one "adjustment" produces their greatest single variation from the cost relationships indicated by the unadjusted Form A costs (V.S. No. 40 A, Ex. G, p. 9). The

several reasons given by Witness Cole in his Verified Statement No. 39 to support this "adjustment" were the subject of Verified Statement

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No. 76 of Witness Coates from which the following analysis of those reasons is drawn.

One of the reasons given by Mr. Cole for employing U.S. car costs both north and south in lieu of territorial costs is that a nationally applicable mileage rate is used in computing car costs for refrigerator and tank cars. This assumes that because the mileage rental rate for each type of car is the same, there is an identical cost for each road or territory. This is a completely incorrect *non sequitur* because, in the case of refrigerator cars, for example, the net debits and credits on account of refrigeration and heater service, car inspection, and general overhead costs are added to this national mileage rate. These costs are not equal as among the several territories.

By using a national car cost Southern lines wipe out the differences in general overhead cost ratios among the several territories. The car costs both for the Eastern District and for the Eastern District plus Pocahontas Region are substantially higher than for the Southern Region. In its annual studies of the "Distribution of the Rail Revenue Contribution by Commodity Groups"—commonly termed "burden studies"—the Cost Finding Section of the Commission prices out Southern intraterritorial movements using Southern territorial car costs, and in pricing Official interterritorial movements uses Official territory costs. In the case of Official-Southern interterritorial traffic the Cost Section uses the car costs for both territories for the assumed hauls in each territory. It does *not* use U.S. car costs for either local or interterritorial movements.

To illustrate his contention that car costs in respect of a particular interterritorial shipment do not change upon passing the boundary between the two territories, Witness

Cole assumed an example of a Union Pacific car being used in a Southern-Official interterritorial movement. But even as to such an instance the items of expense on the railroads north and south would be different since in addition to per diem there would be differences in costs of repairs, whether attributable to owners or users, and for car inspection. Actually the greater part of the interterritorial movement is in cars owned by Official or Southern lines, and their respective car costs involve the whole range of differences in ownership costs, users costs, and per diem debits and credits (V.S. No. 76, pp. 5-6).

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In an effort to show that the differences in car costs as between the territories are attributable to reasons which make it apropriate to here disregard them, Witness Cole suggested that the territorial car costs reflect the composite cost of the car fleet owned by each group of roads, that this is a different car fleet in each territory, and is very different from the consist of the cars handling Official-Southern traffic. To the contrary, however, territorial Form A car costs reflect the composite costs of both the car fleet owned and the car fleet used plus the effect of the per diem net debits and credits. The fact that there is a different car fleet in each territory and that it is not the same as the consist of the cars handling North-South traffic is no justification for the use of national car costs (V.S. No. 76, pp. 6-7).

Mr. Cole further suggests that the territorial car costs are greatly influenced by the types of cars owned by each group, and that over 80 percent of the per diem cars used in the north-south traffic are box cars. But if national car costs are to be used because box car use is here greater than the percent of box car ownership by Official or Southern lines, the same reason would disqualify the use of the national average since national box car ownership is only 43.3 percent (V.S. No. 76, pp. 7-8 and App. A). Even the box car

percentage in the Western District, which is the highest, does not approach the percentage of box car use here.

Witness Cole further suggests that differences in utilization of the different types of per diem cars justify using U.S. average car costs rather than territorial car costs. The constructed statistics used by him in this connection involve inaccuracies, but more importantly they ignore the fact that utilization of cars by types in the several teritories may be much different for various reasons such as the commodities handled, the speed of trains, terminal delays, shopped cars, etc. (V.S. No. 76, pp. 8-9).

Witness Cole also assumes that the difference in territorial costs is in part explained by the difference in the ages of the Official and Southern car fleets, and refers to the percentage of Pennsylvania Railroad open hopper cars over 25 years of age. But these statistics do not and cannot recognize that the repair costs incurred in connection with these alleged old cars, which have been kept modernized through rebuilding, are not necessarily greater by reason of retention of the date of original building (V.S. No. 76, pp. 9-10).

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In concluding his discussion of the effect of the cost of the car fleet owned on average car costs in each territory Witness Cole concludes that Form A as applied to the northern roads develops the same car costs for all per diem cars but reflects to a substantial extent the expenses incurred in connection with open hopper cars within the North which he assumes to be greater. But if this were true the Pocahontas Region car mile costs should be substantially greater than those for the Eastern District which is contrary to fact (V.S. No. 76, pp. 10-11). Further, in here taking the position that hopper car costs are a major factor in making Eastern District car costs higher than those in the Southern Region, Witness Cole is inconsistent with testimony given by him in 1954 in which he expressed the

opinion that the cost of maintaining a box car was considerably higher than the cost of maintaining open top cars (V.S. 76, p. 11). In addition the average cost of acquiring general service box cars in the United States in 1959 was higher than that of open hopper or gondolas (V.S. No. 76, p. 11). Hence both the return element and the depreciation element would also be higher on box than on open cars.

A further reason given by Witness Cole for using U.S. car costs rather than territorial costs was that the latter are strongly affected by per diem debits and credits, and that this has a distorting effect because the basis used in computing Form A costs differs from that used in determining per diem rates. The fact is, however, that car costs are affected by per diem debits and credits and properly so, and that the failure to reflect per diem in the car costs would distort them.

Witness Cole's next reason to justify use of U.S. car costs was that the unit costs for the territories are determined by dividing cost of cars owned by the car miles operated, and that the numerator and the denominator do not represent the same cars in any given territory. This reason is unsound. Territorial average car costs reflect the total net costs and the car miles operated in the territory, and the numerators and denominators are consistent. In answering this reason Witness Coates stated in part as follows (V.S. No. 76, p. 13):

> "Mr. Cole reiterates on more than one occasion that Rail Form A costs include repairs made by the owning road to its own cars or paid by the owning road for repair work performed off line. He seems to gloss over the fact that there is a substantial cost of

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> operating cars other than a railroad's own ownership included in the accounts. As a matter of fact the costs which are included in the accounts of the railroads in each of the territories are costs which must be met

from its own cash, the source of which must be its freight revenues and certainly include its share of revenues from handling interterritorial traffic. The miles included in the accounts represent miles operated by all cars regardless of ownership and these miles must be used as a basis for determining costs and the pricing of traffic which moves over a particular railroad or territory."

Witness Coates then pointed out that the Cole theory as applied produced car costs for Official territorial lines $41 million short of the Form A Group I car-mile costs for running service, interchange switching, and intertrain and intratrain switching which the Commission's own application of Form A produces. For the Eastern District the method produces car costs $62 million short of the actual. This figure represents 25 percent of the total car mile cost of the Eastern District lines. If the same theory were applied to interterritorial traffic of Official lines the intraterritorial traffic of those roads would have to bear not only the car costs incident thereto but a substantial part of the burden of the interterritorial traffic. On the other hand the Cole method of using U. S. car costs would *increase* the costs of Southern lines by nearly $9 million above their own actual car costs.

In addition to the shortages in car costs which the Cole method would produce for Eastern lines, it would additionally exclude some $900,000 from Northern lines' costs and add about $300,000 to Southern lines' costs in respect of the car cost portions of switching costs developed in Rail Form A, Group VI, for switching road train to industry (V.S. No. 76, p. 17).

Another argument offered by Witness Cole to support use of U. S. average car costs was the fact that the Rail Form A procedure makes use of national tare weights. Answering this argument Witness Coates stated (V.S. No. 76, p. 18):

"In my opinion the use of tare weights on a U. S. basis furnishes

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no reason for applying car costs on a U. S. basis. In fact, except as to the development of the percentages for the separation of costs between mileage and time portions for depreciation, tare weights never enter into car cost development in Rail Form A."

Answering Witness Cole's characterization of territorial Form A car costs as measuring "the composite effect of the car fleet owned by the respective groups of roads" (V.S. No. 39, p. 45), Witness Coates pointed out that it erroneously included only ownership costs and ignored users costs and per diem debits and credits. He also noted that Official territory equipment is used to a greater extent in handling the North-South traffic both in Official and Southern territories, and that if Western equipment is disregarded, Northern-owned equipment performed 53.96 percent of the total miles and Southern-owned equipment 46.04 percent of the total miles performed by cars of northern and southern ownership. Yet the participation in the line hauls, as shown by Southern lines, is 40.81% north and 59.19% south. That is to say, the total car miles performed by northern equipment represented 132 percent of the total northern car miles performed by northern and southern equipment while the total car miles performed by southern-owned equipment represented only 78 percent of the total performed by northern and southern cars in the south. This illustrates the importance of including all of Eastern lines' car costs and of dividing them by the car miles performed in their territory. Otherwise northern lines would never recoup the proper proportion of their car costs on the interterritorial traffic, with the result that local traffic would have to bear not only its own car costs but also a portion of such costs attributable to the interterritorial traffic which it is manifestly incapable of doing (V.S. No. 76, pp. 18-19 and App. B).

Mr. Coates also referred to the generally higher wage rates in the Eastern District than in the Southern Region as affecting car costs (V.S. No. 76, pp. 19-20). In 1956, maintenance of equipment and stores employees of Eastern district railroads received compensation amounting to $11,548,082 more than they would have received at Southern Region rates of pay. Including Pocahontas lines, the figure is $12,667,286 (V.S. 80, F2 and F3).

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After pointing out other infirmities in the Cole theory for the substitution of United States car costs for those of the individual territories, and the inconsistent statistics and arbitrary assumptions on which Southern lines' cost figures in this respect were based, Witness Coates concluded (V.S. No. 76, p. 25):

> "In conclusion it is my opinion the unit car costs associated with the costs and transportation service for each of the two territories are more appropriate for use in a North-South Divisions Case than a nationwide average car cost which ignores the differences in territorial costs that do exist."

f. *No Justification Shown for Adjustment of Empty Return Ratios.*

As previously stated, Witness Remington's adjusted costs reflect the application of "empty return ratios appropriate for the Official-Southern traffic" as part of his undertaking to "relate the unit costs to North-South Traffic." (V.S. 40, pp. 18-19). This adjustment accounts in part for the results shown in Table 10 of Verified Statement No. 40.

In support of the empty return ratios employed in Southern lines' cost studies, Witness Remington relies entirely upon the testimony of Witness Cole in Part II of Verified Statement No. 39. (V.S. 40, Appendix C, p. 20). Thus, it is clear that any justification for Southern lines' substitu-

tion of adjusted empty ratios in Rail Form A for territorial average factors must be found in the evidence of Witness Cole. It is submitted no such justification appears. Eastern lines will demonstrate that there is insufficient evidence to substantiate either the necessity for or reliability of the adjusted box car and refrigerator car empty return ratios for Eastern and Southern lines computed by Mr. Cole and furnished to Mr. Remington for incorporation into Southern lines' cost study.

Before turning to the details of the theories and methods employed by Witness Cole in developing these rates however, a brief comment is appropriate with respect to the introductory remarks of the witness

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regarding this subject. At pages 18 and 19 of his statement, the witness undertakes to contrast the cost applications of Witness Heywood with the use of true "average costs" which he asserts was defended by an operating witness for Eastern lines, with obvious reference to Witness Nancarrow. As previously shown, references to average costs in Verified Statement No. 8 of the latter witness, who did not purport to testify as an authority on costs, constituted nothing more than a convenient method of describing the territorial Rail Form A costs presented earlier by Witness Heywood. (R. 552). Nowhere in Eastern lines' direct evidence, to which Mr. Cole was responding, was there any suggestion that the Commission revert to "a conglomerate system average for all type cars" as Mr. Cole implies. (V.S. 39, p. 19).

In purporting to so construe Eastern lines' evidence in order to advance the argument that Eastern lines inconsistently have recognized the need for adjustments in average costs in applying empty return ratios and other traffic characteristics by type of car, Southern lines have attributed a distorted meaning to Eastern lines' presentation in order to produce a straw man which can then be assailed.

Obviously, there is a vast difference between recognizing that box cars and hopper cars, which are suited for different types of commodities, may have separate return characteristics, on the one hand, and Southern lines efforts to distinguish between various classes of box cars, which the record indicates are loaded much more indiscriminately and possess no distinct empty return characteristics, on the other.

The traffic studies herein, both those of Eastern lines and that of Southern lines summarized by Witness Cole at page 24 of his statement, indicate that by far the greatest part of Official-Southern traffic moves in box cars while refrigerator cars are the most significant of the other classes involved. For this reason, apparently, Southern lines have limited the adjustments made in empty return ratios to those two classes of cars. Inasmuch as the individual box car and refrigerator car adjustments incorporated in Southern lines' cost studies rest upon evidence which is dissimilar in many respects, it is proposed herein to treat separately of the contentions advanced by Southern lines in justification of the adjusted empty return ratios employed in costing each of these two classes of equipment.

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(1) Box Cars.

Turning now with more particularity to the box car empty return adjustment urged by Mr. Cole and adopted in Witness Remington's cost applications, it is essential that the underlying theories and assumptions be first clearly understood before proceeding to an analysis of the mechanics and nature of the adjustment made in this element of cost by Southern lines.

At the outset, Witness Cole undertakes to distinguish between general purpose box cars, which may be utilized for "loading all types of commodities", and "box cars which are only suitable for loading those special commodities for which the cars have been specifically designed and con-

structed or box cars which, though they may be physically suited for some type of return load, are in assigned service and thus returned empty to the point of loading." (V.S. 39, pp. 24-25). The witness thereupon refers, at some length, to Vehicle Parts cars as apparently the primary example of the second category of box car equipment.

After demonstrating that Official Territory carriers own a greater proportion of special device box cars (defined as classes XAP, XAR, XML, XMP, XMR and XT) it is asserted that "Commodity Class No. 623, Vehicle Parts N.O.S. requires particular use of special service box cars." (p. 26). The Witness thereupon undertakes to compare Eastern and Southern lines in terms of commodities handled, which would indicate that a greater proportion of the traffic of Official Territory carriers is composed of Vehicle Parts, N.O.S., than is true of Southern lines.

It is significant to note that the foregoing comparisons by Witness Cole are made, first, in terms of classes of equipment, that is, general purpose and special device cars as designated by the Commission in Schedule 417 of the annual report form and, secondly, in terms of commodities moving in all classes of box cars. The tendency of the witnesses for Southern lines to confuse class of equipment with class of traffic and to attribute characteristics to one based upon statistics with respect to the other is one of the fundamental fallacies invalidating Southern lines' adjustment of box car ratios. It is this confusion which, it will be seen, belies the worth of the special study requested by Southern lines which Eastern lines necessarily rejected.

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Assuming the accuracy of Mr. Cole's showing with respect, first to relative ownership of special device box cars and, secondly, relative participation in the transportation of commodity class No. 623, Vehicle Parts, N.O.S., there is, nevertheless, no logical or factual basis for the ensuing assumption that the cars in which the latter commodity

may move incur a 100 percent empty return movement. The witness, at page 27, asserts the proposition that "* * * the Southern carriers should not be saddled with any portion of the costs of handling the empty cars which have moved auto parts traffic solely within Official Territory or between that territory and territories not involved in this proceeding." Yet, there is no evidence whatsoever to substantiate as a *fact* that the cars handling "Auto Parts traffic", uniformly or even normally return empty to origin. Nonetheless, Southern lines have submitted a cost study to the Commission which embodies that uncorroborated assumption.

The Eastern and Southern District average box car empty return ratios, employed in Witness Heywood's cost applications on the involved traffic, were developed from data made available to the Commission by all Class I rail carriers pursuant to the order of July 16, 1956. The carriers' returns to this order embraced a total of seven days at intervals in the periods from October 22, 1956 to August 18, 1957. The results of these studies are stated by Mr. Cole to have produced empty return ratios of 39 in the North and 33 in the South (p. 28). By a series of calculations which will be demonstrated to rest upon insufficient and disassociated data, as well as assumption and judgment, Mr. Cole reached the conclusion that:

> "* * * as far as North-South traffic is concerned, the empty ratio for box cars is no greater in Official Territory than in the south. In my judgment a fair ratio for either territory would be 30 percent." (p. 32).

Thus, it is seen that while Witness Cole has adjusted the empty return ratio for box cars in Southern Territory from 33 percent to 30 percent he has, at the same time, made an adjustment three times as great for Eastern lines in that the Official Territory box car ratio was reduced from 39 percent to the same 30 percent used for the South.

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The adjustment in the box car empty return ratio for Official Territory carriers, with which Eastern lines are naturally most concerned, was accomplished in three stages, each of which requires independent consideration. The first and perhaps the most important step in the Cole adjustment, measured by the degree of its effect upon the empty return ratios, is sought to be justified on the ground of eliminating, as inapplicable to Official-Southern traffic, the allegedly high empty return movement of special device cars. By this first stage in the adjustment, Witness Cole accomplished a reduction in the Official Territory ratio from 38.93 percent to 34.66 percent. Support for this first adjustment is claimed to be found in the same territorial comparisons of box car ownership by classes and the proportions of vehicle parts to other traffic previously referred to and, in addition, the conclusion that inasmuch as the carriers serving Detroit are stated to have a 49 percent empty return ratio (p. 29), there is necessarily a correlation between the two comparisons first mentioned, i.e., equipment ownership and auto parts traffic, from which empty return experience can be statistically computed in a reliable manner.

Even assuming the facts to be as shown by Mr. Cole, however, the logic of his conclusions is open to serious question. System and territorial box car empty return ratios are a reflection of total system or territorial operating and traffic experience. That experience is a composite of many variable factors, some of which exert a favorable influence upon the empty return ratio, others of which may tend to be unfavorable. Southern lines' argument, however, would reject the influence of all variables but one and require the finding that the system average box car empty return experience of the Detroit lines is higher than average simply and solely because they participate in a greater-than-average proportion of vehicle parts traffic, giving no

recognition whatsoever to the other imponderables which influence the empty movement of box cars.

Once having assumed the desired effect for vehicle parts traffic on the system return ratios of the so-called Detroit lines, Mr. Cole then arbitrarily attributes the same effect to Official Territory carriers as a whole based upon nothing more than a comparison of the vehicle parts traffic within the two territories.

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Two very fundamental fallacies in Mr. Cole's logic, however, either one of which of itself is sufficient to invalidate his conclusions, must be immediately apparent from the foregoing recital of the theories underlying the first stage empty return adjustment. First, there is absolutely no evidence to sustain the assumption that any given railroad, having both a higher proportion of auto parts traffic and a higher box car empty return ratio than another compared carrier incurs the latter burden because of the former circumstance. There are undoubtedly any number of influential factors as to which roads with higher-than-average empty return ratios may be similar and the same conclusion could be urged with respect to each of those factors with equal logic as that here suggested by Mr. Cole in assuming the effect attributed to the volume of auto parts traffic. Until the carriers operating experience in transporting that traffic has been more comprehensively analyzed (and Southern lines' suggested study would not accomplish this result), the "* * * very definite correlation between the percentage of vehicle parts to total traffic and the empty return ratios for various carriers" (p. 29), asserted by Mr. Cole, is nothing more than mere surmise.

The second defect in Witness Cole's presentation is the equally uncorroborated and, indeed on this record, rebutted, assumption that auto parts *traffic*, as distinguished from certain auto parts *cars*, may properly be assigned a 100 percent empty return ratio as was done in Southern lines' cost

study. When queried about this assumption, Mr. Cole stated, on cross-examination, that no appreciable quantity of auto parts moves in general purpose box cars and that he had been advised by operating officials that 99 percent of the auto parts moving in box cars utilize special device cars, at least within the South (R. 1692). Again, with no study based upon actual experience to sustain his conclusions, the witness conceded that once a movement of auto parts in a box car was encountered in Southern lines' traffic study, a 100 percent empty return movement was assumed. It is submitted that even if it had been demonstrated that the "definite correlation" between the percentage of vehicle parts traffic and empty return ratios urged by Southern lines in fact exists, there is no evidence to sustain Southern lines' extreme assessment of the *degree* of any such influence in terms of a 100 percent empty return ratio on all vehicle parts box car *traffic.*

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Eastern lines, recognizing the fallacies in sweeping generalizations as to railroad operating experience, such as those here indulged by Southern lines, undertook, in the limited time available to them upon rebuttal, to make a spot check of the accuracy of Witness Cole's assumptions. The results of these checks are fully described in Verified Statement No. 73 of Witness F. H. Clark. Inasmuch as Mr. Cole had singled out the Detroit lines for certain of his comparisons, the New York Central, Wabash, Chesapeake and Ohio and DT&I, joined by the Pennsylvania and Baltimore and Ohio, the remaining large Eastern carriers, made an indiscriminate check of their transportation records to determine if all auto parts transported in box cars in fact require special device box cars, as assumed by Mr. Cole and, secondly, to determine whether such special device cars are limited to particular commodities or special services, again as assumed by Mr. Cole, or are utilized for traffic generally. (V.S. 73, p. 7). As a consequence of those studies, which are

embodied in Exhibits Nos. 1 through 6 to Verified Statement No. 73, Witness Clark concluded as follows:

> "It is my conclusion that any adjustment in the box car empty return ratio for Official Territory which is premised upon the assumptions, first, that vehicle parts traffic, commodity Class 623, moves in special device box cars rather than in general purpose box cars; and secondly, that all special device cars and all assigned box cars incur a 100 percent empty return movement, is clearly unrealistic. It is, of course, true that many shipments of auto parts are transported in special device box cars and that many special device cars and other assigned cars incur substantial empty mileage. It is likewise true, however, that many auto parts shipments are made in general purpose box cars and that special device and other assigned box cars are loaded with a wide variety of miscellaneous commodities. I have not undertaken to assess the degree to which these factors influence the box car empty return ratio within Official Territory. I do not believe that such an evaluation can be made upon any meaningful or accurate basis because of the indiscriminate use of general purpose and special device box cars." (V.S. 73, pp. 14-15).

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As acknowledged by Witness Clark, Eastern lines do not suggest that there are not many occasions when special device box cars and assigned general purpose box cars return empty to the point of origin. The empty return movement under these circumstances is a necessary service to the shipper which is frequently a prerequisite to the enjoyment of the loaded movement by the carrier. But, as Witness Clark pointed out, shippers requiring this service are not only to be found within Official Territory. (V.S. 73, p. 6). Rather, empty return movements of box cars in special and assigned service are a burden of modern competitive rail

transportation to which carriers in all territories are subject. Moreover, neither can it be said that this burden is peculiar to auto parts traffic since similar shipper demands are a characteristic of other commodities as well. Under the circumstances, no justification has been shown for the effort on the part of Southern lines to independently assess the effect upon average box car empty return ratios which can reliably be found to be attributable either to ownership and movement of special device cars or to the transportation of various commodity classes of traffic, such as vehicle parts.

Witness Cole conceded that there are many factors which contribute to producing empty return ratios. (R. 1665). They will vary somewhat with business conditions generally and, hence, the availability of loads for all classes of equipment. The movement of empty cars is influenced by the desire to minimize per diem payments or may be compelled by Association of American Railroads car service orders.

Another influence, and one urged by Mr. Cole as a basis for the second stage in the box car adjustment, is that of directional flow. In this connection, the witness stated that in his experience, even where directional flow of traffic is in perfect balance between two areas, there is an empty return ratio of approximately 25 percent because cars are not made empty at the locations at which traffic is available.

The existence and interaction of these many variables, all of which exert an influence upon the empty return ratios of carriers and territorial groups of carriers, is itself persuasive of the soundness of adhering to average empty return ratios in the absence of very persuasive evidence demonstrating the clear-cut and *measurable* effect of any single influencing factor which may be selected for emphasis. The record here is persuasive that Southern lines' attempt to explain and

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neutralize the difference in the Northern and Southern empty return ratios solely in terms of vehicle parts traffic

is without evidentiary support and rests entirely upon uncorroborated assumption as to both the fact and the degree of the influence claimed for the auto parts traffic. The almost indiscriminate movement of general commodities in special device cars and of vehicle parts and other special commodities in general purpose cars effectively precludes valid acceptance of the adjustment urged by Southern lines on the flimsy foundation of the proportionately heavier movement of vehicle traffic over Eastern railroads.

The second stage in the box car empty return adjustment urged by Witness Cole rests upon an estimate of the influence of traffic moving between Official Territory and Canada upon the ratio for that territory. Thus, he concludes, at page 32, that:

> "* * * the empty ratio for Official Territory should be adjusted to exclude the 1,275,000 miles of empty movement *that can be attributed solely to directional flow* of this Canadian traffic. Such an adjustment would further reduce the Official Territory empty ratio by 2.13 percent points, from 34.66 percent to 32.53 percent." (emphasis supplied)

The foregoing discussion should suffice to demonstrate the impropriety of any undertaking to attribute the net result of the interplay of many variable factors "solely" to any particular circumstance. And in this instance, it is admitted that elimination of the circumstances charged with producing the effect upon empty return ratio, which Mr. Cole so ingeniously computes statistically, directional flow, does not result in corresponding elimination of empty mileage. (R. 1664). As indicated earlier, Mr. Cole concedes that where directional flow is in perfect balance a 25 percent empty return ratio would nonetheless be incurred because of the unavailability of loads at the precise point of unload and because of the existence of the other variable factors which Mr. Cole recognizes. (R. 1665). Under the circumstances, it is impossible to even determine the nature

of the influence, if any, of traffic imbalance in Canadian traffic upon Eastern lines' average box car empty return ratios much less to substantiate the contention that the directional flow of such traffic alone increases that ratio by precisely 2.13 percentage points. Here again Southern lines seek to have the

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Commission adopt a specific measure of the influence of one of numerous variables, each impossible of independent evaluation.

Moreover, if directional flow of traffic exerts the influence attributed to it by Mr. Cole with respect to Canadian traffic, an adjustment in average empty return ratios, with the purported purpose of reflecting the conditions under which Official-Southern traffic is moved, is not complete without a similar assessment of the impact of the directional flow of other blocks of traffic not here involved upon the box car empty return ratios for both territories. The witness, however, elected to limit his computations to a selected example of traffic imbalance, which might be claimed to reduce the box car ratios of Eastern lines. If the effect of directional flow on Canadian traffic can be so readily isolated and so exactly evaluated, as urged, clearly corresponding adjustments should also have been made in the box car ratios for the South as well as Official Territory which would isolate the effect of directional flow of all traffic not here in issue. For example, there is no indication of the influence of directional flow between the South and the West upon the ratio for Southern lines incorporated in Witness Remington's adjusted costs. Yet, if Mr. Cole's theory with respect to directional flow of traffic is correct and if Southern lines were sincere in their oft-professed desire to reflect the particular characteristics of Official-Southern traffic, the further adjustments here suggested could not properly be omitted. Their apparent willingness to go only part way along this path is again demonstrative of the consistent

selectivity in the adjustments of Rail Form A costs here urged upon the Commission.

The third stage in Southern lines' adjustment of the box car empty return ratio for Official Territory whereby that ratio is further reduced from 32.53 percent to the 30 percent employed in Southern lines' cost studies is lacking even a pretense of justification and rests entirely upon the uncorroborated judgment of the witness. As to this third step, Mr. Cole readily conceded that he had made no investigation in either territory nor any calculations whatsoever and that the adjustment rested entirely upon the assumption that there is a greater degree of assigned box car service in the North because of greater industrialization than is true in Southern Region (R. 1694-95). Cer-

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tainly, this last phase in the box car empty return adjustments comes with poor grace from parties who have professed, throughout this proceeding, to provide the Commission with more specific and more accurate cost information through the utilization of modern cost finding techniques. Clearly, it was never contemplated that accepted factors regularly employed in Rail Form A cost applications be discarded in favor of the purely judgment factor of a witness who admittedly has made no investigation to sustain that judgment.

It should be noted, also, that Mr. Cole made no effort whatever to deal with the possibility that the Southern empty mileage ratio on box cars is affected by special device cars to as great an extent, or even greater, than is the ratio in the East. Witness DeButts testified (R. 923, 24):

> "The problem in the South is that we are finding more and more that we have to furnish specially equipped cars, what the shipper wants and what he must get if he is going to keep it on the railroad instead of shipping by truck, which is usually an expensive car sometimes, and we have to meet that demand."

Mr. Cole gave no consideration, in adjusting the box car ratios, to any commodity but vehicle parts. Having in mind movements of such things, for example, as stoves, freezers, refrigerators, washing machines, dryers, and dishwashers in special device cars within the South, as well as other places, it is wholly arbitrary to attempt, as Mr. Cole has, to "refine" empty return ratios on box cars by adjusting only for vehicle parts traffic. There is no evidence whatever that box car traffic moves to a greater extent in special device cars in the East than in the South.

The foregoing discussion now makes appropriate and, it is submitted, more meaningful, a further discussion of the special study sought by Southern lines to which reference has previously been made. In the course of the hearings herein, Southern lines requested that Eastern lines "join in furnishing data which will provide a precise separation of box car empty return ratios as between box cars available for general loading and special device box cars not suitable for return loading." Reference to this request, there incorporated as Appendix B, was made in the Notice served by Southern lines on February 15, 1960, wherein it was further stated that:

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> "In view of the Northern lines' refusal to produce the data requested, the Southern lines hereby serve notice of their purpose to present evidence based upon available statistics from which reliable estimates may be made bearing upon these features of the cost evidence, and to rely upon the well settled rule that, when relevant representations are made which would be either verified or impeached by records in the sole possession of the adverse party, refusal to permit inspection of the records creates a presumption that the representations are true." (pp. 5-6)

It is unnecessary to consider the soundness of the "well-settled rule" upon which Southern lines indicate they will

rely inasmuch as the basic premises urged in justification of the application of that rule are shown to be inaccurate. It has been previously demonstrated that the "reliable estimates" presented by Southern lines resting in one instance upon pure judgment, cannot be sustained. Furthermore, the "relevant representations" cannot, contrary to Southern lines' assertion, be either "verified or impeached" by records in the possession of Official Territory lines.

The records to which Southern lines there referred may be assumed to be the wheel reports of Eastern lines, since they are the indicated source of the information sought by Southern lines' request. It is there stated that the suggested form accompanying that request, based upon the conductor's wheel reports, together with the Equipment Register would "permit the parties to develop box car empty return ratios separately for box cars available for general loading and special device box cars not suitable for return loading." (Notice, Appendix B, p. 1). The data extracted from the wheel reports would make available the car initial and number together with a breakdown as between loaded and empty cars to which miles would thereafter have to be added. The request then contemplated that the Equipment Register would be employed to determine from the car number whether that car was classified as a general purpose box car or one of the six classes of special device box cars.

But the development of a separate empty return ratio for box cars classified as special device, which would be the product of the requested study, would not accomplish the suggested purpose of

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making available a precise box car empty return ratio for cars "not suitable for return loading" nor, indeed, for assigned general purpose box cars. Eastern lines' studies, presented by Witness F. H. Clark in Verified Statement No. 73, demonstrate that special device box cars, particu-

larly Classes XML, XMP, and XMR, are available for and regularly utilized by Eastern lines in the transportation of a wide variety of miscellaneous commodities and are thus, in fact, quite "suitable for return loading." Hence, in actual practice, the "definite correlation" between the class of car and the category of traffic that is urged by and implicit in Southern lines' request, is shown to be lacking.

Any effort, such as that embodied in Southern lines' cost application, to attribute an independent empty return ratio to a class of *traffic,* such as auto parts, when that empty return ratio is developed in terms of the class of *equipment,* as distinguished from traffic, can be of no assistance in the development of costs for application to traffic. It is for this reason, among others, that Eastern lines denied the request to join in the proposed study and stated their opinion, which is here demonstrated by the instant record, that such study would be of no value.

Manifestly, it is highly improper to attribute any transportation characteristics, such as empty return ratio, to a commodity classification of traffic unless it can be demonstrated that those transportation conditions are almost invariably an attribute of the particular commodity or traffic under consideration. Eastern lines' studies here clearly establish, however, that such is not the case with respect to vehicle parts since that commodity moves also in general purpose box cars admittedly suitable for a wide variety of traffic in return movement and, further, and perhaps of greater significance, that special device cars designed and used for particular commodities, such as vehicle parts, are likewise regularly employed for miscellaneous commodities thus invalidating the assumption that they must, by their very nature, return empty to point of origin.

Another important reason for declining Southern lines request was that whereas the Commission's seven-day study embraced days that were spaced through a twelve-month period, the three-day study suggested by the Southern lines would have been for "Monday, Janu-

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ary 25, 1960; Wednesday, February 3, 1960, and Friday, February 12, 1960," or a period covering a span of but 18 days. It is obvious that the period was not representative. Moreover, specially equipped cars were in heavy demand during the period because there was a steel strike during the 1959 Fall period when model changeovers take place and the movements of parts was, therefore, greatly curtailed in that period and, in consequence, was heavy during the period which would have been covered by the proposed three-day study, thus resulting in a heavy demand for the cars and a consequent greater empty return movement to meet this demand than would have applied throughout the year. Of course, a study embracing days throughout a year's period would have resulted in an intolerable delay in the disposition of this proceeding, and such a study would still have been subject to the unwarranted assumption mentioned above (V.S. 73, p. 4).

Any effort to develop a separate box car empty return ratio for application to particular traffic, whether by commodity classification, such as vehicle parts, or by territorial designation, such as the Official-Southern traffic here involved, encounters a further problem in that there is a complete absence of any guiding principle whereby empty miles may be allocated to particular loaded movements. By way of illustration, if a loaded movement of vehicle parts is followed by an empty movement and thereafter by a loaded movement of another commodity and it is desired to develop the empty return experience of the former commodity, empty mileage intervening between the two loaded movements, conceivably, can either be entirely assigned to auto parts traffic or, to miscellaneous traffic, or indeed, be divided between the study traffic and the non-study traffic. In any event, whatever the allocation of this empty mileage, it would rest upon judgment alone.

Southern lines' operating witnesses were unable, upon cross-examination, to suggest any standard which would be

of assistance in allocating the empty miles in the foregoing illustration or in variations of that example (R. 1118-21, 1245). Obviously, the same difficulty inevitably exists when it is sought to develop empty return ratios "appropriate" to territorial movements of traffic. The indiscriminate use, in terms of both commodities and territorial movements, of railroad box car equipment precludes the allocation of

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empty mileage to movements of any particular commodity or territorial classification of traffic on any basis other than mere judgment and makes necessary and appropriate reliance upon system average experience.

Empty mileage is in essence a burden of doing business. It occurs as a consequence of the necessity that equipment be moved to the points at which a demand exists for the transportation of shipments tendered to the railroad. The nature of the operation here involved was very clearly summarized by Witness F. H. Clark in Verified Statement No. 73, at pages 5 and 6, as follows:

> "In general, much of the empty mileage incurred by box cars, particularly those designed for general loading, in unrelated to any particular shipment or placement order. The cars gravitate toward the areas where potential demands exist or are anticipated. Under such circumstances, the empty mileage cannot reasonably be attributed to any specific use or any identifiable shipment, either prior or subsequent to the empty movement, and must be considered as a general burden of doing business. For example, when an empty general purpose box car is received by a Southern carrier from a Northern connection, or vice versa, having previously moved loaded in the opposite direction, the empty return may well be completely disassociated from the preceding trip. The empty movement could well be motivated by a desire to minimize per diem payments or, in compliance with AAR orders, aimed at providing

equipment to territories in need of the same, or the receiving railroad may send the car to car shortage areas of its own road in no way concerned with the origination territory of the previous load. A good illustration of empty haul not assignable to other than system operation is a car moving into storage after a loaded trip. That handling has no connection whatever with the previous load. In my opinion, therefore, it is impossible, in such instances as here under consideration, to associate empty mileage with either the prior or the subsequent loaded movement or to fix the occurrence or point in time at which such mileage may be said to cease to be related to the prior load and thereafter be attributed to the subsequent load."

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The difficulty involved in any effort to allocate empty mileage to particular traffic has previously been recognized by the Commission. In Docket No. 17000, *Rate Structure Investigation, Part 12, Nonferrous Metals,* 204 I. C. C. 319, 351, it stated:

"The amount of empty-car mileage operated to supply car service to a particular traffic cannot be determined with accuracy, because of the labor and difficulties involved in attempting to trace the entire movement of all cars used in handling it, both before and after the transportation is completed, and in attempting properly to allocate such mileage."

Likewise, the Commission has very clearly recognized the essentially systemwide composite character of the relationship between loaded and empty mileage in I&S Docket No. 7008, *Export Soybeans—Southwest and South to Gulf Ports,* 309 I. C. C. 445, 459 (1960), where is stated.

"The furnishing of an empty-car supply is an overhead cost of providing transportation service, and the sys-

tem average of box cars, used by both parties in their cost computations, appears justified."

The box car adjustment urged by Southern lines which, when reduced to essentials is shown to rest on assumption, generalization and uncorroborated judgment, completely fails with any guarantee of assurance to isolate the influence claimed for certain selected factors upon the system and territorial box car empty return ratios, and effectively demonstrates the futility of any effort to precisely dissect the composite result of a number of variables which, by its very nature, is an indivisible overhead burden upon general railroad operations. Eastern lines submit that, under the circumstances, the adjustment urged by Southern lines in this respect has not been substantiated by any credible factual evidence and that no justification has been shown for rejecting the territorial average box car empty return ratios employed in the cost applications of Eastern lines. On the other hand, there is considerable evidence, particularly the studies of Witness Clark and the acknowledged impossibility of allocating

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empty mileage as between various categories of traffic, which fully warrants the use of such territorial averages as appropriate measures of the overhead cost of providing service on Official-Southern traffic as an integral part of the total traffic of Eastern lines.

(2) Refrigerator Cars.

As previously noted, Southern lines' cost study incorporates an adjustment both North and South in the empty return ratios for refrigerator cars as well as that previously discussed with respect to box cars. While the mechanics of this adjustment and the justification therefor are in some respects different from the box car adjustment, it will be seen that here again, just as was true of the box car adjustment, there is a substantial disparity between the avowed

purpose sought to be accomplished by the adjustment and the result which is in fact produced and urged for application to Official-Southern traffic.

Witness Cole criticizes the use of the Commission's average territorial empty return ratios for refrigerator cars developed in the seven-day study on the ground that it "does not reflect the conditions surrounding North-South traffic." The principal basis for this contention is the assertion that fresh meat traffic moves to a greater degree on Official Territory lines than in the South, and that such traffic incurs a 98 percent empty return movement. On these assumptions, Witness Cole expresses the opinion that

> "* * * the proper approach for empty return ratios on refrigerator cars, as in case of box cars, is to apply separately the empty return ratios of 100% for such special movements as fresh meats (215) and bananas originating at New Orleans on the Illinois Central, and to develop an appropriate empty return ratio for the general movement of refrigerator car traffic which is not influence in different degrees in the respective territories by the empty return ratios for specialized commodities."

Up to this point, the theory and method of Witness Cole in dealing with refrigerator cars is essentially the same as that previously discussed with respect to box cars, that is, he compares the relative

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traffic proportions in both territories of a selected commodity, in this case fresh meats, and assumes a 100 percent empty return ratio for that commodity. Thereafter, he undertakes to adjust the refrigerator car empty return ratio on other traffic by eliminating the assumed influence of the movements of fresh meats upon the territorial average factor. Again, as was true of box car traffic, there is no evidence to substantiate the assumption by the witness that

every car handling fresh meats returned empty to point of origin.

Having once determined to eliminate the purported influence of fresh meat traffic, the witness resorts to information as to loaded and empty refrigerator car miles of selected refrigerator car companies on Eastern and Southern lines as affording a "more accurate measure" and a "closer representation" of the ratio of empty to loaded car miles on North-South traffic." (pp. 37, 38). On the basis of information furnished by Fruit Growers Express Company alone, so far as Eastern lines are concerned, and with some additional information from other refrigerator car lines with respect to movements on Southern carriers, the witness concluded that "the empty to loaded ratio which should be used for refrigerator cars (other than bananas and meat) in the North is 75 and in the South is 84." (p. 29). The result of this acknowledged "opinion" expressed by the witness, which is reflected in Witness Remington's cost study is to reduce the ratio for Official Territory from 90 percent as developed by the seven-day study to 75 percent, while at the same time increasing the ratio for Southern Region from 76 percent to 84 percent.

The evidence relied upon in justification of the respective refrigerator empty return adjustments North and South is not comparable, hence it is necessary to examine the adjustment in each territory independently. In each instance, however, it must be reiterated that Southern lines reject the territorial average refrigerator car empty return ratios developed by the Commission and employed by Mr. Heywood and profess to substitute therefor a ratio for each territory which is appropriate to the particular traffic here involved. The ratios actually developed by the witness, however, fall far short of achieving the allegedly desired relationship to Official-Southern traffic.

Referring, first to the Official Territory adjustment, the witness asserts that:

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> "* * * because Fruit Growers Express cars handle a very substantial portion of the North-South refrigerator car miles, the empty to loaded ratio for Fruit Growers Express cars is a closer representation of the empty to loaded ratio for refrigerator cars in the North on North-South traffic than a system average refrigerator car empty ratio based on the Commission's seven-day study." (V.S. 39, p. 38).

Yet, even conceding the substantial participation of Fruit Growers Express cars in North-South business, the basic information furnished by that Company, from which Mr. Cole developed the adjusted empty return ratio, has no particular relationship to that traffic.

At the request of Southern lines and with the concurrence of Eastern lines, Fruit Growers Express Company furnished the total loaded and empty miles made by cars of that ownership on all United States railroads, not including BRE or WFE cars at home in the West but used also for North-South business. This information is shown for the railroads in Official Territory and Southern Region in Appendix F to Verified Statement No. 39. That Appendix did not include the information furnished by Fruit Growers Express for railroads in the West, yet the report of the car company indicated that FGE refrigerator cars move for very substantial mileages on many Western railroads. Witness Cole conceded, for example, that the data furnished by Fruit Growers Express revealed in excess of 17 million miles operated by equipment of that Company on the Great Northern Railroad, miles which are obviously completely unrelated to Official-Southern traffic. (R. 1700).

Inasmuch as the information furnished by Fruit Growers and relied upon by Witness Cole reflected *all* miles in *all* traffic, it is manifest that whatever relationships between loaded and empty miles for *carriers* in the North and South are shown, the resulting ratios cannot, in any sense, be at-

tributed to Official-Southern *traffic* or any other category of business. The FGE miles shown for Eastern lines are just as much a reflection of the experience of those lines on traffic moving between Official Territory and the West and Southwest since the equipment of Fruit Growers Express is shown to be utilized very substantially in other territories during the off season when not

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required for the movement of southern perishables. Obviously, the approximately 17 million miles operated by Fruit Growers Express equipment on the Great Northern and similar operations on other Western District carriers had a corresponding movement in Official Territory completely unrelated to North-South traffic. Thus, while purporting to develop a refrigerator car empty return ratio which, in preference to the Commission's seven-day study, would allegedly reflect the characteristics of North-South traffic, Mr. Cole has actually substituted in lieu of a ratio developed by the Commission from *all traffic* moving in *all refrigerator cars* an empty return ratio developed again for *all traffic* but only in Fruit Growers Express cars.

Moreover, the evidence shown by Mr. Cole, at page 36, based upon Southern lines' traffic study, indicates that Fruit Growers Express cars participated in only 43 percent of the loaded Official-Southern movement in refrigerator cars. Hence, a second defect in the method here urged by Southern lines, which would invalidate even an FGE ratio in fact related to North-South traffic, is the absolute lack of evidence from which the Commission can determine the empty return experience on the remaining 57 percent of the loaded refrigerator car miles made in North-South traffic. Eastern lines submit that clearly there is no justification for substituting for the ratio developed from information based on all refrigerator cars and all traffic one produced by the total United States operations of a selected individual refrigerator car line handling less than half of the North-South

refrigerator car traffic, particularly when the asserted purpose of the adjustment is to produce a ratio which may be found to reflect the particular characteristics claimed for Official-Southern traffic.

In adjusting the empty return ratio for Southern territory, Witness Cole included the loaded and empty miles made on Southern lines by refrigerator car equipment of other ownerships as well as that of Fruit Growers Express Company. This information is stated to have been "obtained from replies to questionnaires directed to the Accounting Departments of the Southern carriers." (p. 27). It is set forth in detail in Appendix G to Verified Statement No. 39 and summarized by the witness at page 37 of his Verified Statement. It was acknowl-

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edged by the witness, however, that the information presented in his Appendix G was similar to that previously discussed with respect to Fruit Growers Express Company cars alone in that the miles shown for cars of other ownerships on Southern lines are likewise those produced by all traffic on those carriers. (R. 1697).

In seeking additional information with respect to the movement of cars other than those of the Fruit Growers Express Company, Southern lines have, by clear implication, recognized the very basic invalidity of undertaking to rely entirely upon the experience of a single car company as affording a measure of the services provided on North-South traffic in which a number of refrigerator car companies participate. As shown, however, while Southern lines attempted to cure this defect as to the Southern Region adjustment, it is alone sufficient to invalidate that made with respect to Official Territory on the basis of Fruit Growers Express information alone. The variance in the underlying data relied upon for the respective adjustments in the two territories likewise detracts from the weight to be given to Southern lines refrigerator car empty return adjustments.

Witness Cole, in using Fruit Growers Express data for his Official Territory adjustment and all refrigerator car companies for his Southern Region adjustment, has violated one of the important precepts in the production of relative costs of service by failing to make comparable studies for both territories.

It must again be emphasized, however, that even had the witness succeeded in producing comparable data North and South, he has by his own admission failed to relate the information relied upon in any manner to Official-Southern traffic. Under these circumstances, any criticism of the Commission's seven-day study because of its more general application applies with equal appropriateness to that here urged by Southern lines. Certainly, an adjustment on a highly selective basis favorable to one of the parties, which is shown upon analysis to constitute not a refinement of information to relate it to particular traffic but merely a distortion to accomplish a desired purpose, provides no justification for departing from the factors normally employed in the Commission's Rail Form A cost formula.

Summarizing, Southern lines' adjustments of box car and refrigerator car empty return ratios, when stripped of the statistical legerdemain whereby they are sought to be justified, are quickly distilled into bold, uncorroborated assumption. By the expedient of attributing

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100 percent empty return ratios to categories of traffic not moving to as great a degree between Official Territory and the South as within Official Territory, adjustments highly favorable to Southern lines are accomplished under the guise of producing ratios which are "appropriate" to the involved traffic. But the empty return characteristics so arbitrarily and inflexibly attributed to vehicle parts and fresh meats moving within Official Territory are simply not borne out by fact. Furthermore, even if the avowed pur-

pose of Southern lines to develop empty return ratios reflecting the particular traffic were to be deemed desirable, it has been seen that the selective ratios here urged by Southern lines rely on nothing more persuasive than judgment and assumption and are, hence, vastly inferior from the standpoint of reliability than the system average factors they are intended to displace. The Commission cannot properly sanction adjustments in Rail Form A which so clearly lack the support of sound evidentiary fact.

g. *Switching Minute Adjustments.*

Beginning at page 62 of V.S. 39, Witness Cole undertakes to identify, on the system average basis, the source of the difference between Official Territory and Southern Region unadjusted Rail Form A box car costs. In terms of the dollar value placed by the witness upon each of the five factors there described, the difference shown for switching costs constitutes the most important single item. Referring to this element of cost, Mr. Cole asserts (p. 63) that "* * * one of the basic problems in railroad cost finding is the inadequacy of information on actual switching services and costs."

Responsive to this statement, and allegedly on the basis of more "adequate" information as to switching services rendered on the involved traffic, Southern lines have incorporated certain adjustments in switching costs into their cost applications. These adjustments are based upon switching studies in the South, more fully described by Witness Seigler in V.S. 42, and upon even more arbitrary modifications in switching costs for Northern lines, more fully described by Witness Remington in V.S. 40-A. It is significant to note at the outset that Southern lines' cost adjustments on account of switching employ markedly different methods for each territory. The adjustments for both territories will be demonstrated to be identical, however, in that

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neither can be found to measure up to even the standards set by Mr. Cole of proceeding upon either adequate or reliable "information on actual switching services and costs."

It will be the purpose of this section to examine the procedures employed by Southern lines in adjusting switching costs, both North and South, and to analyze the various bases for such adjustments. It will be seen that whereas Southern lines' witnesses assailed the switching factors employed in Rail Form A unadjusted and purported to develop adjusted factors more appropriate to the involved traffic, valid evidentiary support for such adjustments is so clearly lacking that departure from Rail Form A cannot properly be justified.

In Appendix L to V.S. 39, Witness Cole compares the engine minutes per car for the years 1948 and 1956 for Eastern District, Pocahontas Region, Official Territory and Southern Region for both boxcars and other cars. That statement shows, for the latter year, 1956, 25.9 minutes in Official Territory and 17.3 minutes in Southern Region for boxcars; and 28.8 minutes and 19.2 minutes, respectively, for other cars. This is apparently the starting point from which Witnesses Seigler and Remington commenced their various studies and adjustments.

So far as Southern Region is concerned, as more fully described by Witness Remington at pages 5 and 6 of his V.S. 40-A, Southern lines, through Witness Seigler, developed an average switching time per car at origin or destination in the South which was substituted for all classes of equipment in lieu of the Form A factors. Thus, instead of the Form A system average switching minutes per car, which Witness Seigler shows as 17.8 minutes for boxcars and 19.8 minutes for other equipment, after having embraced the Remington car count and switching-terminal company adjustments which also affected switching time, there is substituted in both cases the same factor of 26.03

minutes per car developed in Appendix A to V.S. No. 42 of that witness. It might be noted at this point that the average minutes for the 26 box cars shown in Appendix A was slightly greater, 26.55 minutes, than for the 15 other cars, 25.13 minutes, contrary to general experience in both territories which customarily attributes greater minutes to other than boxcar equipment.

For Official Territory, however, no comparable studies were attempted. Rather Witness Remington undertook to adjust the switch-

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ing minutes per car for Official Territory carriers without even the benefit of a study as imperfect as that of Witness Seigler, in several steps, some of which are the consequence of the car count and switching and terminal company adjustments previously discussed. By these various computations, to be more fully described below, Southern lines substituted for the system average switching minutes relied upon in Rail Form A the two factors of 27.65 minutes for boxcars and 30.72 minutes for other cars in Official Territory.

Thus, the net result of the dissimilar adjustments in the switching minutes for the two territories was to neutralize the cost consequences of the very significant differences in the average switching minutes for boxcars and other cars between those territories and to impute to Southern lines a substantially higher than average switching factor not significantly different from that attributed to switching service on Northern lines.

(1) The Seigler Switching Studies.

As previously stated, so far as Southern lines' costs are concerned, the switching adjustment reflected in the cost studies of Witness Remington rests entirely upon the switching studies conducted under the supervision of Witness Seigler and described in his V.S. No. 42. These studies

were limited to a total of 41 cars selected from Southern lines' 1958-1959 traffic study. From such studies a switching minute factor was developed for each study car, as shown in Appendix A to V.S. 42, and the average of these 41 separate factors, 26.03 minutes, was employed to adjust Southern lines' switching costs on all cars in the traffic study whether boxcars or other classes.

Eastern lines do not propose to elaborate upon the deficiencies in the studies at the various study points, most of which had a tendency to overstate the minute factors claimed for that point. Exhibit No. 4 to V.S. No. 72 of Witness Clark contains six examples of errors which alone produced an over-statement of 63.87 minutes out of the 1067.20 minutes claimed for the 41 cars. Eastern lines do most vigorously urge, however, that even assuming absolute accuracy for the switching studies and hence the validity of the average factor of 26.03 minutes for the 41 cars studied, there is no justification whatsoever for attributing this factor, in preference to that developed upon a compre-

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hensive study for use in Rail Form A, to the projected total of 967,554 cars of Official-Southern traffic claimed for Southern lines' traffic and cost studies. Common sense alone, from the mere statement of the proposition, should suffice to demonstrate the absurdity of any claim that an infinitesimal sample of this size, however selected, can be deemed representative of this large body of traffic. Nevertheless, Southern lines' efforts to impart an aura of authenticity to the switching minute adjustment for Southern Region dictates further consideration of the procedures relied upon in substantiation of the Seigler switching factor.

Preliminary to a description of the switching studies made with respect to the 41 car sample of the involved traffic, Witness Seigler undertook to demonstrate the inappropriateness of the Form A average switching minutes for application on such traffic. In essence, he attempted to show,

first, that so-called "volume" commodities handled by Southern lines require less-than-average switching service; and secondly, that these same commodities move to a very large degree within the South and are not here involved. It should be noted that Mr. Seigler did not undertake any similar inquiry with respect to the traffic of Eastern lines.

Assuming, as Mr. Seigler states, that volume commodities tend to move in multiple car shipments, and hence, exert a depressive effect upon system average switching minutes, the same result may be claimed for Eastern lines. Exhibit No. 12 to V.S. No. 71 of Witness Gill, which shows information for Eastern lines corresponding to that for Southern lines appearing at page 5 of Witness Seigler's V.S. 42, indicates that volume commodities particularly iron ore and coal represent in excess of 37 percent of the total traffic of Official Territory lines, again as compared to the small proportion of such commodities involved in this proceeding. Thus, if the movement of such commodities exerts the effect upon system average minutes for Southern Region which Southern lines contend, the presence of volume traffic in the North produces at the very least a corresponding influence upon Eastern lines.

While Witness Seigler urges, as axiomatic, the proposition that multiple origins and terminations reduce average switching time per car, the "illustrative studies" of pulpwood, wet phosphate rock and

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sand and gravel movements shown at page 4 of V.S. 42 in an effort to demonstrate the degree of difference between system average switching minutes and those fairly attributable to volume commodities can hardly be accepted as representative. Mr. Seigler there shows the minutes per car developed for various volume commodities at thirteen Southern study points. These points were admittedly not selected by any sampling procedure but, rather, study areas having a heavy movement of volume commodities were intentionally chosen in order to illustrate the depressive effect

of such commodities on the system average switching minutes (R-1853-1854). Obviously, it is highly improper to condemn the appropriateness of system average minutes in pricing Official-Southern traffic by a process of elimination based upon illustrations of the handling of volume commodities at a mere thirteen points admittedly hand-picked with the express view to corroborating the hypothesis which is sought to be tested. The fact that judgment had to be exercised to find points with heavy movements of volume commodities itself indicates that there are many other points served by Southern lines at which these same commodities do not move in multiple car lots with any degree of regularity. And for the purpose of operating economies it must be remembered that Southern lines operating witnesses consider a multiple car shipment to be a minimum of 5-10 cars. (R-1125, R-1202).

Moreover, if it were Mr. Seigler's intention to contrast the handling given the volume commodities typified in the table at page 4 with that required on the involved traffic, of which the 41 cars in Appendix A are allegedly representative, he fails of this purpose as well. Recognizing that switching minutes are the result of a number of variables and that they will vary with location perhaps to an even greater degree than with commodities, it is significant to compare the switching times shown for the only two points which are common to both the volume commodity study at page 4 and the Appendix A study of the involved traffic. For Panama City, Florida, the table at page 4 shows an average of 11.55 minutes for terminating pulpwood, a "volume" commodity. Item 32, in Appendix A, shows only 11.72 minutes for the outbound pulpboard traffic into which this pulpwood was apparently manufactured. The difference between 11.55 minutes for the volume commodity

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and 11.72 minutes for the involved traffic is acknowledged by Mr. Seigler to be insufficient to justify the conclusions urged by the witness. (R. 1859)

The same conclusion can be drawn from a comparison of switching at the only other point common to the two studies, Georgetown, S. C. There the volume commodity was likewise pulpwood inbound as to which Mr. Seigler shows, at page 4, 13.03 minutes as contrasted in items 3, 25 and 34 of Appendix A, with 17.46, 17.46 and 30.25 minutes, respectively. In the latter instance the first two cars represent pulpboard shipments presumably manufactured from the inbound pulpwood; whereas the car in Line 34 is shown by the underlying data to be a movement of lumber.

While, of course, no sweeping generalizations can properly be drawn from the comparisons at these two common points or, indeed, from any of the very meager studies presented by Mr. Seigler, it seems quite clear that these comparisons do not, in any way, justify the conclusions drawn by Mr. Seigler in his testimony. And, since it is by elimination of the so-called volume commodities assumed to be lower-than-average that Mr. Seigler concludes, as he does at page 5, "that the application of system average Southern Region costs materially understates the costs actually incurred in handling the Official-Southern traffic", this conclusion is necessarily erroneous.

Witness Seigler himself earlier advocated conclusions with respect to pulpwood, the principal volume commodity of Southern lines, which are inconsistent with his testimony in this proceeding. In Docket No. 30958, *Reduced Rates on Pulpwood in Southern Territory*, 291 I.C.C. 155, decided December 3, 1953, in which Witness Seigler testified for protestants Atlantic Coast Line and Louisville & Nashville, the Commission noted, referring to cost adjustments urged by the paper conference, that "The protestants question the accuracy of the data on which the reduced switching time used in the conference study was based, but do not support their criticism with any determinations of their own" (p. 164).

In response to questions upon cross examination with respect to his testimony in this proceeding, Witness Seigler

stated that the "characteristics of the physical operation have undergone an extreme change" in the intervening period because of the program of opening additional wood concentration yards in the South (R-1900). The Commission,

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however, had already taken cognizance of this program, finding that "There were at least 40 such yards in operation at the time of the hearing" and concluding that "the revolutionary results claimed for these yards have not been reflected in statistics" (R-161).

In its report on further hearing in the *Pulpwood case*, 297, ICC. 735, decided February 7, 1956, again referring to the claim of lower unit switching costs resulting from the continued addition of wood concentration yards, the Commission stated, alluding to the testimony of Mr. Seigler:

> "The protestants insist that there has actually been no savings in these costs because on the typical branch line overtime payments to the local train crews, which perform this service, have not and cannot be eliminated on account of the continued use of way stations on the branch lines for pulpwood loading". (p. 741)

Thereafter, in discussing cost of service, the Commission further stated: (pp. 745-746)

> "The principal difference between the protestants and the paper conference relates to estimates of origin and destination switching costs. . . .
>
> "The protestants made time studies of origin, intermediate, and destination switching which embraced 35 trains of the Atlantic Coast Line in a 3-day period in May 1954, 21 trains of the same carrier for 3 days in July 1954, and 79 trains of the Louisville & Nashville for 3 days in the latter month. A total of 582 loaded and 591 empty cars were included, and those originated at way stations as well as at woodyards on representa-

tive segments of the lines of the carriers mentioned. The average time shown for origin switching of these cars was 14.62 minutes per car. It appears proper to adjust this figure to 13.04 minutes to remove an excessive allowance for non-productive time. The protestants' destination switching studies included 4 large mills served by the Atlantic Coast Line and 7 by the Louisville & Nashville. The average time shown in these studies was 17.81 minutes.

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"In our opinion, the results of the protestants' study are more reliable as a basis for estimating switching costs for pulpwood than those of the paper conference since the latter was clearly handicapped by the inability to obtain anything more than fragmentary operating data from the respondents. This comment applies particularly to the study of destination switching time. The observers for the conference were not in a position to record all of the operations which should be included in such a study. In addition, the study of origin switching considers traffic originating at way stations only to a very limited extent."

Turning now with greater particularity to the studies here urged as affording a justification for Southern lines' adjustment of switching minutes for application to the involved traffic, Witness Seigler considered it to be his assignment to "develop the minutes per car applicable to the Official-Southern traffic involved in this case for use in providing the basis for adjusting Rail Form A." (V.S. 42, p. 5) What Mr. Seigler in fact developed, however, again assuming the accuracy of his individual studies, was the minutes per car applicable to but 41 cars of involved Official-Southern traffic. These cars were produced with the assistance of Witness Remington by a sampling process described on cross-examination by Dr. Deming. Although Witness Seigler, at page 6 of his statement, refers to the study cars as "aver-

age" and to the sample as "representative", it is significant that Dr. Deming expressly declined to so characterize the sample which he selected. (R-1580). Certainly the Commission will be at least equally reluctant to accept as representative of Official-Southern traffic a sample containing not a single car to or from Boston, Philadelphia, Detroit, St. Louis, or Buffalo among other large northern cities; one which has cars from Trenton, Mich. and Columbus, Ind., but not such cities as Trenton, N. J. or Columbus, Ohio, and one which shows two movements of rags but none of citrus or vegetables.

The record shows that the 41 cars included in Appendix A resulted from a series of diminishing samples and subsamples. From Southern Lines' traffic study, itself a sample, a "preliminary sample" was selected consisting of 497 cars. As shown in Exhibit R-14, presented during the cross-examination of Dr. Deming, these cars were

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divided 59.4 percent northbound and 40.6 percent southbound, and, most significantly, 59.8 percent were noted as having received yard engine switching and the remaining 40.2 percent, train engine switching. The identification and segregation of the cars in the "preliminary sample" in the terms of the type of switching service provided was deemed desirable by Dr. Deming after he was advised that there might be a difference between yard and train engine switching minutes (R. 1553). Appendix A, when divided as between cars receiving yard engine switching and cars receiving train engine switching, as shown in Exhibit R-19, tends to confirm this substantial difference and shows that the average yard engine minutes developed by the Seigler studies were almost double those developed for the cars which received train engine service (30.75 minutes versus 17.84 minutes).

In recognition of the probable difference in switching minutes occasioned by the type of switching, further sampling

from the "preliminary sample" was designed in a manner which would retain the initial 60-40 proportions of yard and train engine switching (R. 1558 and 1566). There was no effort, however, to retain the proportions in terms or origin or destination service (R. 1559) or any other characteristic. Exhibit R-15 shows that in the next step in the sample design the "preliminary sample" was further reduced to 83 cars, which it was first intended to study before a lesser number of studies was decided upon and a still further reduction made in the sample. (R. 1563).

When the sample of 41 cars actually studied by Witness Seigler was produced, however, Exhibit R-16 shows that while there was no significant difference from the 497 car "preliminary sample" in terms of direction, 63.4 percent of the cars selected had received yard engine switching and only 36.6 percent had incurred admittedly less burdensome train engine service. While Dr. Deming declined to characterize the variations in proportions of yard and train switching between the preliminary 497 car sample and the ultimate 41 car sample as substantial (R-1667), the ensuing comparisons demonstrate the different results that might have obtained had Southern lines in fact retained in their final sample the same 60-40 proportions of yard engine and train engine switching found in the preliminary sample.

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In order to produce average switching minutes for a sample retaining those proportions of the two classes of switching, four yard engine cars must be eliminated from the cars in Appendix A leaving a total of 22 yard engine switched cars (60%) and 15 train engine cars (40%).

If the 60-40 relationship is restored by excluding the yard engine cars showing the greatest number of minutes, readily identifiable from Exhibit R-19, Items Nos. 16(62.72 minutes), 21(51.49 minutes), 26(55.5 minutes) and 33(72.54 minutes), the average switching minutes used in Southern lines' cost study for that territory would be reduced very signifi-

cantly from 26.03 to 22.30 minutes, a decrease of 14.3%. Certainly a possible variation of this magnitude in the most important single item of those selected by Witness Cole as accounting for the boxcar territorial cost differences should not be made to rely upon the propriety of including a mere four additional study cars out of a total estimated at approximately one million cars annually. Viewed in these terms the risk of substantial distortion in relative cost comparisons cannot be sanctioned.

Applying a similar test by assuming the other extreme, exclusion of the four yard engine cars with the lowest minutes, Item Nos. 1, 9, 32 and 38, with a total of 50.58 minutes, the average would be increased to 27.48 minutes, a difference of only 5.6% contrasted to 14.3% variation upon excluding the higher items. Thus it is clear from these two comparisons that Southern lines' failure to retain in the 41 car sample actually studied the 60-40 relationship found in the 497 car "preliminary sample" between those receiving yard engine switching service and those receiving train engine switching service, is much more likely to have resulted in an overstatement of the adjusted switching factor used for Southern Region than the contrary.

Moreover, the range between 22.30 minutes achieved by eliminating the four larger items, and 27.48 minutes, resulting when the four smallest individual factors are those deleted to restore a 60-40 relationship, is so large as to demonstrate conclusively the unreliability of the 26.03 minute factor employed. Certainly, if a difference of over 5 minutes per car can result dependent upon which *four* out of approximately *one million* cars is selected for study, the sample studied is so small as to offend the intelligence.

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And lest it be thought that the foregoing demonstrated variations in switching minutes are of little real consequence, the Commission's attention is directed to Verified Statement No. 77 wherein Witness Coates pointed out that

the switching cost claimed for Southern lines in Witness Remington's study is $12,407,912, representing 6.39% of the total cost South. (p. 1). With each minute therefore representing in excess of $475,000, the range of over 5 minutes suggested by these comparisons would effect a reduction of almost 2½ million dollars out of the total of less than 12½ million in switching costs claimed for Southern lines.

Inasmuch as standard error has been urged by Southern lines as establishing the reliability of the switching study sample among others, it is perhaps appropriate at this point to comment briefly upon the showing in Witness Seigler's Appendix B of switching minutes per car by subsample. It was acknowledged that the subsamples shown there represent the original traffic study subsample in which the study car was found (R. 1574). The 41 study cars themselves were not selected by subsample. Nevertheless, in an effort to demonstrate the validity and reliability of the study, Witness Seigler divided the 41 study cars into 10 subsamples and computed the system average and "actual" switching minutes for each subsample, the difference between those figures, and the standard error. Such a process of arbitrarily assigning cars to subsamples after selection of the sample in one operation is of course a gross distortion of the use of subsamples in sample selection.

The purpose of this maneuver obviously was to produce a standard error from the subsamples which might be claimed to substantiate the reliability of this minuscule sample. Even if it had been done properly in this instance, however, the significance of a standard error must not be misinterpreted. Dr. Deming acknowledged that the standard error is a computation based only upon the data *included* in the sample, hence, the standard error could be desirably low, while at the same time data was erroneously *excluded* from the sample (R. 1595). He also conceded that there could still be a standard error of 2.2 as shown in Appendix B, and probably even less, if through error the sample were completely distorted, as for example by including only cars receiving yard engine service (R. 1597).

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It seems clear, therefore, that a computation which indicates merely that 10 groups of cars having from 2 to 7 cars in each group produce results which are not drastically different *from each other* hardly establishes that those few cars are representative of an estimated annual movement of 967,554 cars, particularly when it is noted that these few cars are themselves shown to vary all the way from a low of 3.39 "actual" switching minutes to a high of 72.54 minutes.

Moreover, the average difference shown for the entire 41 car sample between system average and study minutes in Column 4 of Appendix B is only 7.5 minutes. Dr. Deming did not claim any greater accuracy or reliability for the switching factor of 26.03 minutes derived from the 41 car sample than a range of about 7 minutes (R. 1582). Accordingly, the average switching factor derived from the 41 car sample could just as well be 26.03 minutes minus 7 minutes or roughly 19 minutes since no greater reliability than this was expected by Dr. Deming based upon the sample selected. Witness Seigler shows the Form A factors as 17.8 minutes for boxcars and 19.8 minutes for other cars, or again just about 19 minutes on an average. Thus, even if the Seigler studies were to be taken at face value, there is no justification for the conclusion that the involved traffic, assuming it could be found to be fairly typified by the 41 car sample, an assumption which offends common sense, is significantly different from average traffic in the South in respect of switching service rendered, since the claimed excess over average minutes and the conceded range of reliability of the study are almost exactly the same.

Quite apart from the minimal size of the sample selected for study and the significant variation between that sample and the "preliminary sample" in terms of the type of switching received, there is a further assumption implicit in the method adopted by Witness Seigler which renders unreliable the results obtained. This evidentiary defect arises from the fact that whereas the 41 cars claimed to be

representative of the entire 12 months Official-Southern movement were selected from the traffic sample and, hence, moved during the latter half of 1958 or the first half of 1959, the switching studies were conducted for various one-week periods in 1960. This method necessarily requires the assumption that the service in 1960 at the study

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points which is imputed to the sample cars was substantially similar to the switching actually rendered on those cars in the earlier years. Mr. Seigler's explanation, upon cross-examination, of the procedures followed by his switching committees compels the conclusion that the assumed similarity cannot be substantiated.

The 40 studies conducted in 1960* embraced all cars handled by the selected carrier at the study stations whether Official-Southern or other movements (R. 1834). The resulting minutes were developed for each category of service at all industries in the terminal area and were not, therefore, particularly appropriate to the operation rendered on the study car in the sample (R. 1886, 1887). Obviously, inasmuch as all cars were included in the divisor in each instance, the minutes attributed to each class of service are these for average traffic at that station and do not in way reflect the characteristics of Official-Southern traffic. Hence, the results are clearly at odds with the stated purpose of the studies "to develop the minutes per car applicable to the Official-Southern traffic involved in this case for use in providing the basis for adjusting Rail Form A" (V.S. 42, p. 6).

Having thus obtained a minute factor for each category or service *that by change happened to occur during the one week study period in 1960,* these factors were then *assumed* to measure the services rendered on the particular 1958 or 1959 study cars. Such cars were traced only to the extent

* The study at Memphis, Tenn., on the Frisco imputed to the car in Line 1, Appendix A, was conducted October 7-14, 1957 (R. 1836).

of available yard records (R. 1833) and the corresponding minute factors from the 1960 study were applied on the assumption that the study car moved under conditions similar to those existing during the later study week (R. 1881). No investigation was made, however, to insure that the services rendered in 1960 corresponded to those in 1958 and 1959 when the study cars in fact moved (R. 1839). It was acknowledged that some yards were rebuilt in the interval between the movement of the study cars and the switching study (R. 1938), which would have an obvious effect upon the switching service. Moreover, if the study car had received a category of service that was not encountered in 1960 and for which, therefore, no minute factor was developed, admittedly Witness Seigler simply "took the next best thing." (R. 1945)

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Not only was there no investigation to determine whether operations were conducted in 1960 in a manner similar to that at the time the sample car moved, but no comparison was made of the volume of traffic at the study points in the two periods. (R. 1840). In view of the emphasis by Southern lines' witnesses, including Mr. Seigler, upon the relationship between traffic volume and switching minutes, particularly where the volume is sufficient to permit multiple car handling, it is difficult to reconcile Witness Seigler's failure to insure, before imputing 1960 minutes to earlier movements, that the number of cars handled at the particular industries or by the particular crews involved in 1960 corresponded with that at the time the sample cars moved as part of the total traffic in the terminal area. For example, the underlying data disclosed that the car in line No. 36 of Appendix A was a shipment of freight automobiles from Prairie, Miss. on the G.M.&O. to Culbertson, Pa. This car was selected from an "A" abstract containing 82 similar movements. While, admittedly, the abstract includes shipments for a one-month period, the average daily shipment

would have to be at least 3 or 4 cars. Indeed, it is not unlikely that all 82 cars were handled in a single multiple car block or in several large blocks with corresponding economies since admittedly some study cars did so move (R. 1952). Yet significantly, Witness Seigler made no effort to determine this fact which would have required a reduction in the switching minutes claimed on a single car basis (R. 1880, 1954).

The foregoing example suffices to demonstrate that whereas the Commission has no means of comparing the particular transportation conditions during the 1960 study weeks with those existing at the time the study cars moved in 1958 and 1959, Mr. Seigler might well have made such an inquiry but failed to do so. Instead, Southern lines seek to have the Commission assume that the switching for a week in 1960 at a *few Southern stations* is representative of *all Official-Southern traffic* handled in 1958-59 at *all stations* without even demonstrating that 1960 switching minutes and 1958-59 switching minutes were the same for the few points studied, let alone the entire South.

Furthermore, Witness Seigler made the additional unwarranted assumption that the service at one industry served by a particular

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crew is identical with that at other industries served by that crew inasmuch as he made no effort, for example, to develop a separate factor for each of three industries on a single track (R. 1955). Hence, it is noteworthy that whereas Appendix A includes a boxcar of rags (line 7) originating at South Pittsburg, Tenn., the witness was unable to state that the factors applied to that shipment were developed during a week in which a single car of rags moved from this particular plant (R. 1947). In view of the procedures just described, and even assuming the accuracy of the 1960 factors so far as 1960 traffic handled at the study points during the respective study weeks is concerned, there is

utterly no basis for the conclusion that these 40 studies in 1960 and one 1957 study are representative of the switching service provided by Southern lines on a projected total of 967,554 cars moving in 1958-59.

By way of comparison with Witness Seigler's studies, it is interesting to compute the switching minutes required for handling certain traffic selected by Southern lines' operating witnesses as being typical of the services rendered by their respective railroads. For example, at pages 11-13 of Verified Statement No. 30, Witness L. L. Waters describes the service of the Southern Railway at Chattanooga, Tenn. If, as stated, 24 regular yard engine assignments handled a daily average of 4350 cars within the yard, the average per car is 2.65 minutes. For cars destined to the Alton Park Industrial area, to which Witness Waters referred, the average of 2.65 minutes includes classification into track No. 26. The crew serving Alton Park goes on duty at 7:30 A.M. and is relieved at 3:30 P.M., for a total of 480 minutes. This crew is said to move about 35 cars in each direction on this 23-mile trip, or a total of 70 cars in 480 minutes, which represents an average of 6.86 minutes per car. When the latter factor for industrial switching service is added to the 2.65 minutes for yard work and classification, the total switching time is only 9.51 minutes for delivering a car at this allegedly typical industry as contrasted with 26.03 minutes used in Southern lines' cost study.

One further comment should be made with respect to the Seigler switching studies. It has previously been shown that no effort was made either in drawing the "preliminary sample" of 497 cars or in reducing that sample to the 41 study cars upon which the Remington

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switching adjustment is based, to retain the proportions of traffic in terms of direction shown in Southern lines' traffic study. Tabulation A, Exhibit No. 1 to Verified Statement

No. 11 of Witness Wolford shows 445,820 (46.08%) cars Southbound and 521,734 (53.92%) cars Northbound of the total of 967,554 cars there estimated. Witness Butler's study showed 54.04% of the cars to be Northbound even without inclusion of the Northbound perishable movement separately accumulated. Thus, the ratio Northbound *v.* Southbound is undoubtedly at least 54 percent to 46 percent. Exhibit R-16 demonstrates, however, that of the 41 study cars, 61 percent were northbound and only 39 percent were southbound, indicating that there are more cars in the switching study upon which Southern lines performed origin as contrasted to destination service than is generally true of Official-Southern traffic. This variation, of course, has significance only if there is a difference, so far as Southern lines' service is concerned, between the switching required in originating a car and that provided in terminating a car at a given point.

As previously indicated Southern lines' operating witnesses have almost uniformly taken the position that it is more burdensome to originate a car than to terminate it in the South. The absence of any foundation for this opinion has already been the subject of comment. Nonetheless, if these witnesses were correct in that opinion, then the average switching minutes developed in Appendix A to Witness Seigler's statements are unduly inflated to the extent that the number of originated cars in the 41 car sample exceeds that in the traffic study from which such sample was selected.

And, of even greater significance, if credence were to be given to Witness Seigler's 41 car study as representative of Official-Southern traffic, that study is flatly contradicted by the contentions of Southern lines' operating witnesses with respect to the relative burdens of originating and terminating traffic in the South. This is established by Exhibit No. 3 to Witness Clark's V.S. No. 72 which is a breakdown of the Appendix A study cars in terms of origin or destination service. It will be noted that for the 25 northbound cars originated at the Southern study points, the switching min-

utes developed by Witness Seigler averaged 24.08 minutes per car, whereas for the 16 cars upon which Southern lines performed destination service, the average switching time is 29.07 minutes.

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It seems obvious, therefore, that if Witness Seigler's study could be relied upon as typical, Southern lines' operating witnesses would be shown to be in error in their assumption that origin service in the South is more burdensome than destination service. As a matter of fact, however, neither contention by Southern lines can be supported. As previously demonstrated, there is no substantiation for the opinions expressed by the Southern operating witnesses respecting the relative burdens of origin versus destination terminal service; and it is eminently clear in the light of the preceding analysis of the Seigler switching studies that they cannot be relied upon as representative of Official-Southern traffic for any purpose whatsoever.

The conclusion is inescapable, therefore, that, inasmuch as Witness Remington's adjustment of switching costs for Southern Region relies expressly and exclusively upon the Seigler's switching studies summarized in Appendix A to V.S. 42, that adjustment has not been sustained. While it is recognized that Rail Form A provides for the adjustment of switching minutes in appropriate instances where the particular traffic is found to possess characteristics different from traffic generally, no such showing has been made in this instance. And, even it there had been evidence to this effect, the fact that the particular adjustment here is premised upon a distorted study of an insignificant sample of 41 cars with an admittedly wide range of error hardly commends its acceptance in preference to the Rail Form A average switching factors as a measure of the cost of the entire body of Official-Southern traffic.

(2) The Remington Official Territory Switching Adjustments.

Turning now to the adjustments in switching minutes for Official Territory described by Witness Remington and embodied in the cost studies presented by that witness, it should be emphasized again that a different method was employed in effecting the Official Territory adjustment than that based upon the Sigler studies used in the adjustment of Southern Region switching minutes. Unlike the single factor of 26.03 minutes for all types of equipment used as the basis for adjusting Southern lines' costs, Witness Remington substituted the two factors of 27.65 minutes for boxcars and 30.72 minutes for other cars in developing Official Territory costs (V.S. 40-A, p. 7).

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As previously indicated, the foregoing substituted Official Territory switching factors are the end result of a series of cumulative adjustments made by Mr. Remington to the Form A average figures shown by Mr. Cole in his Exhibit L to V.S. 39 to be 25.9 minutes for boxcars and 28.8 minutes for other equipment. The first two adjustments are the consequences of the switching and terminal company adjustments and the car count adjustment, both of which effected a reduction in switching minutes North (V.S. 40-A, p. 3). The last step, which must stand on its own merits, was "made to eliminate the effect of volume commodities upon the switching minutes per car at origin or destination" (V.S. 40-A, p. 5) and produced a nominal increase for Official Territory. The total net result of all adjustments was to increase the switching minutes for Northern lines by 1.75 minutes on boxcars and 1.92 minutes on other cars. This is to be contrasted with corresponding increases, although on a different basis, in the switching minutes for Southern lines from 17.3 minutes and 19.2 minutes, respectively, to 26.03 minutes for both categories of equipment;

a net change of 8.73 minutes on boxcars and 6.83 minutes on other cars.

The distorting impact of these grossly unequal adjustments upon relative costs in the two territories is readily visualized when it is recognized that the adjustments for Southern lines produced switching minute factors increased over Rail Form A by more than 50 percent on boxcars and 35 percent on other cars while the corresponding increases for Northern lines are but 6.5 percent and 6.6 percent, respectively. Eastern lines submit that when the sum of the several adjustments affecting the switching minutes factors are analyzed in this manner, it becomes eminently clear that Southern lines' declared purpose of reflecting the characteristics of the particular traffic here involved through appropriate adjustments in switching minutes succeeded only in substantially distorting to their advantage the true relationship between the switching services rendered in the two territories.

The vast disparity in the proportionate increases made in the switching minute factors for each teritory would suggest, at least insofar as switching time is concerned, that the involved boxcar traffic handled by Southern lines differs from the average traffic of those carriers to a

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degree almost eight times as great as that which might measure the variation from average on Northern lines. And for other than boxcar traffic the Southern lines' adjustment would assume a degree of difference from average traffic in the South over five times that of the corresponding variation in the North. When it is recalled that Southern Lines' witnesses emphasized the relatively greater proportion of total traffic represented by the Official-Southern traffic here involved for those lines, any claim that this substantial block of traffic varies so drastically from system average operating characteristics is rendered even more unbelievable.

The foregoing comparisons reflect the sum total effect of all adjustments in the switching minute factors, North and South, incorporated in Southern lines' cost studies, including those adjustments made for both territories which result from the car count and switching and terminal company adjustments made by Witness Remington. Assuming, without for a moment conceding, the validity of the car count and switching and terminal company adjustments affecting the switching minute factors hereunder consideration, it is equally appropriate to isolate those special adjustments in switching minutes for both Northern and Southern lines which were made subsequent to the foregoing two adjustments.

For Southern Region, the adjusted Form A average switching minutes reflecting the two prior adjustments just mentioned, as shown in Witness Seigler's Verified Statement No. 42 and Appendix A thereto, are 17.8 minutes for boxcars and 19.8 minutes for all other cars. The adjusted factor South for all classes of equipment incorporating in addition the Seigler studies, is 26.03 minutes, a net increase of 8.23 minutes or 46 percent for boxcars and 6.23 minutes or 31 percent for all other cars, attributable in this instance entirely to the Seigler 41 car studies.

The corresponding partially adjusted Rail Form A factor for Official Territory (embodying the car count and switching and terminal company adjustments), as shown in Exhibit F to V.S. 40-A, are 25.4 and 28.2 minutes, respectively (R. 1998). As stated, these factors were ultimately increased on the volume commodity theory to 27.65 minutes and 30.72 minutes which are the factors applied in Southern lines' cost studies. Thus, the increases made by Mr. Remington in the switching

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minutes factors for Official Territory subsequent to the car count and terminal company adjustments common to both territories amount to 2.25 minutes for boxcars and 2.52

minutes for other cars, in each case an increase of slightly under 9 percent as contrasted to the increases of 46 percent and 31 percent, respectively, urged for Southern lines.

The foregoing very drastically disproportionate increases in the switching minutes employed in costing out the two territories must be examined in the light of the express justification and intent of the adjustments producing those variations which, as noted, was to bring about the elimination of the effect of volume commodities on switching costs in the respective territories. It must logically follow, however, that if volume commodities in fact have the effect on the switching minute factors suggested by the nature and extent of the adjustments made by Mr. Remington, it would appear that the total traffic of Southern lines from which the average Form A figures were developed contains approximately four or five times as much volume commodity traffic as does that of Northern lines inasmuch as the adjustment for Southern lines exceeds that for Northern lines by those proportions.

Moreover, it would have to be assumed that each and every car of the so-called volume commodities moving in the South actually moves in volume, that is as part of a multiple car shipment. Neither of these assumptions can be supported. As a matter of fact Eastern lines, with their trainloads of coal and ore, undoubtedly have a greater amount of multiple car shipments than do the lines of Southern Region, and it is the manner of operation that affects costs rather than a mere comparison of the cars of various commodities, such as pulpwood, which may have been handled, with no knowledge of the degree to which they actually move in volume, that is in multiple cars.

It seems quite apparent, therefore, that the asserted rationale of the switching minute adjustments, both North and South, just considered, that is the alleged necessity of eliminating the effect of volume commodity, does not at all explain the very substantial difference in the degree of the adjustments on that ground made in the cost studies of

Witness Remington. It is only fair to conclude that even if the purpose sought to be accomplished were both proper and necessary, the inconsistency in the procedures employed for the two teritories has

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nullified the efforts of Southern lines to measure the relative effect of eliminating intraterritorial volume traffic. Moreover, even assuming that comparable methods had been followed in furtherance of the sought purpose of the switching adjustments, if it is possible to visualize a method which could completely and accurately measure the influence of a particular category of traffic out of a total traffic entity, the net effect of such an adjustment upon relative costs would have been virtually nil because of the similar and, hence, at the very least offsetting, consist of the general traffic of Northern and Southern lines in terms of the respective proportions of volume commodities handled by each.

Southern lines will doubtless dispute the feasibility of any suggestion that Seigler-type switching studies should also have been made at the Northern stations involved in order to achieve comparability. Any request to make such detailed and costly studies of a sample so insignificant that the results of the studies, even if undertaken, would be meaningless, doubtless would have been denied. In the alternative, however, they could very readily have made the Remington alleged volume commodity elimination adjustment employed for Official Teritory equally as well for Southern Region. The procedure employed in this adjustment is very generally described at page 6 of V.S. 40-A as the Cost Finding Section "Burden Study" method, sometimes referred to as the Pocahontas Adjustment.

One further comment seems appropriate with respect to Mr. Remington's treatment of the switching minute factor for Official Teritory lines. At page 7 of V.S. 40-A and in Exhibit H to that statement, he undertook to corroborate

the switching minute adjustments, both North and South, which it must be emphasized, eliminate the greater part of the difference between those two territories reflected by the Rail Form A switching factors, by means of an analysis in terms of a certain selected origin and destination cities. This correlation, as Mr. Remington points out, was developed by the Cost Finding Section. It establishes as a general principle, with which Eastern lines do not for a moment disagree, that on the average, switching minutes increase directly with the size of the city and, hence, the size and volume of the terminal in which they are performed. Those carriers do, however, dispute the unsubstantiated proposition advanced by Mr. Remington

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that "the size of the cities at which Official-Southern traffic originates and terminates in the North and South does not provide any basis for using the higher factor of minutes per car in the North than in the South." (V.S. 40-A, Ex. H, p. 4).

As both the text of Mr. Remington's statement and Exhibit H indicate, and as he additionally acknowledged on cross-examination (R. 2004), the basis for this very sweeping conclusion with respect to Official-Southern traffic is the same, almost invisible, 41-car sample studied by Mr. Seigler. For that reason alone, Mr. Remington's conclusion in this respect is no more reliable than the assumption previously discussed that the switching on the same 41 cars is representative of that required on the projected annual total of 967,554 cars of Official-Southern traffic.

Even aside from that fundamental flaw, however, Exhibit H contains several errors in the assignment of stations to population groups as a result of which the average minutes North are deflated and those in the South increased. (R. 2005-07). Eastern lines deem it unnecessary to further elaborate upon what already must be common knowledge that contrary to Mr. Remington's assumption, Official Terri-

tory has more large cities than are to be found in the South and, further, that Official-Southern traffic is equally chargeable with the heavier switching burdens incurred by Eastern lines in those cities.

Summarizing, Eastern lines submit, on the basis of the foregoing analysis of the adjustments in switching minutes North and South reflected in Southern lines' cost studies, as well as of the Seigler switching studies upon which the adjustment South is premised, that Southern lines have utterly failed to demonstrate the propriety of substituting the uncorroborated adjustment factors employed in lieu of the system average switching minutes used in Rail Form A unadjusted.

h. *Train tonnage adjustment.*

On the ground that the Commission's Cost Section in its burden studies makes a similar adjustment in the costs of Official territory lines (which recognizes the depressing effect of heavy coal traffic upon the costs of other traffic), Southern lines' adjustments of group Form A costs included an adjustment of train weights for the Official terri-

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tory lines "to eliminate the influence of volume traffic" on the Pocahontas lines (V.S. No. 40-A, p. 8, and Ex. G, p. 9; V.S. No. 80, Sec. E). The nature of this adjustment is explained by Witness Heywood in Verified Statement No 80, Section E. His testimony in this respect, substituting the corrected figures of Witness Remington, is as follows:

> "The use of the revised train loads increases the costs in the North as compared with use of the unadjusted train loads. If, as northern lines contend, the comparison as between the groups is here properly to be made on the basis of using Eastern District costs as against those of the Southern Region, the adjustment is inapplicable. If, however, Pocahontas Region Form A costs are to be included in the Eastern cost base, the adjustment runs in favor of northern lines.

"A comparison of Mr. Remington's Exhibit G, page 7, with his Exhibit D, page 1, indicates that this adjustment increases the cost North from $154,062,358 to $154,929,677 or $867,319, with no change in the cost South thereby increasing the North proportion of the total cost from (44.71% to 44.85%) or 0.14%."

The Cost Section's adjustment to which Witness Remington refers in his Verified Statement No. 40-A and Southern lines' own adjustment in this respect strongly confirm the soundness of Eastern lines' contention that, use of Eastern District costs (without inclusion of Pocahontas Region costs) in comparison with those of the Southern Region for comparing the relative contribution of the two groups of carriers in the handling of the traffic involved is not unfair to Southern lines.

i. *Exclusion of Suburban Service Deficits.*

The eagerness of Southern lines to seek out ways to adjust Eastern lines' costs downward is well illustrated by their exclusion of suburban service deficits (V.S. 40, pp. 21, 22; V.S. 40-A, p. 10). Although both Northern and Southern lines have large passenger deficits, in ascertaining the relative transportation costs of Northern and Southern lines

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under the rates here involved, Southern lines urge the exclusion of only a part of the deficit, the part, of course, that is more weighty in the North than in the South, that incurred in suburban service. By this adjustment, the Southern lines hope to reduce Eastern lines' relative share of the cost on this traffic by over $2½ million annually (Compare Tables 10 and 12 from V.S. 40).

The theory in justification of this adjustment is set forth in Mr. De Butt's Verified Statement No. 14. He says, at pages 12 and 13 of his statement:

"It is essential to an understanding of the passenger problem that it be realized that the deficits associated

with intercity passenger service must be sharply distinguished from the deficits also incurred by some roads in providing suburban service within certain metropolitan areas in the North. They are separate types of operations, both physically and in the problems which they present.

"Intercity passenger service is, in large part, performed over the same tracks, bridges and other facilities as are used in freight service. As a result, an important portion of passenger costs represents the allocation of costs common to freight and passenger service.

"However, elimination of all intercity passenger trains experiencing out-of-pocket losses will not eliminate the reported passenger deficit. The passenger deficit will still reflect the large portion of carrier costs which would continue in any event if all passenger service ended. Under such circumstances, the intercity passenger deficit is treated as a burden to be recovered from the freight service. This becomes largely a matter of terminology, since the freight service is paying for the use of the common facilities that must be maintained for freight service in any event."

It is, of course, admitted that Southern lines have a large passenger deficit. Mr. De Butts admitted also that the railroads in the South have "local and branch line passenger trains which represent a serious drain against the railroad's other revenues" (R. 945). It would seem obvious that, from the standpoint of its relation to North-South traffic and the cost performing it, there is no difference between that part of the

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passenger deficit which results from suburban operations and that part of the passenger deficit which result from the operation of through or local passenger trains. If the Southern lines should not properly be charged with any part

of the deficit incurred in handling commuters from "A" to "B" in the East, it would seem logically to follow that the Northern lines should not be required to bear any part of the Southern lines' deficit from transporting passengers from "X" to "Y" in the South.

But Mr. De Butts's attempted distinction is that the suburban service is largely a separate service, using facilities not common to freight service, while other passenger service generally uses facilities that are also used in freight service. He suggests further that if the latter type of passenger service is discontinued the passenger deficit "will still reflect a large portion of carrier cost which would continue in any event if all passenger service ended", and that "Under such circumstances, the intercity passenger deficit is treated as a burden to be recovered from the freight service. This becomes largely a matter of terminology . . ." (V.S. 14, p. 13).

Southern lines made no effort to prove that the passenger deficit, on other than suburban service, is simply a matter of "terminology" or that it is a fiction. The fact is that putting entirely aside the common expenses that are apportioned between freight and pasenger service, and considering only expenses that are solely related to passenger service, it is found that there is a substantial deficit in the Southern Region. On the other hand in the Eastern District, both including and excluding Pocahontas, the passenger revenues exceed the solely related expenses. These comparisons are shown in Exhibit R-13. Taking 1959, the latest year shown, the results are as follows:

Passenger Revenue	Solely Related Passenger Expenses	Difference
Eastern District Excluding Pocahontas Region		
$571,828,636.	$512,913,020.	$58,915,616.
Eastern District-Including Pocahontas Region		
$602,199,956.	$545,661,252.	$56,538,704.
Southern Region		
$155,314,803.	$159,706,283.	$ 4,391,480. (def.)

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Thus, Mr. De Butts's claim that the passenger deficit—the kind they have in the South—is merely a matter of terminology and would not disappear if the service were discontinued is without foundation.

Northern lines are entitled to a substantial increase in divisions irrespective of whether the costs on the North-South traffic are computed including or excluding passenger deficits. Mr. Heywood's Exhibit B to V.S. 3 showed the unit costs both ways. His own application of Form A costs for the Eastern District lines excluded passenger and l.c.l. deficits and stated return on investment at 6%. At the average haul, and using the year 1956, this showed Eastern lines as incurring 50.5% of the total costs. Using the I.C.C. basis, which includes passenger and l.c.l. deficits and states the return at 4%, Eastern lines incurred 50.7% of the total costs (V.S. 3, Ex. B, p. 15).

Thus, from the standpoint of relative costs, a major criterion, Eastern lines have demonstrated their entitlement to increased divisions whatever the weight to be given the passenger deficits by the Commission. This deficit must be viewed as an entirety however. It would obviously be unfair to pick and choose a part of the passenger deficit to be excluded, selecting in such a manner as to distort the cost relationship to the advantage of Southern lines. Either the passenger deficit should be excluded from the cost figures in its entirety or it should be included in its entirety. On either basis the higher costs in the North are manifest.

j. *There is No Justification for Addition of Pulpwood and Phosphate Rock Constant Costs to Southern Lines' Costs of Handling Involved Traffic.*

It has already been noted that the series of adjustments to the Cost Finding Section's application of Rail Form A for Official Territory and Southern Region, which constitute the cost study of Southern lines, are sought to be justified on the ground that they are necessary to reflect the particular

cost characteristics of North-South traffic (V.S. 40, p. 18). However, included among such adjustments embodied in the testimony of Witness Remington is a very substantial increase in Southern lines' purported costs of handling the involved traffic which represents an asserted deficiency of revenue developed *not for the involved*

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North-South traffic but for other traffic not here in issue. The adjustment in question, which is more fully described at pages 11-14 of Witness Remington's Verified Statement No. 40-A and reflected in Tables 20 and 21 at those pages, is expressly made in reliance upon the testimony of Witness Burroughs in Verified Statement No. 41. It will be the purpose of this section to demonstrate that the addition of so-called constant cost deficits, attributed to intra-South transportation of pulpwood and wet phosphate rock, to the relative service costs of Southern lines claimed on the involved traffic is completely unwarranted.

First, the reason for this adjustment is stated by Southern lines to arise from Northern lines having shown relative costs on a fully distributed basis. Thus, Mr. Burroughs stated on pp. 1 and 2 of V.S. 41, after alluding to the alleged favorable transportation characteristics of wet phosphate rock and pulpwood:

> "There is, however, a further and even more extreme effect of the handling of certain of the volume commodities on the fully distributed costs as applied by the Northern lines. The fully distributed costs allocate the constant costs on a ton and ton-mile basis which assumes that every system ton and ton-mile has an equal ability to contribute to constant costs. This assumption produces extreme distortions in the cost relationships when applied to important segments of Southern-Official traffic."

Again, on page 2, of the same statement, Mr. Burroughs stated:

> "Paper and paper products, the most important category of Southern-Official traffic, provide a prime example of the distortion in cost relationships caused by the Northern lines' application of fully distributed costs. The basic error is that no consideration is given to the volume movement of pulpwood which is an integral part of the transportation service in producing the outbound haul of paper and paper products."

Again, on page 6, the witness stated:

> "The problem this statement primarily addresses, however, is the treatment of fully distributed costs * * *."

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Again, on page 8, he said:

> "The critical fact here is that the ton and ton-mile allocation of constant costs assigns to pulpwood a cost that the Southern lines must recover from their share of the revenue on the essentially transit movement of paper."

A complete answer to this adjustment is that Eastern lines can make just as good a showing—in fact a somewhat better showing—on the basis of out-of-pocket costs, as to which Southern lines' argument admittedly has no application whatever. This may be demonstrated by the following table:

EASTERN PERCENTAGES OF TOTAL COSTS ON GENERAL TRAFFIC AT AVERAGE HAULS

	I.C.C. Basis	
Year	Fully Distributed	Out-of-Pocket
1956	50.7	51.7
1957	50.9	52.0

(Source: V.S. 3, Ex. B, p. 14)

Our first point in reply to this adjustment, therefore, is that even if fully distributed costs should be completely disregarded, Eastern lines' case from a cost standpoint would not suffer in the least but would be, if anything, improved. Yet, the whole basis of the suggested adjustment depends upon Eastern lines' use of fully distributed costs which assign the constant expenses on a ton and ton-mile basis.

Second, Eastern lines' second answer to this adjustment is that they have no participation in the rates on wet phosphate rock and pulpwood, no control whatever over them, no voice as to their level. The suggestion that notwithstanding that fact Eastern lines should bear a part of the constant cost of transporting these commodities wholly within the South is plainly without merit. And that it is palpably unjust is demonstrated additionally by the fact that at least one object—if not the sole one—of the Southern lines in making these rates as low as they are was to induce paper companies to move from other locations—obviously on Eastern lines—to locations on Southern

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lines. Thus, Mr. Marks, of the Southern Railway testified in *Reduced Rates on Pulpwood in Southern Territory,* I.C.C. Docket No. 30958:

> "The pulpwood rates in the South, from the very inception of the production of paper in the South, have been made with the definite object in mind of developing the industry. We realized that with the vast reservoir of pulpwood in the South, there was a golden opportunity to encourage the industry to locate in the South." (V.S. 80, G-12, pp. 17, 18.)

And, on p. 18, of the same statement, Mr. Marks said:

> "That our theory of rate making is correct is evidenced by the enormous growth of the pulp and paper industry in the South, and we feel very keenly that it is an obligation of the railroads to make freight rates

that will foster the continued growth of the pulp and paper industry in the South.

"It is our position that the Interstate Commerce Commission should not fix freight rates that will hamper the railroads in their endeavor to assure the continued growth of this industry, but the railroads should be permitted to exercise their managerial discretion in making rates for the future that will assure the continued growth of this important industry in the South."

The situation, therefore, is that these rates on pulpwood, as to which Eastern lines have no control, were made on a low basis to attract plants from the North, and now the Southern lines want the Commission to require Eastern lines to help make up the deficit under constant costs which they incur. The injustice of sanctioning any such adjustment as that here proposed is manifest.

Third, Even if this proposed adjustment of Southern lines were otherwise valid—and it obviously is not—it could have no application to the traffic of the Southern lines without being applied also to traffic of the Eastern lines. Even if Southern lines had overcome all other objections to the adjustment, before they could succeed with it they would have to make a like adjustment with respect to the movement of raw materials—like iron ore and coal and fluxing stone, for example—which go into the manufacture of things —like iron and steel—

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which move from the North to the South and as to which there could be no movement without the prior movement of the raw material. But Southern lines looked only to improving their own cost situation. Like adjustments on traffic within the North which fail to meet fully distributed costs, but which are essential in the making of things which move from the North to the South, were ignored.

Southern lines' excuse for confining the adjustment to the traffic upon which they made it is that there is a "tacit" transit privilege on such traffic. There is nothing to this point, as will be shown *infra;* even if there were, no such distinction could be allowed to govern. Otherwise, form would be substituted for substance.

While the foregoing is sufficient to dispose of this adjustment for which Southern lines contend, certain aspects will be elaborated in the following paragraphs.

In stating that the fully distributed costs allocate $20,844,431 to traffic that "under the whole premise of the rate structure, cannot make any such contribution to constant costs", Mr. Burroughs drew an unwarranted implication from the use of fully distributed costs which he thereafter proceeded to belabor.

But Eastern lines have never contended that the allocation of constant costs on ton and ton-mile bases constitutes a representation so far as revenues are concerned that each and every commodity in fact makes an identical contribution per service unit to such costs. In thus criticizing Eastern lines' cost evidence, Mr. Burroughs has confused costs with revenues, or the ability of particular commodities to cover full costs as thus computed. If it were his purpose to prove that these commodities cannot make the indicated contribution to constant costs because "under the whole premise of the rate structure," the object is to have extremely low rates so as, to use Mr. Marks' words, "to encourage the industry to locate in the South", that fact is not denied.

Eastern lines' do not agree with the subsequent implication drawn by Mr. Burroughs as typified by his statement that:

> "The critical fact here is that the ton and ton-mile allocation of constant costs assigns to pulpwood a cost that the Southern lines must recover from their share of the revenue on the essentially transit movement of paper." (V.S. 41, p. 8.)

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If pulpwood and wet rock fail to provide their pro rata share of revenues necessary to offset overhead costs, the asserted deficit, if it were properly and necessarily incurred, would be a burden of traffic generally rather than of any particular segment of that traffic whatever its physical relationship to the so-called deficit commodities. Constant cost, created as a burden of all traffic, must be shared by all traffic jointly in proportion only to the revenue-producing abilities of each segment. In placing the entire alleged pulpwood deficit on paper, for example, Mr. Burroughs himself made an allocation of constant cost, in this case to the paper traffic, which he would give precedence over the ton and ton-mile basis he here assailed.

Eastern lines challenge the merits of the allocation urged by the witness which, in effect, represents a pyramiding and, hence, duplication so far as paper and dry phosphate here in issue are concerned, of raw materials deficits added to fully distributed costs for the former already computed on the customary basis. It is submitted that cost is an independent determination capable of computation quite apart from ability to pay or revenues received. The costs incurred in handling pulpwood and wet phosphate rock do not become the costs of handling paper or dry rock or some other commodity, of whatever nature or physical relationship, simply because revenues may be inadequate on the former. A necessity to resort to general funds developed from traffic in the aggregate for general overhead expenses cannot possibly justify the arbitrary assignment of pulpwood costs to the paper traffic, or wet phosphate rock costs to the subsequent movement of the dry commodity.

The foregoing analysis makes it readily apparent, as stated earlier, that Witness Buroughs' criticism of Eastern lines' use of fully distributed costs serves merely as a pretext for the transfer of costs from Southern intraterritorial traffic to that here in issue. The out-of-pocket cost comparisons set forth above in this discussion clearly show that

it is not the use of fully distributed costs which distorts the true relationship between the territories but rather the Burroughs' adjustment which has that effect. Substantial distortions do in fact occur when adjustments are made in an arbitrary manner on only one side of the ledger as in the Burroughs' adjustment which increases the costs shown for the South while undertaking no corresponding adjustment for Eastern lines.

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Mr. Burroughs stated that a characteristic of the "related movement" concept is the necesity to haul the inbound commodity in order to participate in the outbound load. This latter situation was characterized by the witness as a "tacit transit arrangement." He further stated that there must be a direct relationship between the inbound raw material and the outbound finished product and that where there is a transportation operation intermediate between the pulpwood transported locally and the paper ultimately moving in North-South traffic, the former would not be "directly related" (R. 1770-71.)

Yet Witness Remington, in discussing this same adjustment, suggested that it might be equally appropriate to a three-step operation wherein the first movement was one of a raw material, the second of a semi-finished product and the third of a finished article. In the footnote, at pages 12 and 13 of Verified Statement No. 40-A, the latter witness stated that the costs of both the raw material, pulpwood, and the semi-finished product, wood pulp or pulpboard, should be charged against the subsequent haul of the finished paper product. Obviously, the difference in the two situations as to which Southern lines witnesses were not in agreement would not be one of principle but rather of degree.

Southern lines, anticipating this difficulty in rationalizing their theory, have thus chosen to emphasize what Witness Buroughs described as "an essentially transit relationship"

on pulpwood and wet phosphate rock. But a transit relationship is one that is readily identifiable from the tariff and either exists or doesn't exist. If an actual transit relationship exists, then the through rates from the initial origin of the raw material via the transit point to the ultimate desination of the finished product would here be in issue if that movement were between the territories involved. In that situation the through cost would likewise appropriately be considered in fixing divisions. But here no transit is in fact provided by the appropriate tariffs.

The only joint interterritorial rates here before the Commission are those applying on paper and paper products and on dry phosphate rock. The so-called "tacit transit arrangement" is at best an express recognition of the obvious physical fact that the production of finished and semi-finished products necessitates an inbound flow of basic ma-

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terials. Pulpwood, for example, is no more essential to the production of paper than are the myriad raw materials which enter into the production of other commodities moving freely in commerce between the two territories here involved as well as elsewhere throughout the United States. As Mr. Marks stated in the *Pulpwood* case cited above: "Pulpwood is the very heart of the paper industry to the same extent that iron ore is the very heart of the steel industry." (V.S. 80, G-12, p. 18.)

Pulpwood—Paper

In pursuing their one-sided adjustment Southern lines assert:

(1) "The Southern roads do not haul pulpwood in order to obtain the revenues from the pulpwood rates." (V.S. 41, p. 2.)

(2) That is is necessary to haul the pulpwood in order to obtain the outbound routing of the paper

(V.S. 41, p. 2; R. 1769), and, moreover, that under a "practice strictly adhered to", "the outbound routing is assigned to the railroads on the ratio of one ton of outbound paper for each 5.5 tons of pulpwood necessary to produce the ton of paper." (V.S. 41, p. 2.)

These assertions with respect to pulpwood are somewhat surprising inasmuch as most carriers are not inclined to so lightly dismiss as burdensome traffic which, by their own computation, not only covers out-of-pocket costs but contributes almost $5 million annually towards the sum total of constant costs assigned to all traffic as a totality. (V.S. 41, p. 6.) Moreover, the carriers in Southern Region themselves compete vigorously, not only with truck and barge carriers, but with each other for this allegedly burdensome pulpwood traffic. While they may seek to explain this competition as aimed at the resultant paper traffic, such an argument presupposes actual rigid adherence to the claimed pulpwood-paper ratio. Witness Buroughs himself, however, demonstrated very conclusively that the transportation of pulpwood is not in fact a necessary condition precedent to the routing via Southern lines of the paper produced from that pulpwood. (V.S. 41, p. 3.)

The relationship here urged by Southern lines, that between pulpwood and paper, was not previously suggested by those carriers when

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the reasonableness of rates on pulpwood was under consideration by the Commission, even where the compensatory nature of reduced rates on pulpwood was seriously questioned in an internecine battle. *(Reduced Rates on Pulpwood in Southern Territory, supra.)*

As previously noted that proceeding was an investigation into the lawfulness of reduced rates on pulpwood from and to points in Southern Territory, except in Kentucky, Louisiana and Mississippi, on the lines of the Southern Railway, SAL, Central of Ga., Frisco, C&O, N&W, Norfolk

Southern. The rates were protested by the ACL and the L&N. The Paper Conference intervened in support of respondents.

The Commission found that the purpose of the reductions was to recover pulpwood traffic lost to truck and barge carriers. (p. 158). The Paper Conference asserted that consideration should be given to the financial contribution made by pulpwood to the outbound paper. The Commission declined to recognize or comply with a requirement to determine the amount of money which traffic may fairly be required to contribute, stating:

> "The paper conference charges that 'this conclusion was reached without any consideration of the financial contribution *in dollars* actually being made by the pulpwood traffic and, of course, with no consideration of the financial contribution made by the outbound paper traffic derived from the pulpwood.' It is argued that there must be a comparison with the 'contributions *in dollars* made by other traffic.' The cited authority for these arguments is *North Carolina* v. *United States*, 325 U.S. 507, 516, 520. The particular observations of the Supreme Court relied on here were made by way of emphasis of our limited powers with respect to intrastate commerce. Earlier in the opinion, at page 510, the Court had remarked that 'as to interstate regulation, the Commission is granted the broadest powers to prescribe rates and other transportation details.' Consistently with that view, the Court has never undertaken to circumscribe our authority to prescribe minimum interstate rates by a rule such as that which the paper conference considers controlling; namely, that there must be a determination by us of the amount of money which the traffic in question may fairly be required to contribute. We have never recognized the existence of such a requirement, which practically would be very

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difficult, if not impossible, to comply with." (297 I.C.C. 735, 747-748.)

At page 3 of this Verified Statement No. 41, Witness Burroughs showed that Southern roads hauled 23,068,500 tons of pulpwood and originated 8,506,900 tons of paper and products. Thus, notwithstanding the claimed strict adherence to the inbound-outbound ratio, those railroads were required to originate and terminate only 2.71 tons of pulpwood for each ton of paper and products outbound rather than 5.5 tons as alleged. In effect then, the "burden" of handling pulpwood, said to be a prerequisite to securing paper traffic, was only half as great as asserted.

If, as stated, 5.5 tons of pulpwood are required to produce one ton of paper, it can be determined that the pulpwood handled by Southern lines produced only 4,194,272 tons of the total of 8,506,900 tons of paper and products originated by those lines. The remaining 4,312,628 tons, or over half of the total, constituted "free tonnage" secured by Southern lines without the necessity of any "burdensome" pulpwood haul. Using the same ratio of 5.5 to 1, this "free tonnage" obviously required the movement of 23,719,450 tons of pulpwood by carriers, presumably by water and highway, other than Southern railroads. Thus, in supply the raw materials for this "free tonnage", truck and barge lines handled more pulpwood than all Southern railroads and did so without receiving a single pound of outbound paper and products. This comparison makes it apparent, first that pulpwood traffic is desirable, certainly, at least, to competing modes of transportation, for the revenues from that traffic alone and, secondly, and fortunately for Southern railroads, that there is clearly considerably less than strict adherence to the claimed practice of awarding the higher-rated paper traffic to the carrier hauling the inbound pulpwood.

Moreover, by this analysis, Mr. Burroughs' admitted speculation (p. 9) that the pulpwood rates might be increased and the paper rates reduced without injury to Southern lines but with serious impact upon Northern lines, is shown to be utterly removed from reality. Since there are water and motor carriers actively participating in the pulpwood traffic, for the sake of that traffic alone, rates on pulpwood are

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subject to competition; and, moreover, increased rail rates would run counter to Southern lines' policy to attract the paper industry to the South and to encourage its growth there. And so far as rate reductions on paper and paper products are concerned, Southern lines would hardly reduce rates which are already sufficiently competitive to attract more uncommitted "free tonnage" for which truck lines are already competing than tonnage allegedly earned by handling pulpwood under the so-called tacit arrangement.

Wet Phosphate Rock—Dry Phosphate Rock

Inasmuch as it is the position of Southern lines that the principles asserted with respect to pulpwood and paper apply as well to the wet phosphate rock and dry phosphate rock (V.S. 41, p. 9), the foregoing comments are pertinent as well as to the latter. It is appropriate, however, to note three minor differences. First, as Mr. Burrough himself pointed out, the Commission's waybill statistics show only phosphate rock and do not separate wet from dry rock. Hence, the method relied upon by the witness to allocate costs as between the two commodities is subject to careful scrutiny. Second, while reference is made to certain transit tariffs, there is no rate adjustment to the shipper and no claim that the rate here being divided is that on the entire wet rock-dry rock movement (R. 1767). It follows that this is no more a true transit arrangement than was the case with pulpwood. Third, Witness Burroughs' computations

with respect to phosphate rock purport to show a deficiency not only below fully distributed cost, as in the case of pulpwood, but below out-of-pocket cost as well.

But the degree of the deficiency is not material to the inquiry which Eastern lines submit is of prime importance, that is, the propriety of including, as a legitimate cost of handling the traffic, the rates, on which are sought to be divided, the alleged amounts by which some other rates (over which Eastern lines have no control) not here in issue, fall short of returning full cost, with no justification other than the claim that the two movements are "directly related."

Nor is the existence of a tacit transit arrangement a criterion of substance even if it were shown to exist in fact and to be adhered to in practice. Certainly, if this theory had any validity, a carrier actually handling both inbound raw materials at below fully distributed costs

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and the outbound finished products at profitable rates could legitimately claim the same relationship and transfer of cost from the former to the latter whether or not there were any express, or unspoken, arrangement with the shipper as to routing of the finished product. There would be no difference in the physical sense in any case since the outbound product could not come into existence but for transportation of the inbound raw material by whatever means. And to the extent that the inbound transportation movement devolved upon the outbound carrier, and if a common carrier it might well have no choice, then under Southern lines' theory, costs and, hence, rates and divisions, on the outbound product would have to be fixed giving full consideration to any deficiency on the inbound commodity. Eastern lines submit that the complexity and impractical effectuation of the principles of "direct relationship" here expounded by Southern lines, when carried to their logical

conclusion, are another ground upon which it is condemned without more.

There is, then, no possible justification for this effort on the part of Southern lines to transfer the costs of other traffic, not here in issue, to those claimed for such lines on North-South traffic. And even if such transfer were otherwise proper, it would be a gross distortion of territorial cost levels to fail to make corresponding adjustments in the cost of Eastern lines, which Witness Burroughs necessarily conceded would be proper to reflect similar inbound raw material—outbound finished products relationships in the traffic of those carriers (R. 1765, 1806).

k. *In Summary, Each of Southern Lines' Proposed Adjustments to Form A Costs Should be Rejected.*

It is respectfully submitted that the foregoing discussion demonstrates that Southern lines' proposed adjustments to Form A average costs are unsound and should be rejected. They are the work of parties who are motivated by the sure knowledge that they cannot prevail if relative costs are determined by a forthright application of Form A to the immense body of traffic that moves between all stations in the North and all stations in the South, both ways. What the Commission observed when this case was first before it is true now: that adjustments "advanced by litigants in adversary proceedings must neces-

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APPENDIX.
Volume V.
(Pages 1157 to 1556.)

Office-Supreme Court, U.S.
FILED
JUL 5 1968
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, [redacted] 1968

No [redacted] 13

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,

Appellants,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees.

No. [redacted] 15

INTERSTATE COMMERCE COMMISSION,

Appellant,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees.

Appeals From the United States District Court for the Eastern District of Louisiana, New Orleans Division.

Filed December 18 and 21, 1967.

Probable jurisdiction noted March 4, 1968.

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ORDER.

Service Date
January 7, 1963

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C. on the 27th day of December, A. D. 1962.

No. 29885

OFFICIAL-SOUTHERN DIVISIONS

IN THE MATTER OF DIVISIONS OF JOINT RATES BETWEEN OFFICIAL AND SOUTHERN TERRITORIES

No. 29799

THE AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, ET AL.

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.

Upon consideration of the record in the above-entitled proceedings, a petition for further hearing filed November 13, 1962, by the respondent Southern Territory railroads, and a memorandum in support thereof filed November 30, 1962, by the Southern Governors' Conference, et al., interveners, and of replies thereto filed by the respondent Eastern railroads; and

It appearing, That the petition seeks further hearing for the purpose of submitting evidence concerning the effect of proposed combinations and consolidations of rail carriers in official territory upon operating costs and revenue needs of said carriers;

It further appearing, That such combinations and consolidations are involved in pending proceedings before the Commission, in some of which the hearings have not been concluded; and that it cannot properly be assumed at this time that all of the combinations and consolidations will be approved and consummated, as proposed;

It further appearing, That, even if all or some of the combinations and consolidations are approved and consummated, the effect thereof on operating costs and revenue needs of the carriers involved will not be ascertainable within a brief period after consummation;

And it further appearing, That reopening these proceedings for further hearing would result in unjustified delay in the disposition thereof; therefore,

It is ordered, That said petition be, and it is hereby, denied, for the reason that sufficient grounds have not been presented to warrant granting the action sought.

By the Commission.

HAROLD D. MCCOY,
Secretary.

(SEAL)

EXAMINER'S RECOMMENDED REPORT DATED JULY 17, 1963.

INTERSTATE COMMERCE COMMISSION

Served July 17, 1963

No. 29885 [1]

OFFICIAL-SOUTHERN DIVISIONS

IN THE MATTER OF DIVISIONS OF JOINT RATES BETWEEN OFFICIAL AND SOUTHERN TERRITORIES

Decided

Upon further hearing, present divisions of joint interterritorial rates between official and southern territories found unjust, unreasonable, and inequitable. Just, reasonable, and equitable divisions prescribed. Prior reports, 287 I.C.C. 497, 289 I.C.C. 4, 291 I.C.C. 90, 294 I.C.C. 739 and 298 I.C.C. 83.

Edward A. Kaier, Joseph F. Eshelman, Andrew C. Armstrong, R. G. Bleakney, Jr., Robert D. Brooks, Benson T. Buck, J. Raymond Clark, J. T. Clark, Robert B. Claytor, A. P. Donadio, A. Paul Funkhouser, Thomas P. Hackett, John W. Hanifin, J. E. Hess, Bernard Hulkower, Allen Lesley, Kenneth H. Lundmark, Robert H. Pratt, and *S. W. Scully,* for official-territory respondents.

Douglas F. Smith, Howard J. Trienens, John W. Adams, Phil C. Beverly, C. J. Collins, R. Granville Curry, Arthur J. Dixon, R. Wray Henriott, Moultrie Hitt, Howard

---

1. This report also embraces No. 29799, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen & Rockfish Railroad Company, et al.

D. Koontz, John E. McCullough, Prime F. Osborn, Charles P. Reynolds, Edward M. Reidy, Walter C. Scott, Joe A. Sutherland, Donal L. Turkal, E. B. Ussery, Harold B. Wahl, and *Arthur J. Winder* for southern-territory respondents.

Charles H. Clay, R. J. Faletti, James A. Gillen, R. J. Lehman, Don McDevitt, Joseph J. Nagle, and *Edgar Vanneman, Jr.,* for western-territory respondents.

David O. Benson, F. Kent Burns, Reuben G. Crimm, Hammond Fowler, G. P. McCord, Jr., and *Walter R. McDonald* for interveners supporting southern-territory respondents.

[2]

RECOMMENDED REPORT AND ORDER UPON FURTHER HEARING BY OREN G. BARBER AND T. RUSSELL ROPER, HEARING EXAMINERS.

The title case is a proceeding of inquiry and investigation originally instituted on December 4, 1947, upon the Commission's own motion for the purpose of determining whether the then existing divisions of joint rates on classes and all commodities between points in official territory and points in southern territory (as both territories are defined in *Class Rate Investigation,* 1939, 262 I.C.C. 447, 457) were unjust, unreasonable, or otherwise unlawful. All railroad carriers in the two territories were named as respondents.[2] The complaint in No. 29799 was filed July 24, 1947, in which the northern lines assailed as unlawful the divisions of joint rate on citrus fruit from points in Florida to destinations in official territory. As originally instituted therefore the two proceedings brought in issue the division of all joint interterritorial rates between the North and the South except those on coal and coke made from coal which were excluded by mutual consent of the parties.

In the original principal decision dated January 12, 1953, 287 I.C.C. 497, called the 1953 report, embracing all

2. For this note and succeeding ones see Appendix A.

such traffic, the Commission prescribed primary divisions based upon equal mileage factors for the northern and southern lines except as to joint proportional rates on grain and grain products from East St. Louis, Louisville, and Cincinnati to points in southern territory, the northern factors prescribed were 75 percent of the northern general factors. That report also provided that arbitraries which were included in the joint rates should be deducted before prorating and that in lieu of specific apportionment of the arbitrary in respect of the rates on citrus fruit from Florida to official territory one percentage point should be deducted from the northern division and added to the southern division. Also in that report the dividing points for such primary divisions were fixed at the points of actual interchange rather than at the territorial boundaries.

In a report on reargument, 289 I.C.C. 4, decided May 26, 1953, the prior report was modified so as to make the prescribed divisions applicable only to and from the existing primary dividing points. This report also postponed the effectiveness of the prescribed divisions with respect to divisions to and from points on the Norfolk Southern Railway Company and the Beaufort & Morehead Railroad Company pending further hearing. The prescribed divisions became effective on July 15, 1953.

[3]

Upon petition of various parties the findings in the two prior reports were interpreted and certain conclusions were revised in three supplemental reports. In 291 I.C.C. 90, of November 2, 1953, the definition of northern lines was broadened to include the Toledo, Peoria & Western Railroad Company, and the proceeding was reopened for further hearing with respect to divisions of rates between points on certain western trunklines and points in southern territory where no northern (official territory) carrier was a party to such rates, (later vacated, see *infra.*) and with respect to divisions of joint interterritorial rates between

points on the line of the Atlantic and Danville Railway Company west of Suffolk, Va., and points in official territory. The third and fourth supplemental reports, 294 I.C.C. 739 and 298 I.C.C. 83, made certain interpretations of previous findings.

On November 2, 1956, the northern lines petitioned the Commission for general reopening of these proceedings for further hearing and for modification of the order of January 12, 1953, as modified by the order of May 26, 1953. The petition was held in abeyance at the request of the interested parties until April 1, 1959, when the northern lines asked that the petition be processed. After replies had been duly filed, the Commission by order dated July 20, 1959, reopened the proceeding for further hearing. The scope of the divisions now at issue is in some respects more limited than that covered in the 1953 report. The extent to which joint interterritorial rates is now excluded and the reasons therefor are listed in Appendix B.

Traffic Studies

Both the northern and the southern lines made traffic studies for use in these cases. The northern lines introduced two studies developed in accordance with a sampling procedure, embracing carload shipments (except coal and coke made from coal) moving on joint rates (including aggregate-of-intermediate rates which automatically displace single-factor joint rates) between points in southern territory and points on northern (eastern) railroads in official territory. One of such studies covered general traffic for the months of March and September, 1956. The other embraced citrus fruit and fresh or green vegetables, not frozen, for the five months, January to May, 1956. The southern lines introduced a traffic study, developed in accordance with a sampling procedure, which was broader in scope and coverage than that of the northern lines. These lines selected the 12-month period July 1958 to June 1959

as a representative period which excluded any period said by them to be abnormal. Unlike the northern lines' study, this study includes traffic originating or terminating on western or southern lines in official territory when a northern line participated in the hauls.

The southern lines' tabulations include showing of many of the characteristics of the traffic in the same form as that produced

[4]

in the northern lines' study. The southern lines' study, unlike the northern lines' study, does not make separate showings as to citrus fruit and vegetables, such traffic having been included in the over-all general study. Coal and coke made from coal are not included in the final tabulations of the southern lines' study, and there are certain classes of traffic which for reasons shown the southern lines deem the divisions of rates thereon are not here in issue. These segments are: (1) traffic to and from western carriers' stations in official territory, (2) traffic subject to grain proportional and reshipping rates subject to Docket 29885 prescribed divisions, both categories excluded for stated reason that no evidence was introduced by an official territory respondent, (3) border traffic between border points and official territory which was subject of litigation in Docket No. 32055 (the parties have stipulated that this traffic is not in issue), (4) Norfolk Southern general traffic between stations on that line and points in official territory excluded because Docket 29885 divisions were not prescribed thereon and that respondent made a separate presentation thereof (the study does include Norfolk Southern "overhead" traffic), and (5) traffic to and from Morehead City, N.C., on A. & E. C. Ry., excluded for same reason as (4) above.

Northern Lines' Studies

The general traffic study.—The northern lines' general traffic study covering general traffic for the months of

March and September 1956 is expanded to a year's basis by multiplying by six. This study, so expanded, embraced a movement of 983,664 cars, 28,416,839.4 tons, with total revenue of $450,909,348. By directions northbound traffic exceeded the southbound by substantial amounts as shown below:

	Cars	*Tons*	*Through Revenue*
	Percent	*Percent*	*Percent*
Northbound	54.04	59.36	54.87
Southbound	45.96	40.64	45.13

The predominance of higher grade traffic is indicated by the following summary of the separation of the total traffic by primary commodity classifications:

[5]

	Cars	*Tons*	*Through Revenue*
	Percent	*Percent*	*Percent*
Products of agriculture	4.26	3.09	3.28
Animals and products	1.39	0.89	1.25
Products of mines	11.09	18.85	10.81
Products of forests	9.86	8.92	8.31
Manufactures and misc.	70.15	67.23	73.79
Forwarder	3.25	1.02	2.56
Total	100.00	100.00	100.00

About 75 percent of the general traffic moved in box cars and refrigerators as shown by the following tabulation of the movement by types of equipment:

	Percent
Box	72.13
Gondola	11.23
Tank	6.42
Refrigerator	3.15
Hopper, covered	3.04
Flat	2.34
Hopper, open top	1.22
Stock	0.47
Total	100.00

The studies of both groups do not cover less-than-carload traffic as was also the case in the original phase. Gross freight revenue on such traffic has declined substantially since 1947 as follows:

	Eastern district and Pocahontas region	*Southern region*
1947	$243,910,929	$99,608,559
1956	123,550,144	48,067,987
1958	90,667,451	36,532,274

As in the original case, the most important interchange points are Cincinnati, Ohio, Richmond, Va., and Potomac Yard, Va., with

[6]

over half being interchanged at Virginia gateways, the remainder at the Ohio crossings. The relative importance of the principal primary break points on general traffic is shown below:

	Cars
Break point	*Percent*
Cincinnati, Ohio	23.19
Richmond, Va.	19.27
Potomac Yard, Va.	12.37
Louisville, Ky.	8.68
Cairo, Ill.	7.65
East St. Louis, Ill.	4.94
Elkhorn City, Ky.	4.78
Other Virginia cities	16.40
Other Ohio River crossings	2.72
Total	100.00

The average hauls on the general traffic per car-mile and per ton-mile are shown below:

	North	*South*	*Total*
Car-miles	*Miles*	*Miles*	*Miles*
Route of movement	408	519	927
Short line	362	475	837
Ton-miles			
Route of movement	392	508	900
Short line	347	464	811

It was shown that the average hauls of the northbound traffic (not including Florida Vegetables) in the southern lines' general 1947 study (based on average short-line ton-miles) were 370 miles in the North and 500 miles in the South, and of the southbound, 325 miles in the North and 440 miles in the South. On the same basis the present northern lines' general traffic study shows on northbound traffic, 371 miles in the North and 496 miles in the South,

on southbound, 313 miles in the North and 419 miles in the South, and on total traffic 347 miles in the North and 464 miles in the South, compared with the 1947 study figures of 345 miles North and 478 miles South.

The total through revenue, $450,909,348, including the arbitraries, was divided "as settled," between the two groups as follows:

[7]

	Percent
North	45.44
South	54.56

This study shows that the northern lines performed 42.8 percent of the short-line ton-miles of service, and 44 percent of actual route of movement car-miles, the southern lines 57.2 and 56 percent, respectively.

The citrus fruit and vegetables study.—This study, also developed by sampling, covering the movement of these commodities from southern territory to points in official territory on lines of the northern lines for the five months, January through May, 1956, embraced 43,810 cars, 713,618 tons. The total revenue was $19,660,843, which was settled 33.38 percent North and 66.62 percent South. The northern carriers performed 29.4 percent of the short-line ton-miles of service, the southern, 70.6 percent. While the southern lines' study will be discussed fully later, it may be pointed out here that that study covers 14,651 cars of citrus and 21,785 cars of vegetables totalling 36,436 cars moved in the 12 months July 1958 to June 1959, or 7,374 less than the northern lines' study.

The preponderance of citrus and vegetables moved through the Virginia gateways, Richmond and Potomac Yard. Cincinnati was the important Ohio River gateway. The percentage distribution of cars by gateways is tabulated below:

Gateway	*Citrus fruit*	*Vegetables*	*Total*
	Percent	*Percent*	*Percent*
Richmond	69.76	51.20	57.66
Potomac Yard	10.06	13.94	12.59
Elkhorn City	7.56	14.70	12.21
Cincinnati	7.38	11.98	10.38
Evansville	3.26	4.23	3.90
Other	1.98	3.95	3.26
Total	100.00	100.00	100.00

The following table shows the average short-line hauls on this traffic:

[8]

	Short-line Miles		
Car-miles	*North*	*South*	*Total*
Citrus fruit	356	830	1186
Vegetables	360	893	1253
Total	359	871	1230
Ton-miles			
Citrus fruit	355	830	1185
Vegetables	361	890	1251
Total	358	860	1218

As settled, the revenue on the citrus fruit and vegetable traffic divided as follows:

	North	*South*
	Percent	*Percent*
Citrus fruit	34.88	65.12
Vegetables	32.23	67.77
Total	33.38	66.62

Southern Lines' Study

This study for the 12-month period July 1958 to June 1959 produced an estimated total of 967,554 cars containing 28,055,720.7 tons of freight yielding total through freight revenue of $496,088,766, including arbitraries totalling $1,365,705. As stated above this traffic study included traffic originating or terminating on western or southern lines in official territory when a northern line participated in the haul, and as stated above coal and coke made from coal and certain classes of traffic not considered by the southern lines as here in issue, were not included in the final tabulations.

By directional flow, by commodity groups, and by types of equipment, this study follows closely those characteristics as produced in the northern lines' study. The distribution of the traffic by direction is as follows:

	Cars	*Tons*	*Through Revenue*
	Percent	*Percent*	*Percent*
Northbound	53.9	59.5	55.4
Southbound	46.1	40.5	44.6

[9]

The distribution by general primary commodity groups was as indicated below:

Commodity group	*Cars*	*Tons*	*Through Revenue*
Products of agriculture	8.59	6.25	7.18
Animals and products	1.36	0.88	1.17
Products of mines	11.23	19.15	11.21
Products of forests	5.82	5.28	5.15
Manufactures and misc.	68.81	67.13	72.03
Forwarder	4.19	1.31	3.26
Total	100.00	100.00	100.00

Distribution of the traffic (including citrus fruit and vegetables) by types of equipment also shows the predominance of boxcar and refrigerator traffic as follows:

	Percent
Box	68.97
Refrigerator	8.31
Gondola	7.62
Tank	6.65
Hopper, covered	4.25
Flat	3.06
Hopper, open	0.73
Stock	0.41
Total	100.00

As in the northern study, Cincinnati leads as the principal primary break point, with Richmond and Potomac Yard in second and third place. Of the total cars embraced in the study, 55.4 percent passed through the Ohio River-Illinois-Kentucky gateways, 44.6 percent through the Virginia gateways. The detailed distribution of cars by individual gateways does not differ materially from that shown by the northern study.

The average hauls per car and per ton, both route-of-movement and short-line, for the total traffic included in the study are shown below:

	North	*South*	*Total*
Per car	*Miles*	*Miles*	*Miles*
Route of movement	420	567	987
Short line	372	522	894
Per ton			
Route of movement	410	557	967
Short line	361	511	872

[10]

The following table compares the "as settled" division of the total through revenue, in the two groups' studies:

	Combined northern lines' studies—Percent	*Southern lines' study*	
		Percent [1]	*Percent* [2]
North	44.93	44.64	44.75
South	55.07	55.36	55.25

The northern lines point out that the southern study may be subject to criticism for failure to include Norfolk Southern traffic so that the Commission could deal with such traffic separately or together with southern traffic as a whole, according as it shall find proper. As stated, the Norfolk Southern submitted a separate presentation for itself in respect of traffic originating or terminating on its line and passing over its line to or from stations on the Atlantic & East Carolina and the Beaufort & Morehead. The divisional situation as to these lines is the subject of later discussion herein. Inclusion of Norfolk Southern originated or terminated traffic tends to shorten the average hauls in the South as shown in the following tabulation based on average short-line ton-miles:

Traffic study	*North*	*South*	*Total*
Northern general	347	464	811
Southern total	361	511	872
Southern plus Norfolk Southern	361	503	864

It will be observed from a comparison of the various foregoing tabulations that the two groups' studies are basically similar as to the general characteristics of the traffic. The least similar results are the average hauls as

1. Including arbitraries.
2. Excluding arbitraries.

indicated immediately above. These differences may be accounted for principally in the difference in periods studied as well as the inclusion or exclusion of certain traffic in the one and not in the other. We are of the opinion that the southern study more closely corresponds in coverage with the scope of the Commission's order in this reopened phase of the case.

The northern study does not include an estimated annual movement of 46,201 cars which originated or terminated on western district lines on which the northern lines performed only intermediate service. Also excluded was traffic (4,092 cars) to or from southern lines' stations in official territory on which the northern lines performed only intermediate service. A third category not included in the northern lines' study (2,955 cars) which the southern study embraces was traffic between the South and Canadian points moving on combination rates breaking at the international boundary on which the revenue accruing to domestic carriers is divided on the 1953 prescribed basis.

[11]

On the other hand, the northern study includes traffic between points on the Norfolk & Western in southern territory and points in official territory. The extent of this traffic is not revealed in the northern study but its inclusion therein tends to understate the southern lines' average haul since such traffic always has a short haul in the South. The southern study includes so-called vacated order traffic: (1) liquid soda and soda ash from Saltville, Va., to Kingsport and Port Rayon, Tenn., and (2) peaches and fresh vegetables moving on per car rates to piers 22, 27, 28 and 29 at New York City. These two categories represent only 1,209 cars, an inclusion of little significance, but the divisions thereon are again in issue here as are the divisions on trailer-on-flatcar traffic not covered by stipulation of the parties.

The northern study does not reflect the changes in effective divisions which have occurred since 1956, brought about by vacation of the 1953 order as to certain categories of traffic as requested by mutual petitions. Thus, the "as settled" revenue which the northern lines received is understated under present divisional bases. This is particularly true as to vegetables. The rates on this traffic which moved in 1956 contained Florida arbitraries which were deducted before prorating then added back to the southern proportion of the through revenues. Since 1957 vegetable traffic to New York has moved on per-car rates, containing no arbitraries, the divisions thereon providing that the excess of $57 per car in the New York rates, over and above the rates to Jersey City, N. J., shall accrue to the delivering lines before prorating. Thus the northern lines' study shows that during the first five months of 1956 the northern lines received 32.23 percent of the as settled revenue (including arbitraries in effect at that time) on northbound fresh vegetables whereas the southern lines' study of 21,785 cars of fresh vegetables moved in a year subsequent to the establishment of the per-car rates shows the northern lines received 35.28 percent of the as settled revenue (including presently effective arbitraries).

Economic Trends—Revenue Needs

At pp. 501-505 of the 1953 report various statistical comparisons were stated which supported a conclusion "that in the past 20 years the South has bettered its relative economic position in comparison with the North" and that "the southern railroads have benefited from this improvement in the economic situation of the South." The record in this reopened phase indicates a continuation of these trends. There is little evidence comparing these statistics as between the North and the South but figures comparing the South with the entire country are quite abundant. The number of employees in the South in 1958 increased 28 percent over 1947, the number in the North was approximately the same in 1958 as in 1947, while there

was an increase of 12 percent for the entire country. In absolute figures the North in 1958 had almost 10 million employed persons, 5 times as many as the South. The value of manufactures for the

[12]

nation almost doubled between 1947 and 1958, increased about 67 percent in the North, and slightly more than doubled in the South. From 1930 to 1958 the population of the United States increased 41 percent and in the southern States, 44 percent. The percentage population gains during the 20 years 1930 to 1950 were 22.7 percent for the entire country, 24.5 percent in the South, and 18.8 percent in the North, as shown in the 1953 report. An advertisement sponsored by a southern respondent in 1960 shows "that the South's economic development since World War II has outpaced the national rate of growth in practically every category you can name." These data show for the South increases of 40 percent in the number of manufacturing establishments, and 57 percent in the number of industrial and commercial forms, compared with respective national increases of 26 and 25 percent.

The relatively greater increase in freight traffic in the South than in official territory since 1947 warrants the conclusion that the southern lines have benefited from the general improvement in the economic situation in the South. The number of cars and tons handled within the South in 1958 were 100.40 and 120.21 percent, respectively, of that for 1947 while corresponding percentages for official territory were 64.14 and 68.19. Revenue ton-miles for the southern region in 1958 were 99.6 percent of those shown for 1947, and revenue tonnage originated and terminated in 1958 was 105.5 and 113.6 percent, respectively, of that handled in 1950. Corresponding percentages for the eastern district and Pocahontas region were for revenue ton-miles, 85.4 percent, and for tons originated and terminated, 77.3 and 77.5 percent, respectively. Revenue tons origi-

nated and terminated in the entire country in 1958 were 87.9 and 91.3 percent, respectively, of that in 1950.

Freight revenue of the southern lines since 1950 has also increased relatively greater than that of the northern lines as shown below:

Freight revenue for	*Southern region*	*Percent*	*Eastern district and Pocahontas region*	*Percent*
1950	$1,098,229,000	100	$3,374,542,000	100
1958	1,175,318,000	107	3,217,516,000	95.3

The average net ton-miles of revenue and non-revenue freight per annum in the southern region for 1956-1958, 91.8 billions, were 2.1 billions more than those for 1950, and 37.9 billions greater than in 1940. The average for the eastern district and the Pocahontas region in 1956-1958 was 253.2 billions, 6.3 billions less than in 1950, and 53.8 billions greater than in 1940.

At page 503 of the 1953 report the operating ratios of the two groups of carriers are shown for the years 1941-1950, indicating ratios for the southern lines were consistently below the ratios of the northern lines. The present record does not show freight operating ratios separately. The total operating ratios continue to favor the southern lines as shown below:

[13]

Year	*Southern region Percent*	*Eastern District and Pocahontas region Percent*
1951	75.14	79.58
1952	73.26	79.03
1953	72.64	78.79
1954	76.00	81.14
1955	72.79	77.09
1956	74.73	77.62
1957	77.68	79.53
1958	78.61	81.20
1959	76.22	80.52

The 1953 report also showed that the increase in net railway operating income received by the southern lines in the period 1941-51 had been relatively larger than for the northern lines. Continuation of that trend is shown in the table below:

	Southern region		*Eastern district and Pocahontas region*	
Annual average for—	*Millions*	*Percent*	*Millions*	*Percent*
1948-1953	$157.8	100	$395.4	100
1954-1959	162.4	103	361.1	91

The above table reflects operations of the two groups for the six full years prior to and after the present prescribed divisions became effective under which the prior divisions giving the southern lines on general traffic a 25 percent factor advantage was eliminated.

Rates of return on depreciated book investment, set forth at page 503 of the 1953 report, indicate for the years 1941 to 1951 those for the southern lines consistently exceeded those for the northern lines. In this phase of the proceeding the southern lines show the rates of return based on the net investment [3] as follows:

Year	*Southern region percent return*	*Eastern district and Pocahontas region percent return*
1952	5.27	3.86
1953	5.45	4.01
1954	4.48	2.89
1955	5.45	4.19
1956	5.02	4.05
1957	4.14	3.29
1958	3.68	2.00
1959	3.63	2.27

Again comparing these statistics for the 6 full years since the present divisions became effective with the 6 years

prior thereto it is shown that the average rate of return (net investment method) for the southern lines was 4.40 percent in 1954-59 and 4.79 percent in 1948-53, while the northern lines' average was 3.11 and 3.60 percent, respectively.

[14]

The southern lines say that returns for the calendar years 1958 and 1959 should not be used for comparative purposes to determine future divisions in view of the recession in business activity affecting the first half of 1958 and the severe steel strike affecting the last half of 1959, which affected the northern lines to a greater degree than the southern lines. The rates of return of both groups for these years were lower than for any year since 1949. A comparison, omitting 1958 and 1959, shows average annual rates of return for the southern lines, 1954-57, 4.77 percent and 1950-53, 5.19 percent and for the northern lines during the same respective periods, 3.60 and 3.76 percent. Thus the spread between the two groups in the 4 year period before the present divisions became effective, 1.43 percentage points, was reduced to 1.17 in the like period subsequent thereto.

As the Commission stated at page 504 of the 1953 report, relative revenue needs of opposing groups of railroads must be taken into account in prescribing divisions. It was there observed that the southern lines in 1939 put *much* emphasis on the more urgent revenue needs of their railroads when these lines were given an inflation in divisional factors. In the 1953 report in which the inflation was removed, these respondents were less emphatic, merely asserting that the relative revenue needs were if anything greater in the South than in the North, despite their higher rates of return in the decade prior thereto. Here the northern lines say "The Commission, charged with responsibility for maintaining adequate transportation, cannot fail to give substantial weight to the manifestly greater revenue needs of the Eastern lines * * *". The southern lines designate cost of service as the "vital and decisive issue in this divi-

sions case" but recognize that the revenue needs issue may properly be given secondary consideration. They say that a separate claim based upon revenue needs is a claim for a disportionate share of the revenues in excess of the "due proportion" of the financial burden reflected in the cost evidence, and that mere differences in earnings do not constitute the special circumstances necessary to invoke the revenue needs test. They further argue that any transfer of the divisional revenues here at issue would have relatively greater effect in the overall financial condition of their lines and of little practical effect upon the earnings of the northern lines to which this traffic "is of incidental importance only". The southern lines take the position that evidence is lacking here establishing a need in the public interest of a transfer of divisional revenues "to maintain carriers in effective operation". They point out that in both groups there are carriers that have relatively high earnings and others with relatively low rates of return. They also question the propriety of a shift in divisions which would take revenues from certain low-earning roads in the South and increase revenues of lines in the North with higher rates of return. Such a result is inevitable in adjusting divisions on a group basis such as we are compelled to do in this proceeding.

[15]

Our findings and conclusions reflect due consideration of the revenue needs of both groups as well as all the other factors the Commission is directed to consider under section 15(6) of the Interstate Commerce Act.

The southern lines also argue that the northern lines should employ the "principle of self-help" before they may "rely upon others to carry their burdens". They refer particularly to those areas of self-help involving modernization and mergers to eliminate excess capacity; and in addition, failure to adjust their subdivisions to a proper basis. Lack of sufficient cash has caused the northern lines

to forego car and locomotive repairs. In August 1959, 12.1 percent of the northern lines' cars were undergoing or awaiting repairs; the figure for the southern lines was 5.3 percent. In July 1959 6.7 percent of the North's locomotives were in or awaiting shop, for the South, 8.1 percent. In respect of maintenance of properties the northern lines have lagged behind the South. Using the 4-period 1950-53 as a base index of 100 for new rail laid in replacement the northern lines' (including Pocohontas) index declined to 60.6, 60.9, 56.6, 54.4 and 20.5 in the following 5 years, 1954-58, respectively, while the respective indices for the southern region roads were 101.2, 90.9, 76.7, 80.7, and 49.8. Indices for cross-tie and second-hand rail replacements in the two groups follow similar patterns during the comparable years.

The southern lines point to the comprehensive steps taken by the New York Central in a modernization program including construction of modern yards and installation of centralized traffic control, permitting the elimination of duplicate facilities and retirement of excessive track, at the same time reducing its fixed charges, all of this accomplished under present divisions. They contend the Pennsylvania and the B. & O., instead of reducing their long term debt in the past years, should have devoted these funds toward more modernization which would reflect reduced operating costs and higher rates of return. As for the New Haven, they say its financial plight can be cured only by positive steps to reduce its local commuter service deficit; that increased divisions is not the answer. The several electronic yards constructed in official territory have not produced the benefits the northern lines had hoped for. These yards generally have been operating at substantially less than capacity due to lack of sufficient traffic volume.

In respect of their financial condition, the southern lines contrast the "stable or shrinking transportation plant" of the northern lines with their investment of "large

sums to expand their railroad plant and facilities in order to handle the increasing volume of traffic generated by the growing South, but without receiving any additional return to support the additional investment". They fail to recognize that even though their net investment has increased relatively greater than that of the northern lines, their rates of return have been relatively favorable as hereinbefore discussed.

[16]

At page 505 of the 1953 report it was observed that each group then sought to show that it was more adversely affected by motor and water competition. The Commission concluded that the evidence was insufficient to justify a prediction that such competition was likely to be felt more keenly in the future by one group than the other. The two groups again stress these competitive factors, both urging that the impact thereof will be greater in their respective regions. Construction of new highway systems in both territories is under way. In 1958 truck registrations in the official territory numbered nearly 4 million, almost twice that in the South. In that year class I railroads in the eastern district handled 11.25 tons for every ton handled by the class I motor carriers. In the South the 1958 ratio was 1:23.42. On a revenue basis the eastern district rail-truck ratio was 1:3.43, southern region 1:5.68. A comparison of ton-miles of revenue freight handled by Class I intercity highway carriers and by official and southern territory railroads shows that in official territory the motor carriers handled 6.82 percent of the total in 1951 and 8.93 percent in 1958. Respective figures for southern region were 5.22 and 8.85 percent, indicating on this basis a greater relative increase in the South between 1951 and 1958. The waterborne traffic diversion appears to have more seriously affected the northern lines, particularly on the Ohio and Illinois rivers and the Great Lakes. The operation of the recently opened St. Lawrence Seaway has diverted traffic

from the northern lines. Both groups have been forced to lower their rate levels on particular movements to meet competition of other modes of transport.

The following table shows changes in revenue per ton and revenue per ton-mile for the two groups in the 4 years of normal business activity since the present divisions were made effective:

	Eastern district and Pocohontas region		*Southern region*	
	Revenue		*Revenue*	
	Per ton	*Per ton-mile*	*Per ton*	*Per ton-mile*
		cents		*cents*
1954	$2.98	1.55	$2.98	1.46
1955	2.91	1.48	2.89	1.40
1956	2.95	1.49	2.82	1.43
1957	3.14	1.56	2.97	1.48

The southern lines observe that the "location of new industries in the South near abundant sources of raw materials has meant that the long-haul movement of manufactured products into the South has been replaced by the movement of low-rated

[17]

raw materials to nearby plants." Increased population in the South has caused finished products to be consumed locally and they say they are left with less remunerative movement of low-rated raw materials. As an example, it is shown that the Seaboard handled 33.9 percent more tonnage of low-rated commodities in 1959 than it did in 1951. Between the same years its tonnage of high-rated commodities increased only 5.6 percent. Its revenue increases in the same period were 28.7 percent on low-rated, and 2.4 percent on high-rated commodities.

The northern lines show their tonnage and revenues in the eastern district for both groups of commodities decreased in 1959 compared with 1951 as follows:

Eastern district

Tonnage handled

	Tons (millions)	Percent decrease	Revenue (millions)	Percent decrease
Low grade				
1951	453.4		$664.2	
1959	329.1	27.4	559.6	15.8
High grade				
1951	207.4		868.3	
1959	161.0	22.4	736.3	15.2

Efficiency of Operation

In prescribing divisions the Commission is required by section 15(6) of the act to "give due consideration, among other things, to the efficiency with which the carriers concerned are operated." In the 1939 report it was observed that neither group criticized the operating efficiency of any respondent carrier. But in the original phase of this case the relative efficiency of the northern lines was the subject of very substantial evidence directed to support the southern lines' assertion that "performance in the North reflects less efficient operation than in the South." After reviewing the various statistical indicators of efficiency in the prior record, the Commission in the 1953 report, stated at p. 519: "In our opinion the figures disprove the charge that the northern lines are less efficiently operated than the southern lines * * *." In this reopened phase the southern lines do not question the relative operating efficiency of their opponents. Instead they charge that the northern lines have been unwise in choosing to de-

vote available funds to reduction of debt rather than making capital improve-

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ments in their transportation plant. This as well as the charge of "self-help" is directly related to revenue needs and is considered herein under that category.

The southern lines charge that "the primary problem confronting these northern lines must be met through the elimination of duplicate facilities and modernization of railroad plant". They argue that cost savings are available to these lines through the elimination of excess capacity and duplicate facilities. In the 1953 report the Commission stated (p. 525):

> We do not interpret section 15(6) as requiring us to determine whether one group of carriers is more or less efficiently operated than another, but rather to give due consideration to any evidence which might tend to indicate that the showing as to cost of service is affected by wasteful or inefficient management.

These factors will be considered in our appraisal of the showings made as to cost of service. The northern lines assert that the same conclusion as to relative efficiency as made in the 1953 report is warranted upon this record. In fact these lines do not request any finding that the costs of the southern lines should be discounted because of their showing of relative efficiency measured by the common indicators or because of the relatively greater success of the northern lines in dealing with the passenger deficit. They say that they "feel reasonably assured that Southern lines, while they might possibly be criticized in the light of hindsight, exercised their best judgment in dealing with their problems at the time they were encountered". The record establishes that the same observation is warranted with respect to the northern lines.

The northern lines' reference to passenger deficit control relates to data of record showing passenger service revenues and expenses for the two regions. These data show that in 1958 and 1959 total passenger revenue of official territory lines, while substantially under total passenger expenses, have exceeded solely related passenger expenses, while the southern region carriers have yet been unable to reduce their solely related passenger expenses below passenger revenues. The following tabulation reflects this information in millions of dollars for 1959:

1959 Passenger

	Revenues	*Expenses*	
		Total	*Solely related*
Eastern district and Pocahontas region	$602.2	$696.7	$545.7
Southern region	155.3	211.2	159.7

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RELATIVE COST OF SERVICE

The Commission stated in the 1953 report, when prescribing the present divisions, that: ". . . it is to be the safest assumption for the future upon the facts before us that neither contesting group will have an appreciably lower basis of operating costs than the other, . . .". (287 I.C.C. 497, at 526). In order to show that conditions have changed since that time the northern railroads presented evidence as to the relationship of territorial average costs, the trend of those costs over a period of years, and the cost of moving the traffic at issue based on territorial average unit costs applied to traffic samples. The northern railroads contend that their cost evidence shows that costs are higher in the North than in the South for equivalent hauls and loads, that the difference is increasing over a period of years, and that the division of the revenues which they

receive for hauling the traffic at issue is less than their proportion of the costs of hauling it.

The basic formula used by both parties was Rail Form A entitled *Formula for Use in Determining Rail Freight Service Costs*. This formula uses the expenses and statistics for a given year as reported to this Commission by the carriers and supplemental data derived from special studies made by the carriers. The starting point is the freight expenses and statistics which are derived in accordance with the rules prescribed by the Commission for the separation of expenses, rents, and taxes between the freight and passenger services. The freight expenses are inserted in Rail Form A and assigned or apportioned to services such as running service (line-haul), yard and train switching services, station service, special services, and general overheads. The general overheads are later apportioned to the other services. The aggregate expenses for each service are then divided by appropriate service units to derive unit costs. The allowance for return is based upon depreciated original cost, present value of land and rights, and an allowance for working capital. These net figures are also separated between those applicable to freight service and those applicable to passenger service. The allowance for return is increased for a computed Federal income tax based upon the rate of return used for a particular study. The computed Federal income tax gives consideration to the rate of return used in the study and the amount of fixed charges of the carriers under study. The formula as used in this proceeding separated the operating expenses, rents, and taxes other than Federal income taxes as 80 percent out-of-pocket and 20 percent constant. The allowance for return after Federal income taxes was treated as 100 percent out-of-pocket for equipment and 50 percent out-of-pocket for the other property.

The traffic here at issue moves over three statistical and cost territories: the southern region south of the divisional break points and the eastern district and Pocahontas region north of the break points or border.

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The eastern and Pocahontas carriers, as stated above, rely in this proceeding upon eastern district territorial costs as developed by rail Form A. It is their view that such rail Form A costs—unadjusted—should be used to measure the relative costs of service for the two groups of carriers involved.

The southern lines take the view that eastern district territorial costs are only appropriate for the eastern territory, and that Pocahontas region costs should be used for the Pocahontas carriers, or at least official territory cost should be used for official territory (made up of eastern district and Pocahontas region). It is also the view of the southern lines that territory costs should be somewhat narrowed down to the North-South traffic in issue. Endeavoring to adjust rail Form A costs to the interterritorial traffic in issue, there are a number of adjustments presented by the southern lines purportedly improving the accuracy of the wide-open territorial costs for the two groups of carriers.

The northern lines have presented costs which omit carriers assigned for statistical purposes to the Pocahontas region, which is not a geographical area but consists of three class I railroads and several class II railroads. The class I railroads assigned to Pocahontas region are the (1) Richmond, Fredericksburg and Potomac Railroad Company which operates between Richmond and Potomac Yard (Alexandria), Va., serving as a connecting link between many railroads, (2) The Chesapeake & Ohio Railway, which operates between Newport News and Norfolk, Va., Elkhorn City and Louisville, Ky., and Chicago, Ill., Milwaukee, Wis., Petoskey and Detroit, Mich., Toledo and Columbus, Ohio, and Buffalo, N.Y., (3) The Norfolk & Western Railway Company, which operates between Norfolk and Norton, Va., Durham and Winston-Salem, N.C., on the one hand, and Columbus and Cincinnati, Ohio, on the other, and (4) The Virginian Railway, which was merged into the Norfolk

& Western in December 1959 (The division in its report found that the merger would result in savings in operating expenses of more than $12,000,000 a year).

In excluding the Norfolk & Western, Virginian and Chesapeake & Ohio, the only facts referred to having cost significance are the heavy tonnage of coal trains. The northern lines would have the Commission believe that a high proportion of coal means high tonnage trains which means costs that are not representative for merchandise traffic. This view is not borne out by the facts. The R.F.&P. has the lowest group 3 cost (per ton mile) while having the lowest percentage of coal to total traffic. The Norfolk & Western, Virginian has the highest group 3 cost with the highest percentage of coal to total traffic.

The following table shows the relative relationship of the car miles north of the break points of the eastern district carriers and of the Pocahontas region carriers:—

[21]

EASTERN DISTRICT

Carrier	*Car miles north of gateway*
Pennsylvania	87,848,897
New York Central	46,752,616
Baltimore & Ohio	45,620,867
New York, Chicago & St. Louis	14,479,943
Erie	11,678,062
New Haven	9,673,280
Monon	8,379,616
Chicago & Eastern Illinois	6,894,580
Reading	6,791,159
Delaware & Hudson	5,849,618
Boston & Maine	5,769,016
All Others	26,540,454
Total:	276,278,108

POCAHONTAS REGION

Carrier	*Car miles north of gateway*
Chesapeake & Ohio	46,231,033
Norfolk & Western-Virginian	29,878,965
Richmond, Fredericksburg & Potomac	19,452,992
Total:	95,562,990

Total—Eastern district plus Pocahontas region = 371,841,098

Percent Pocahontas of eastern district plus Pocahontas 25.7

The percent of Pocahontas car miles to eastern district car miles including Pocahontas for North-South traffic north of the gateway for the year 1956 was over 7 percentage points higher than the percent of Pocahontas total loaded car miles to Official Territory total loaded car miles. The Pocahontas lines participated in North-South traffic to a relatively greater extent than did the remainder of official territory carriers. The three Pocahontas lines ranked third, fifth and sixth in car miles north

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of the gateway on North-South traffic and participated in practically as many car miles as all the official territory carriers combined other than the Pennsylvania, New York Central and Baltimore & Ohio, yet the northern lines wish to completely disregard the costs of these carriers in pricing out this North-South traffic.

In its statement No. 6-58 dated November 1958, the cost finding section stated at page 23:

> The official territory unit costs were computed by aggregating the Eastern district and Pocahontas region expenses and dividing such aggregates by the combined service units for the operations both in the Eastern district and in the Pocahontas region. The official territory unit costs were used for traffic movement shown as official to official in the outbound statement.

Table I below shows the equated [4] car handlings on various commodities which move in volume on certain carriers. Table II shows the equated car handlings on coal and coke plus commodities which are handled in volume as testified to by the operating witnesses on the railroads listed. Table III shows the equated car handlings for all class I carriers for all commodities and for the volume of commodities for the territories involved in this proceeding.

Table I shows that despite the inclusion of commodities as to which there is no claim of volume movement on the Baltimore & Ohio, New York Central or Pennsylvania, those railroads' equated car handlings do not compare with the equated car handlings of either Pocahontas carriers or more significantly of the southern carriers.

TABLE I

Equated Car Handlings

(Year 1956)

(Adjusted to reflect adjustment in car count)

Carrier	*Volume commodities* [1]	*All commodities*	*Percent volume to all commodities*
Baltimore & Ohio	4,831,826	11,113,342	43.5
New York Central	5,873,348	16,138,595	36.4
Pennsylvania	7,505,777	20,004,684	37.5
Chesapeake & Ohio	6,604,948	10,627,410	62.2
Norfolk & Western	4,212,954	5,712,074	73.8
Richmond, Fredericksburg & Potomac	87,397	672,785	13.0
Virginian	1,447,788	1,599,342	90.5
Clinchfield	697,061	989,408	70.5
Louisville & Nashville	3,461,243	6,186,620	55.9
Seaboard	2,351,062	4,522,971	52.0

1. Coal and coke, iron ore, sand and gravel, crushed stone, phosphate rock and pulpwood.

[23]

TABLE II

Equated Car Handlings

(Year 1956)

(Adjusted to reflect adjustment in car count)

Carrier	Volume commodities	All commodities	Percent volume to all commodities
Chesapeake & Ohio	5,986,800 [1]	10,627,410	56.3
Norfolk & Western	3,958,464 [1]	5,712,074	69.3
Richmond, Fredericksburg & Potomac	68,745 [1]	672,785	10.2
Virginian	1,401,115 [1]	1,599,342	87.6
Clinchfield	615,384 [1]	989,408	62.2
Louisville & Nashville	3,397,372 [2]	6,186,620	54.9
Seaboard	2,308,691 [3]	4,522,971	51.1

1. Coal and coke.
2. Coal and coke, iron ore, sand and gravel, crushed stone and pulpwood.
3. Coal and coke, sand and gravel, crushed stone, pulpwood and phosphate rock.

The following table shows the equated car handlings for all class I carriers for all commodities and for the volume of commodities for the territories involved in this proceeding:

TABLE III

Equated Car Handlings

(Year 1956)

(Adjusted to reflect adjustment in car count)

	Volume commodities [1]	All commodities	Percent volume to all commodities
Eastern District	29,440,281	80,848,567	36.41
Pocahontas Region	10,233,294	15,335,783	66.73
Official Territory	39,673,575	96,184,350	41.24
Southern Territory	15,824,600	37,098,512	42.67

1. Coal and coke, iron ore, sand and gravel, crushed stone, phosphate rock and pulpwood.

[24]

The table below lists the costs shown by the witnesses for the Pocahontas carriers for selected origins and destinations. It is noted that Pocahontas carriers did not rely on eastern district costs in any instance in pricing out the cost of North-South merchandise traffic when moving over Pocahontas lines.

Witness			*Out-of-pocket cost per cwt.*	*Cost utilized*
			cents	
Chesapeake & Ohio	Richmond, Va. (Route C&O direct)	Grand Rapids, Mich.	35.98	Pocahontas [1]
Chesapeake & Ohio	Richmond, Va. (Route C&O direct)	Detroit, Mich.	33.13	Pocahontas [1]
Chesapeake & Ohio	Richmond, Va. (Route C&O Muncie, Ind. —Eastern District)	Indianapolis, Ind.	26.43 12.14	Pocahontas [1] Eastern [1]
		Total:	38.57	
Chesapeake & Ohio	Richmond, Va. (Route Rich-C&O-Columbus, Ohio—Eastern District)	Pittsburgh, Pa.	22.90 16.49	Pocahontas Eastern [1]
		Total:	39.39	
Norfolk & Western	Durham, N. C. (Route Durham-N&W-Columbus, Ohio—Eastern District)	Toledo, Ohio	16.870 10.841	N&W [2] Eastern [1]
		Total: [3]	27.711	
Norfolk & Western	Durham, N. C. (Route Durham-N&W-Cincinnati, Ohio—Eastern District)	Chicago, Ill.	17.266 16.624	N&W [2] Eastern [1]
		Total: [3]	33.890	
Norfolk & Western	Winston-Salem, N. C. (Route Winston-Salem-N&W-Columbus, Ohio—Eastern District)	Akron, Ohio	16.870 12.900	N&W [2] Eastern [1]
		Total: [3]	29.770	
Norfolk & Western	Winston-Salem, N. C. (Route Winston-Salem-N&W-Valley Crossing, Ohio--C&O-Toledo, Ohio-NYC)	Grand Rapids, Mich.	16.670 5.210 13.553	N&W [2] Pocahontas Eastern [1]
		Total: [3]	35.433	

1. Statement 2-58.
2. N & W Form A unit costs adjusted.
3. Does not include loss and damage.

[25]

In *Commodities—Pan Atlantic S.S. Corp.*, 309 I.C.C. 587, decided February 10, 1960, the witness for the water carriers at first used southern region and eastern district cost scales in pricing out the cost of handling merchandise traffic moving between points in the South and North, thus omitting any use of Pocahontas cost scales where traffic moved in connection with a Pocahontas carrier. This omission was called to the witness's attention by the eastern lines' attorney and the witness acknowledged that the use of Pocahontas region costs was proper for movements through that region. In a restated exhibit introduced by the witness the Pocahontas cost scales were used to price out the cost of the movement of merchandise traffic through the Pocahontas region. In appendix B to the aforesaid report, the use of Pocahontas costs on the merchandise traffic moving in connection with Pocahontas carriers was approved. It is stated at page 613 thereof:

> Respondent (Pan Atlantic) acknowledged that the use of Pocahontas region costs were proper for movements through that region and used such costs in its restated exhibit.

Appendix A of that report compares all-rail costs and truck-water-truck costs. The rail costs shown in the comparison include Pocahontas costs on traffic moving over Pocahontas roads. The division based its findings concerning the cost of all-rail service handling of the merchandise traffic therein to the effect that eastern district costs should be used for the portion of service provided by eastern district carriers, and Pocahontas region costs for the portion of service provided by Pocahontas carriers, southern region costs for the portion of service provided by the southern carriers, and western district costs for the portion of service provided by the southwestern carriers. It was not considered proper in that case to price out the cost of moving traffic over Pocahontas lines at the eastern district's cost level. The northern lines in the instant proceeding have

priced out the traffic involved by using only eastern district costs in this proceeding which concerns the proper divisions between territorial groups of service, one of which includes Pocahontas lines.

The cost witness (Chesapeake & Ohio) representing the northern lines took the position that the use of eastern district cost scales overstated the cost of performing the service for the Chesapeake & Ohio portion of the haul. He took the position that it would be entirely proper to use Pocahontas region cost scales in pricing out the traffic moving over the Chesapeake & Ohio from a point in Michigan to Toledo, Ohio.

We conclude that the proper procedure for pricing out the cost of North-South traffic is not to eliminate any carriers or groups of carriers costs but to price out the cost of each carrier to the extent it participates in the movement of traffic between the North and South, reflecting the amount of traffic moving over the lines of each carrier. Under this procedure

[26]

the cost of railroads which participate to the greatest extent in the traffic should receive the greatest weighting where the North-South traffic, herein considered, has cost characteristics differing from the system average, due to differences in train tonnages or switching minutes per car. Under such circumstances appropriate adjustment should be made in the system average cost. It is improper to exclude the cost of important participants in North-South traffic. Our restatement reflects official territory costs.

The northern lines presented evidence to show that the average unit costs for comparable service are higher in the North than in the South. The following summary table illustrates this point. The first six lines are based on the northern lines' application of Rail Form A and the last four lines on I.C.C. Cost Section's application. These costs include a terminal service at one end only, reflect short-line-miles, and are based on a load of 28.9 tons in box cars.

Relation of northern to southern freight service costs

	100 Miles Percent	*300 Miles Percent*	*500 Miles Percent*	*1,000 Miles Percent*
Official territory v. south				
1948	119	113	111	109
1956	131	123	120	117
1957	131	122	120	117
Eastern district v. south				
1948	125	119	117	116
1956	141	131	128	126
1957	141	132	130	126
Eastern district v. south (I.C.C.)				
1948 (1-1-50)	124	116	115	113
1956	143	133	129	127
1957	143	133	131	128
1959	154	143	139	136

[27]

These costs show in a general way that cost levels are somewhat higher in the North than in the South for like services, that official territory costs are not quite as high as eastern district costs, and that the northern lines' application of Rail Form A as compared to the Cost Section's application is one or two percentage points more favorable to the North.

The northern lines' application of Rail Form A differs from that of the Cost Section in the following respects: (a) the use of a 6 percent rate of return without provision for Federal income tax in place of a 4 percent rate of return

with provision for Federal income tax; (b) the base for return is book investment in road and equipment plus cash and material and supplies less recorded depreciation and amortization instead of on the basis of original costs except lands and rights, working capital, including material and supplies, less recorded depreciation and normalized amortization, plus the present value of land and rights; (c) the less-carload and passenger deficits are omitted from the constant costs, and (d) none of the costs of switching and terminal companies is included.

The evidence as to the trends of relative costs over a period of years can best be summarized in tabular form as follows:

Eastern percentage of total Form A costs at average hauls

	Citrus and vegetable traffic		*General traffic*	
Average haul-miles:	*Refrigerator car—16.3 tons*		*Box-car—28.9 tons*	
North	358		347	
South	860		464	
	Official territory	*Eastern district*	*Official territory*	*Eastern district*
	Percent	*Percent*	*Percent*	*Percent*
Northern lines' Form A computation:				
Year 1948	32.3	33.3	46.4	47.8
Year 1950	33.5	34.2	48.8	50.1
Year 1952	33.8	34.7	48.8	50.1
Year 1954	33.1	34.7	49.7	51.0
Year 1956	33.9	35.0	48.8	50.5
Year 1957	34.1	35.5	48.8	50.8

	Eastern district		*Eastern district*	
	Fully distributed costs	*Out-of-pocket costs*	*Fully distributed costs*	*Out-of-pocket costs*
	Percent	*Percent*	*Percent*	*Percent*
Form A cost by I.C.C. cost section:				
Year 1947 as of 1-1-49	32.9	33.5	47.0	49.0
Year 1948 as of 1-1-50	33.3	34.1	47.4	49.7
Year 1949 as of 1-1-51	31.9	31.8	46.7	47.5
Year 1950 as of 1-1-52	34.2	34.4	49.7	51.2
Year 1951 as of 1-1-53	34.5	34.5	49.9	50.8
Year 1952 as of 1-1-54	34.7	34.8	50.2	51.1
Year 1953 as of 1-1-55	34.2	34.3	50.0	51.2
Year 1954 as of 1-1-56	34.7	34.7	50.6	51.8
Year 1955 as of 1-1-57	34.9	34.9	50.5	51.5
Year 1956 as of 1-1-58	35.5	35.7	50.7	51.8

[28]

In the southern lines' traffic study, 69.3 percent of all car-miles were run by box cars and 9.7 percent by refrigerator cars. The table above indicates that there was an increase in the northern lines' proportion of costs in the year 1950 but that the trend since that year is not pronounced. As to box car costs, the northern lines' computation shows no increase for official territory between 1950 and 1957 and only 0.7 percent for eastern district. The out-of-pocket box car costs (Cost Section computation) showed 0.6 percent increase from January 1, 1952 to January 1, 1958.

The northern lines priced out the traffic at issue as measured by their own traffic study both on the basis of Rail Form A unit costs of their own computation and on the basis of Rail Form A unit costs as computed by our Cost

Finding Section. They also applied the I.C.C. unit costs to the Southern lines' traffic study. The I.C.C. costs used were at the fully-distributed level, i.e., they included a ton and ton-mile apportionment of the constant costs. All costs were based on the year 1956 and included an allowance for loss and damage. The table following shows for each traffic study, the percentage of revenues received by the northern lines and the percentage of costs incurred by them:

	General traffic (*Percent*)			*Citrus and fresh vegetables* (*Percent*)		
	Revenue	*Cost*	*Difference*	*Revenue*	*Cost*	*Difference*
Northern lines' traffic study	45.44			33.38		
Northern costs:						
Eastern district v. southern region		49.78	4.34		34.62	1.24
I.C.C. Costs:						
Official territory v. southern region		48.19	2.75		34.00	0.62
Eastern district v. southern region		50.18	4.74		35.26	1.88
Southern lines' traffic study:	44.97			34.63		
I.C.C. costs:						
Official territory v. southern region		47.34	2.37		33.69	(.94)
Eastern district v. southern region		49.31	4.34		34.97	.34

The difference in the results for citrus and fresh vegetable traffic as between the two traffic studies reflects a revision in the divisions and the more recent southern lines' traffic study

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shows that the revenues as settled and the costs on this traffic are roughly equal. The following table will indicate the dollar amounts involved on the general traffic:

	Traffic study of northern lines			*Traffic study of southern lines*		
	Percent		*Percent*	*Percent*		*Percent*
Total revenues	100.00	$450,909,348		100.00	$480,160,317	
Northern lines' share:						
Revenues as settled .	45.44	204,889,448	100.0	44.97	215,915,212	100.0
Revenue if based on costs:						
Northern lines' costs	49.78	224,462,673		—	—	—
Increase		19,573,225	9.6			
C. C. costs:						
Official v. southern	48.19	217,293,215		47.34	227,307,894	
Increase		12,403,767	6.1		11,392,682	5.3
Eastern v. southern .	50.18	226,266,311		49.31	236,767,052	
Increase		21,376,863	10.4		20,851,840	9.7

The southern lines urge that it is settled law that relative service costs are the decisive measure in determining just and reasonable divisions and that the costs of all roads participating in the official-southern traffic should be so applied and adjusted as to reflect the cost characteristics of the traffic here at issue. In order to inform the Commission as to the relative service costs of this traffic they applied Rail Form A adjusted unit costs at the fully-distributed level for the year 1956 to their traffic sample which has been described hereinbefore.

They presented the results of their cost studies in several different forms, but their principal cost evidence can be summa-

[30]

rized as shown in the table below. It starts with the application of the costs as computed by the northern lines applied to the southern lines' traffic study, next the unadjusted Form A costs applied to the same study, and lastly the Form A costs modified to include the effect of 12 adjustments deemed necessary by the southern lines.

	North of gateway (000)	*South of gateway (000)*	*Percent*	
			North	*South*
Total revenues as settled under present divisions	$221,430	$274,656	44.64	55.36
Northern lines' costs applied to southern traffic study:				
Eastern district and southern region	158,427	170,708	48.13	51.87
Official territory and southern region	148,424	170,708	46.51	53.49
Unadjusted Rail Form A costs—Official territory and southern region	169,618	194,306	46.61	53.39
Rail Form A costs including 12 adjustments	152,808	201,916	43.08	56.92

All of these costs are territorial average costs based on the expenses and operations of the year 1956, all are at the

fully-distributed level, and all are applied to the same traffic study.

The unadjusted rail Form A costs above result from the standard computation applied to each territory. The specific adjustments made by the southern lines in the unadjusted official territory and southern region unit costs developed by the cost finding section are discussed below:

a. Way and through train separation:

The Form A procedure provides for costing out traffic at either average train costs or a combination of way train and through train costs. Although the northern lines used average train costs in their study on the theory that it was adequate for over-all territorial cost comparisons they have no objection to the more refined procedure of using way and through train costs. This has the effect of giving slightly lower costs at the longer distances and higher costs at the shorter distances and in this case reduces the proportion of costs of the southern lines by 0.13 percentage points. This adjustment is approved.

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b. Platform costs:

The southern lines excluded platform costs from their study of the costs of originating and terminating official-southern traffic. This brought about an increase of their proportion of the costs by 0.28 percentage points or in revenues about $1,389,000.

The southern lines' reason for the exclusion of platform service, for the traffic at issue, was based upon the conclusion that wherever a separate tariff charge was made for carrier loading or unloading, platform costs should be excluded. They took a sample of 19 cars out of a total of 130,353 base cars (before expansion) in the involved traffic

which had a universe of 967,554 cars and established that, "for all practical purposes none of the involved traffic received lighterage or any other service which would include platform handling as a part of the service under the line-haul rates being divided."

The northern lines took the same 19 car sample and showed that eleven originated on the eastern lines, eight of which were from Manhattan and two from Brooklyn, all of which required either float or lighterage service and platform service. One car originated in New Jersey which was not involved in the issue of platform service. Of the eight cars destined to eastern carriers in the New York area, actually only two were delivered to Manhattan, one to Long Island City, and one to Brooklyn, likewise requiring harbor service, with three cars delivered to New Jersey points but not involved in the particular issue, with one remaining car showing for diversion at Potomac Yard then showing no destination and no possibility of knowing what final service was required.

It is evident from the facts that platform service is incurred by some of the shipments of official-southern traffic, but the southern lines excluded platform costs in each territory, the reason being that for the northern lines "such costs are no longer part of the service covered by the line-haul rates but are covered by a separate charge collected and retained by the northern lines." The southern lines excluded their own platform costs in the interest of relative equality between the territories.

In prior years platform service was considered a part of the line-haul service covered by the through rate and accordingly, platform costs less the incidental revenues were correctly included in computing the cost for the line-haul service. Thereafter, however, the conditions at the unloading facilities changed again. Whereas, prior conditions necessitated that shippers be denied access to the cars for unloading at piers, the new conditions permitted shippers

access to the cars with the result that unloading was no longer a part of the line-haul service provided by the railroad but became the responsibility of the shippers, as it occurs at other destinations in all territories. The Commission took cognizance of these changed

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circumstances in *Increased Freight Rates,* 1958, 304 I.C.C. 289, 375 of which the following quote from item 12 reads:

> The line-haul rates on this traffic are designed to cover only normal delivery and do not include compensation for the loading and unloading services, the line-haul rates on the perishable traffic being generally below out-of-pocket costs.

For the purpose of comparing relative territorial cost levels the inclusion of both the incidental revenue and the costs of platform service are correctly shown in Rail Form A; however, where the purpose is to measure the cost of services performed under the line-haul rates to be divided, it is correct to exclude platform service which is not in the scope of the rates.

c. Switching and terminal companies:

To better understand the switching charges at Chicago and St. Louis, such charges must be considered in the light of rail Form A procedures for switching and terminal companies.

Under rail Form A, as applied by the Cost Finding Section, 75 percent of switching and terminal company costs in the above mentioned cities are divided equally between eastern and western lines. Also rail Form A uses as one of the basic sources of information the Freight Commodity Statistics. The cars originated, terminated and interchanged used in the above formula are derived from the Freight Commodity Statistics. The southern lines contend

that, if a car is terminated on the Illinois Central by the Belt Railway Company of Chicago, the Illinois Central pays the Belt Railway of Chicago a switching charge and this switching charge is debited to account 101 by the class I railroads and this amounts to a deduction from the freight revenue account.

Rail Form A does not include actual switching charges paid by line-haul carriers but substitutes therefor the expenses of the switching and terminal companies for performing this work. Nevertheless, the divisor, the figure that is used to divide into the origin and destination switching costs, includes a count for this car. If this is multiplied by many thousands of cars, an inconsistency in the unit cost would be brought about as a result of having cars in the divisor without having corresponding costs related to these cars. By reason of the method of accounting which the class I railroads employ to cover amounts which they pay as switching absorption, and the like, which they pay to these switching and terminal companies, this does not show up as a cost in class I railroad accounts. In

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separating the costs of such switching and terminal companies as between the different railroad groups, the procedure followed by the Cost Finding Section is as follows:

	Eastern district	*Western district*	*Southern region*	*Total*
Chicago, Illinois	50	50	—	100
St. Louis, Missouri and East St. Louis, Illinois...	50	50	—	100
New Orleans, Louisiana ...	—	50	50	100
Louisville, Kentucky	50	—	50	100

When a switching and terminal company is located on the border between two territories; one half of the amount

for line-haul service is allocated to each territory. Thus, at Chicago and St. Louis areas, a half is allocated to eastern district and the other half to the western district.

The southern lines accepted the Rail Form A in general, but feel that the situation at Chicago and St. Louis areas, which divides between eastern and western districts, however, fails to recognize that carriers assigned to the southern region pay for the services which the switching and terminal companies at those points perform for the origination or termination of cars reported in the statistics of southern region carriers. They maintain that since the reported statistics assign to the southern region carriers the cars switched for their accounts by the switching and terminal companies at those points, the portion of the switching and terminal companies' expenses which are associated with switching such cars must be allocated to the southern region carriers, in order to determine the actual unit costs.

To accomplish this the southern lines determined first, the proportion of the total transportation revenues of each switching and terminal company at the preceding mentioned cities, that was paid by the southern region carriers, and, in turn, assigned the relative proportion of the switching and terminal company cost to the southern region. Although the southern lines' apportionment for the switching and terminal companies on the basis of total transportation revenue is not a recommended method, but due to the lack of a more suitable procedure it will be accepted for this proceeding. This adjustment increased the southern lines' proportion of the costs of official-southern traffic by 0.16 percentage points or in revenues about $794,000.

The northern lines maintain, a different viewpoint toward these switching points at Chicago and St. Louis areas, in that Chicago is not now a primary break point on the North-South traffic and that East St. Louis is such a break point only with

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respect to certain Mississippi Valley traffic and that it is improper to take any portion of the expense of switching and terminal companies in the North and put it into the costs used to price out southern lines' services south of the primary divisional gateways. Regardless where the break point for dividing revenues is located the cost on each side ought to be properly computed and the so-called territorial costs are in reality, groups of carriers operating principally in each territory.

We are of the opinion that the southern lines are justified in making this adjustment of the switching and terminal company costs, at Chicago and St. Louis areas, for the reason that these cars are counted in the southern region and, accordingly, the expenses associated with them also should be included in that region.

d. Count of cars interchanged and originated and terminated:

The southern lines contend that for the purpose of determining relative costs incurred by northern and southern lines, it is necessary that cars receiving comparable service be counted in a consistent manner in both territories.

Rail Form A cost applications are based on the count of cars from the Freight Commodity Statistics, which briefly stated, provide that certain cars carrying shipments which are transferred between rail and water carriers, such as lake cargo coal, tidewater coal, and ex-lake ore, will be classed as cars interchanged and that certain other cars carrying shipments transferred between rail and water carriers will be classed as cars originated or terminated. This creates a situation where a car of coal transferred to a ship at an Atlantic port would be classified as interchanged if the shipment is destined to New England and as terminated if the coal is destined to Europe. Further,

coal in official territory going to Canada and transferred from rail to vessel at a Great Lakes port is interchanged, whereas phosphate transferred from rail to vessel at Tampa, Florida, is terminated. These are examples of cars which receive analogous service but are placed in different categories.

The southern lines urge that all of these cars which receive this port service should be classed as originated or terminated because they all receive similar switching service and that the fact that a larger proportion of these cars in the North than in the South was classified as interchanged inflates the terminal costs more in the North than in the South to their disadvantage. To correct this inflation, they examined the information furnished periodically to the Commission for the purpose of reconciling its One Percent Waybill study of terminations with the Freight Commodity Statistics and found that 1,803,499 cars in the North and 129,019 cars in the South should be changed from "interchanged" to "originated plus terminated." This increased the number of cars originated and terminated by 5.4 percent for

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eastern district, 8.7 percent for Pocahontas region, and 1.1 percent for the southern region. This had the effect of reducing the costs $2,003,871 in the North and $555,541 in the South, and of changing the South's proportion of total costs from 53.44 percent to 53.67 percent, an increase of 0.23 percentage points.

The northern lines show that the switching characteristics of the port service between rail and vessel of this traffic are more akin to interchange than to terminal service, that interchange costs vary greatly, and that the information available is inadequate to correctly compute the adjustment.

The switching characteristics of this traffic are described by a northern lines' witness, as follows:

> That the service at tidewater ports on coal, and at the lake ports on coal and ore, is interchange rather than terminal is apparent from the facts with respect to these services. Taking lake cargo coal as an example, the coal trains go to the railroads' lake front yards at the ports. Unlike cars which are to be terminated, the lake cargo coal cars are not then moved to various industries in transfer runs and then switched to effect delivery at the consignee's plant. Rather, they are moved to a dumping machine at the railroads' water front yards and there dumped into the lake vessel. It is obvious that this service is much more akin to a movement to an interchange track than to a transfer and switching movement to effect delivery to a consignee. The fact that the car is not given over to the boat line along with the lading cannot, in itself, mean that the shipment is not interchanged. The interchange of an l.c.l. shipment between railroads is not accompanied by a delivery of an interchange. Also, the fact that the interchange is with a boat rather than with a railroad—that the movement is to a dumping machine rather than to an interchange track with another railroad—cannot detract from the essentials of the operation and their significance from a cost standpoint.

The northern lines cite the following examples to show that interchange costs vary greatly and that the "lake cargo coal, tidewater coal, and ex-lake ore" are not in a class by themselves:

> Of course, interchange service may involve high, low, or average expense, just as terminal service may involve high, low, or average expense. For example, the interchange of cars between railroads in New York

Harbor necessitates the expense of floating service. So does the interchange of cars between the Pennsylvania and connecting lines at Norfolk. Another illustration of an expensive interchange service of cars is in the

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case of traffic which formerly moved between interior points in the East and interior points in the Southwest over the so-called break bulk water routes. This traffic, even where moving under joint rates (like some of the lake cargo coal traffic) required transfer from car to vessel at the ports.

They also urge that the information furnished to the Commission for purposes of reconciling the Waybill study with the Freight Commodity Statistics is inadequate for the purpose of computing the number of cars to be transferred from interchange service to terminal service and that a substantial portion had to be estimated.

There is a great variation from one point to another in the amount of both terminal switching and interchange switching due to the physical layout of the tracks, volume handled, and other causes. Rail Form A gives an equating factor of 1.0 to origin or destination switching and a factor of 0.5 to interchange switching which reflects the relative amount of switching based on careful studies. The northern lines have referred to the similarity of switching at lake ports to interchange switching. Also, because of the large volume of this traffic it lends itself to multiple-car block switching which is less costly than terminal switching and would justify an equating factor of less than one. The reconciliation between the Waybill Study and the Freight Commodity Statistics has to do only with terminations, and therefore the large blocks of traffic received by boat, transferred to car, terminated on rail, and which were counted as interchanged at the port had to be estimated by respondents. How much was estimated, or how reliable the

estimate, is unknown. It cannot be determined from the evidence whether or not the southern lines' adjustment of the car count would enhance or detract from the accuracy of the costs and for this reason it is not included in our restatement of costs.

e. Car costs:

The traffic study shows that of the official-southern traffic 15 percent of the cars are refrigerator and tank cars (mileage cars) and 85 percent are per diem cars. It is the car costs of the per diem cars which are at issue. The southern respondents say that the territorial differences in car costs are due to factors unrelated to the traffic in this case and that U. S. average car costs should be used in both territories. The amount of the difference in car costs reflected in Form A for a box car with a 28.9 ton load moving 350 miles with one terminal is given as

Official territory	$16.20	131%
Southern region	12.27	100%
Difference	3.93 *	31%

* Assuming equal empty return ratios.

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The relative size of this difference may be judged by comparison with the total out-of-pocket cost of the same service in the southern region of about $85.

The study also shows that 27.43 percent of the box cars are owned by carriers other than official or southern carriers. The same rate of per diem is paid on both sides of the border. The witness gives this as an example of equal car costs in both territories. If it takes more days in one territory than the other to make a trip of equal distance, it would cost more because more days per diem would have to be paid for the same trip. Some showing of equivalent

utilization in each territory such as average box car miles per car day, is necessary to show equal per diem cost.

The southern lines give three reasons why car costs vary among territories and say that none of these reasons has any bearing on the relative costs incurred in handling the official-southern traffic. The first reason given follows:

> The system average car cost reflects the composite cost of the car fleet owned by each group of roads. This is a different car fleet in each territory and is very different from the consist of the cars handling official-southern traffic.

About 82 percent of the car-miles of study traffic (per diem cars) in each territory are handled in box cars.

It is stated that differences in the car costs produced by Rail Form A as between territories do not measure the differences in the cost of repairing box cars but rather the difference in the composition of the car fleet.

Information is furnished as to the percentages of ownership of each type of car in each territory and the percentage of car-miles made by each type of car. The percentages of ownership are more meaningful because the owning road bears the cost of repairs, depreciation, and return. The proportion of box cars in the North is 36.9 percent and in the South it is 37.9 percent. This is a difference of only one percentage point and too small to be significant. The major differences in ownership are that the North has 7.6 percentage points more open hopper cars and the South has 7.0 percentage points more rack cars. Another witness for the southern lines shows that costs per day or per year for repairs, depreciation, and return are insignificant as between types of cars and that utilization is the main factor causing a difference in costs between types of cars.

Thus, the effect of the composition of the car fleet on

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costs developed in Rail Form A can be measured by its effect on car utilization, and this is computed as follows:

Type of car	Miles per year	Percentage of ownership		Miles per year of composite car	
		Official territory	Southern region	Official territory (2) x (3)	Southern region (2) x (4)
(1)	(2)	(3)	(4)	(5)	(6)
		Percent	*Percent*		
Box	19,635	36.9	37.9	7,245	7,442
Flat, including rack	12,456	1.8	9.7	224	1,208
Stock	16,953	.7	.6	119	102
Gondola	9,503	17.5	15.2	1,663	1,444
Open hopper	11,827	40.4	32.8	4,778	3,879
Covered hopper	13,816	2.5	3.8	345	525
Other (average)	15,178	.2	-0-	30	-0-
		100.0	100.0	14,404	14,600

The composition of the car fleet has such a small effect on utilization that some other reason must be found for the difference of 31 percent in the car costs of the two territories.

The second and third reasons given by the southern lines to explain why the higher system average car costs in the North do not apply to the traffic at issue are:

> The system average car cost developed in Rail Form A is strongly affected by per diem debits or credits. This has a distorting effect because the basis used in computing Rail Form A costs differs from that used in determining per diem rates, and;
>
> The unit cost for car costs is determined by dividing cost of cars owned by the car miles operated. The numerator and the denominator do not represent the same cars in any given territory.

These two reasons are related and must be discussed together. The Rail Form A group I car costs of a railroad or territory include principally car repairs, depreciation, and return on all cars owned. Per diem payments for foreign cars serving on this road or territory are added and per diem receipts from owned cars serving on a foreign road or territory are deducted. The inclusion of the per diem settlements adjusts the costs from the basis of cost of cars owned to the basis of cost of cars serving on the road or territory. These latter costs are divided by the service car-miles to give a cost per car-mile. Thus, the numerator and denominator are consistent; both represent cars serving on the railroad.

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The determination and fixing of a rate of per diem which is fair as between all railroads and sections of the country is a difficult and complicated problem into which many considerations enter. However, after the rate is determined it becomes an actual receipt or disbursement settled in dollars and cents and properly a part of the costs for each road and territory in the year incurred.

There are very real differences in the car costs in each territory and the causes are known. Among these causes are: a difference in utilization of 39.4 car-miles per day in the North and 49.5 car-miles per day in the South; differences in taxes and wage rates; and a difference in the relative amount of off-line use of owned cars which is only approximately offset by per diem settlements.

The car costs are especially critical in this case because there is a greater relative use in the traffic here at issue of cars owned by official territory railroads than of cars owned by southern roads. Eliminating cars of other ownership for purposes of comparison, cars owned by official territory railroads made 54 percent of all car-miles although only 41 percent of those car-miles were run in official territory.

The use of a national average car cost conceals territorial differences in cost which are important in the consideration of divisions between territories and therefore separate territorial freight train car costs will be used in our restatement.

f. Freight car empty return ratios:

The southern lines' general viewpoint is that the history of costs is a progressing increase in the degree of refinement away from system average costs. Form A departs from over-all system average costs by separating line-haul and terminal, assigning costs on the basis of load per car, and separating tare weight and empty return ratios by type of car. Territorial empty ratios for all types of cars were separated into empty return ratios for each of six types of cars in the first 7-day study (August 15, 1948 to July 11, 1949) and ten types of cars in the second 7-day study (October 22, 1956 to August 18, 1957). The effect on the empty ratios of dividing "gondola and hopper" into three types and "flat" into two types of cars is discussed. A further refinement of empty return ratios among the kinds of box cars and refrigerator cars is consistent with cost finding development and necessary to more accurately measure the costs of the traffic at issue.

The southern traffic study shows that 69.3 percent of the car-miles are incurred by box cars and 9.7 percent by refrigerator cars. The southern lines changed the empty return ratios

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for general purpose box cars from 39 percent in official territory and 33 percent in southern region to 30 percent in both territories and the empty return ratios for refrigerator cars in official territory from 90 percent to 75 percent and

in southern region from 76 percent to 84 percent. The effect of these adjustments was to increase the proportion of costs in the South by 0.51 percentage points.

Box cars:

The northern lines in applying rail Form A used empty return ratios based on a 7-day study of loaded and empty car miles which produced for each group a single ratio covering all types of box cars and another ratio covering all ownerships of refrigerator cars. In this category of box cars are (1) general purpose cars which can be utilized by and are available to all shippers for loading all types of commodities not requiring special type equipment, and (2) box cars suitable for loading special commodities which, though they may be suited for some type of return load, are in assigned service and thus returned empty (some exceptions) to the point of loading. This includes cars used for transporting auto parts, which utilize cars specifically designed to handle such commodities. This empty return ratio, which is questionable, is contrasted by the southern lines with average ratios of less than 40 percent for all box cars including the assigned cars.

The southern lines present the following items in support of their position:

1. A brief arithmetical computation showing that if special box cars have an empty return ratio of 100 percent and general box cars one of 30 percent, or if special box cars account for 13 percent of loaded box-car-miles in the North and 4 percent in the South, the result will be an over-all empty ratio of 39 percent in the North and 33 percent in the South, which is what the 7-day study produced. . .

2. A showing of the Commission's Transport Statistics of the U.S., 1956 as follows

BOX CARS OWNED

Territory	*Total*	*Special Device*	*Percent Special Device is of Total*
Eastern District	267,266	26,779	10.03
Pocahontas Region	32,834	1,501	4.57
Eastern plus Pocahontas	300,100	28,280	9.42
Southern Region	100,191	4,122	4.11

The southern lines point out that the above indicates that the southern carriers own substantially fewer device cars than do the eastern or official carriers involved in this proceeding.

3. The following showing of the relationship in each territory between the amount of traffic commodity Class No. 623, Vehicle

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Parts, N.O.S., and Total Manufactures and Miscellaneous based on carloads originated and terminated and on freight revenue:

	East. Dist. + Poca.	*South*	*Total (Col. 1 + Col. 2)*	*% Sou. of Total (Col. 2 + Col. 3)*	*% East. Dist. + Poca. of Total (Col. 1 + Col. 3)*
	(1)	*(2)*	*(3)*	*(4)*	*(5)*
CARLOADS ORIGINATED AND TERMINATED					
Vehicle Pts. NOS	829,934	62,033	891,967	6.95	93.05
Mfrs. & Misc.	12,669,348	3,787,287	16,486,635	23.01	76.99
% Vehicle Pts.	6.55%	1.64%			
FREIGHT REVENUE					
Vehicle Pts. NOS	$ 130,212,468	$ 19,329,691	$ 149,542,159	12.93	87.07
Mfrs. & Misc.	$1,827,508,648	$625,523,731	$2,453,032,379	25.50	74.50
% Vehicle Pts.	7.13%	3.09%			

The southern carriers state that this shows they participated to a much more limited extent in vehicle parts, N.O.S. than do the official carriers.

4. The following showing of the empty return ratio of box cars and the proportion of vehicle parts traffic to all traffic in box cars for each of the 3 groups of railroads:

Official Territory	*Box Car Empty Return Ratio*[2]	*Percent Vehicle Parts 623 to Total Box Car Traffic*[3]
Roads Serving Detroit Having Heavy Proportion of Vehicle Parts to Total Box Car Traffic[1]	49%	14.5%
Other Official	34%	4.2%
Total Official	39%	6.8%
Southern Region	33%	2.6%

5. Undertake to establish statistically the effect on the empty return ratio of eliminating vehicle parts traffic. The waybill study does not show for interterritorial traffic the

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number of car-miles in each territory and, therefore, it was necessary to approximate this missing element by combining certain items and proportions in the waybill study with originations and terminations and revenues from the Freight Commodity Statistics. The final result after

1. NYS, Wabash, C&O, DTI, and GTW.

2. ICC Seven-day Study.

3. Percent carloads of Vehicle Parts 623 handled in box cars and percent carloads of all traffic handled in box cars from ICC Statement No. TC-3, 1956, applied to total carloads handled, vehicle parts and total carloads all traffic, respectively from Freight Commodity Statistics, Year 1956.

eliminating vehicle parts traffic shows an empty ratio which is four percentage points higher in official territory than in southern region.

There are undoubtedly many instances where specially equipped or directly assigned box cars have a 100 percent empty return, but no one knows how prevalent this is or whether it approaches 50 percent or 100 percent, for this class of cars. The five items above tend to show that these cars have an effect on the empty ratio, but do not support any conclusion as to the amount of the effect. They will be analyzed below:

1. This is merely a computation showing what the effect would be if certain assumptions are made. By itself it does not prove that those conditions actually exist.

2. This shows the percentage ownership of box cars by railroads in these territorial groups. Cars are interchanged between territories and it is quite probable that cars of eastern ownership travel many car-miles in the western district. It is the car-miles in each territory which affects the empty ratio and the relative ownership may or may not coincide with the relative number of car-miles.

3. The use of the relations is between the numbers or carloads and the revenues of vehicle parts to total manufactures and miscellaneous group of commodities does not measure the relationship of special box cars to total box cars for the reason that many box cars carried commodities other than manufactures and miscellaneous and that vehicle parts do not all move in special box cars.

4. A comparison based on only three observations could easily be a coincidence or caused by some unknown factor.

5. The statistical determination of the effect of special cars on the empty return ratio for all box cars is based on certain assumptions, such as, that Commodity Class 623, Vehicle Parts, N.O.S. moves in special cars only and

that all special cars have a 100 percent empty return. These assumptions have not been proven. In fact, 12 percent of the vehicle parts move in other than box cars. This statistical determination is attempting to show an effect on the empty ratio with an exactness or accuracy of small percentage. This degree of accuracy

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is impossible in this particular computation because the individual steps taken to arrive at the answer contain estimates or approximations, which although valid in a general way, contain a generous margin of error. For example, the percentage distribution of intraterritorial car-miles include different amounts of car-miles made by other than box cars in each territory. The equating factors for revenue are also only a rough approximation.

It is claimed that the unbalanced flow of traffic to and from Canada contributes to the high empty return ratio in official territory. A study based on Canadian commodity statistics shows that, excluding automobiles and parts 468,456 carloads were delivered to Canadian connections and 691,316 were received. If every carload going to Canada could be placed in a car from there unloaded here it would produce the following result:

691,316	southbound loads	
468,456	northbound loads	
222,860	empties	19%
1,159,772	total loads	100%

Thus under perfect conditions, which are never obtained, an empty ratio on Canadian traffic of 19 percent is possible. The figures given as to the unbalance in traffic flow do not appear to indicate that Canadian traffic has a greater empty return ratio than other traffic.

Refrigerator cars:

The 7-day study developed empty return ratios for eastern district of 90, Pocahontas of 86, and southern re-

gion of 76. The southern lines state that these are not representative of north-south traffic because they include meat, of which very little moves between the North and the South, and has a 98 percent empty return. Southern traffic study shows 80,379 refrigerator cars of which only 1,642 or 2 percent are meat. The waybill study shows that based on originations and terminations (not car-miles which are not available) fresh meats constitutes 19.1 percent of refrigerator car traffic in official territory and 7.2 percent in southern region.

The southern lines show that the 7-day study produced varying results for individual days ranging from 96 percent to 66 percent empty return ratio for refrigerator cars in the southern region. The empty and loaded refrigerator car-miles of the principal car owning companies in the southern region obtained from replies to questionnaires sent to the southern roads indicate an empty ratio of 84 percent for all traffic (but not all ownerships) in 1956. This coincides with ratio reported by the A.A.R. Car Service Division on Form CS-57A. This empty ratio of 84 percent is considered more accurate by

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the witness than the results of the 7-day study because it is based on records for the full year and is used in the southern lines' cost study.

The southern lines are unwilling to accept the empty return ratios for refrigerator cars in official territory developed in either the 7-day study or the CS-57A reports, and use instead an empty ratio of 75 percent which is the experience of Fruit Growers Express in official territory. Fruit Growers Express handles only 43.3 percent of the North-South refrigerator traffic but the loaded and empty refrigerator car-miles of the other companies were not available to the southern lines.

These studies of refrigerator car traffic, like the Commission's 7-day study, cover intra-territorial traffic and traffic from and to other territories and is not confined to

North-South traffic. However, unlike the Commission's study, they do not include all traffic and they are not on a comparable basis in both territories.

For the reasons discussed above, we feel that the empty return ratios for both box and refrigerator cars developed by the special studies of the southern lines are not as good an estimate of the empty return incurred by the official-southern traffic as are the territorial empty return ratios developed by the Commission's 7-day study.

g. Short lines (class II railroads):

The southern lines considered it an improper procedure to price out the services of the short lines (class II railroads) on the basis of territorial average class I railroad costs. They measured in their traffic study the amount of service rendered by short-line roads, and in doing so adjusted their Form A territorial average costs, which were based on class I railroads to reflect the level of cost of the short lines and, in turn, applied these adjusted unit costs to the service units of the short lines. This increased the southern lines' proportion of the costs by 0.09 percentage points or in revenues about $446,000. They employed the following procedure in their cost study, in order to reflect the level of short-line costs:

1. The total costs of each short line that participated in the official-southern traffic was determined from the 1956 annual reports of each carrier.

2. The costs which were imputed to the operations of each short line by the rail Form A costs of the class I roads were then aggregated.

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3. The ratio of (1) the actual costs to (2) the cost imputed by the rail Term A costs of class I roads was computed for each short line.

4. And finally, the ratios thus developed were applied to the territorial Form A costs of official-southern traffic on each class II road.

The actual expenses and traffic volume for the year 1956 as reported by the class II carriers in their annual reports were used in computing these costs.

The northern lines objected to the southern lines assuming certain information, such as the compilation of 1956 cars originated and terminated that were on the basis of 1955 operations, and that the traffic consist, operating characteristics and the resulting expenses would be the same for 1956 as for 1955. In the reports for the typical short line the southern lines had the tons, but not the cars originated and cars received, and other categories of tons handled.

The southern lines' traffic study showed the number of cars originated or terminated on short lines for the official territory and southern region to be:

Traffic originated or terminated on other than class I line-haul roads participating in official-southern divisions

	Number of cars	*Percent of cars*
In official territory	16,697	1.73%
In southern territory	55,826	5.77%

The northern lines did not question the count of car data regarding short lines (class II railroads) on the abstracts underlying the southern lines' traffic study, but the northern lines observed that:

> . . . there are many class II railroads in official territory which perform only switching or terminal service, whose charges for such service are paid entirely out of eastern line-haul carriers' revenue, and whose participation is not ordinarily shown on the abstracts.

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The southern lines introduced the following table to illustrate the imputation of class I railroads' costs to the

services of these short lines, based on 15 class II railroads in each territory:

Costs of short lines in year 1956

Imputation of class I roads' costs compared with application of the actual costs of the short lines

Source	*North*	*Percent*	*South*	*Percent*
Territorial average Form A costs	$537,359	100.0	$1,594,486	100.0
Southern lines' study of short line costs	509,943	94.9	1,963,632	123.2
Difference	−27,416	−5.1	+369,146	+23.2
Northern lines' study of short-lines' cost	496,545	92.4	1,878,029	117.8
Difference	−40,814	−7.6	+283,543	+17.8
Difference between northern lines' and southern lines' studies	13,398	2.5	85,603	5.4

The above table shows that the imputation of class I road costs to the service of these short lines overstates the costs in the north by $27,416 (southern lines' method) or $40,814 (northern lines' method) and understates the costs in the South by $369,146 (southern lines' method) or $283,543 (northern lines' method).

The southern lines reflect the cost level of each short line while retaining the separation between line-haul services (car-miles and ton-miles) and terminal services (cars and tons), whereas the northern lines start with the identical actual car-load freight costs for each short line as used by the southern lines, but instead spread the entire costs of each short line over revenue ton-miles, producing an aver-

age "cost per revenue ton-mile" with no separation of line-haul and terminal services.

In our opinion the southern lines' cost study for short lines is the more acceptable procedure, in that it conforms with the principle of separating between line-haul and terminal

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costs as set forth in Rail Form A. The southern lines' traffic study reflects the *actual* level of costs of each participating short line, whereas the northern lines *imputes* to each short line the cost level of class I railroads. Basically, the class II and the class I railroads should reflect their own respective costs. This adjustment is shown in our restatement of the costs.

h. Adjustment of switching costs to eliminate the effect of volume switching at origin and destination:

The territorial average switching minutes per car at origin or destination in 1956 are as follows:

	Official territory		*Southern region*	
	Box cars	*Other cars*	*Box cars*	*Other cars*
Cost section application of Form A ...	25.9	28.8	17.3	19.2
After the effect of respondents' adjustments for "Switching and Terminal Cos." and "Corrected Car Count"	25.4	28.2	17.8	19.8
After adjustment for volume switching .	27.65	30.72	26.03	26.03
Volume switching adjustment	2.25	2.52	8.23	6.23
Total amount added to costs by this volume switching adjustment	$1,310,743		$3,648,130	
Change in percentage of costs	44.71-44.45=—0.26		55.29-55.55=+0.26	

Some volume commodities frequently move in multiple-car blocks at origin and/or destination with a consequently lower switching cost than for commodities usually handled one car at a time. The following table indicates the significance of certain volume commodities:

	Number of cars originated or terminated (Year 1959)		Number of cars official-southern traffic involved in this proceeding (as shown in southern lines' traffic study)
	On official territory roads	On southern region roads	
Pulpwood	162,572	1,102,741	564
Sand and Gravel	340,072	653,972	2,229
Wet phosphate rock	—	287,892	None
Crushed stone and rock	407,630	813,734	8,372
Iron ore	789,188	113,452	661
Coal	6,186,315	1,915,566	None
Coke	558,823	79,984	2,811
Fluxing stone and dolomite	395,811	3,558	51
Total cars of volume commodities	8,840,511	4,970,899	14,758
Total cars	23,771,003	10,840,187	967,554
Percent cars of volume commodities to total cars of all commodities	37.19%	45.86%	1.52%

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The southern lines urge that their territorial average switching costs are depressed by the large proportion of volume commodities in their region to the point that these costs are not representative of the official-southern traffic which includes only a small amount of these commodities.

For this reason they used in their cost study origin or destination switching costs based on a special study in the South and on an adjustment in the territorial costs in the North.

As stated, there were 967,554 cars of official-southern traffic in the year studied. A preliminary sample drawn in accordance with a scientific sampling plan designed and applied by an expert in sampling, produced a sample containing 497 cars in eight batches. From this a subsample of 83 cars was drawn. Finally a subsample of 41 cars was produced. Of these 41 cars, 16 were terminated 25 originated; 26 were handled by yard engines and 15 by train engines.

The southern lines made switching studies according to the principles of Rail Form F of all cars at each of the points in southern region where a car in the sample had originated or terminated. The switch engine minutes per car for origin or destination switching varied from 3.39 at Huber, Ga., to 72.54 at Gadsden, Ala., with an average 26.03 minutes for all 41 cars.

The 41 car sample was divided into ten subsamples and a "standard error" of 2.2 minutes was computed. It is virtually certain that error due to a sampling cannot exceed three standard errors or 6.6 minutes. This means that if all 967,554 cars had been studied the average of all would have been within the range of 26.03 minutes plus or minus 6.6 minutes, or between 19.43 minutes and 32.63 minutes per car.

The terminal switching cost for the southern region in the South's cost study of all 967,554 cars is based on the 26.03 minutes thus developed.

The southern lines show that they adjusted the official territory costs by applying Pocahontas region switching minutes to bituminous coal for the entire official territory and using special minute per car factors for iron ore and anthracite to washers in accordance with the method used by the Cost Finding Section in the burden studies. This

reduced the minutes per car for these commodities with a corresponding increase for all other commodities.

Evidence was introduced to show that volume commodities comprise over 37 percent of the total traffic in official territory and northern lines point out that if volume commodities exert a depressing effect upon system average switching minutes in the southern region, the presence of volume traffic in the North produces at the very least a corresponding influence on the eastern lines.

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The northern lines urge that thirteen study points used by the southern witness to illustrate the difference between system average and volume commodity switching minutes were selected, "hand-picked", for the sole purpose of showing that volume commodities do depress the territorial average. Thus they are extreme instances, not typical or representative. Two of these thirteen points are also among the places studied for the 41 car sample. Having in mind these two points common to both traffics, the northern lines say:

> And, since it is by elimination of the so-called volume commodities assumed to be lower than average that Mr. Seigler concludes, as he does at page 5, 'that the application of system average southern region costs materially understates the costs actually incurred in handling official-southern traffic', this conclusion is necessarily erroneous.

They also point out that respondents' principal witness in a prior case studied 582 loaded and 591 empty cars of pulpwood, a major volume commodity, and found 14.62 minutes for origin switching and 17.81 minutes for destination switching, which is not far from system average.

These three points, that volume commodities exist in both territories, that the 13 points were hand-picked and

that two were common to the points sampled as representative of official-southern traffic, and that pulpwood, a volume commodity, has average switching minutes, are cited by northern lines to show that there is no necessity to make an adjustment for volume commodities. They also urge that a sample of 41 cars is too small to be relied on to be representative of almost a million cars of study traffic. They show further that the sample included no cars from Boston, Philadelphia, Detroit, St. Louis, or Buffalo, among other large northern cities, and not a single car of citrus or fresh vegetable traffic.

Of the 967,554 cars of official-southern traffic, 46 percent were southbound and 54 percent were northbound, whereas the 41-car sample showed 39 percent southbound and 61 percent northbound. Thus the 41-car sample showed 7 percent too many origin studies and 7 percent too few destination studies as compared to the universe. The 25 cars originated had 24.08 minutes per car and the 16 cars terminated had 29.07 minutes per car. The northern lines point out that although southern lines' operating witnesses have almost uniformly taken the position that it is more burdensome to originate a car in the South than to terminate it, the switching studies of the 41 cars show the opposite.

The 26 cars given yard switching averaged 30.75 minutes and the 15 cars given train switching averaged 17.84 minutes. The original sample of 497 cars contained 59.8 percent given yard switching and 40.2 percent given train switching, whereas of the

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41 cars, 63.4 percent were given yard switching and 36.6 percent were given train switching. The northern lines point out that, to restore in the small sample the 60-40 relationship of yard to train switching shown in the more comprehensive sample, it is necessary to drop four cars of yard

switching from the small sample. If the four cars dropped were those with the largest number of switch engine minutes the average per car for the remaining 37 cars would be 22.30 minutes and if the four cars with the lowest number of switching minutes were dropped the average would be 27.48 minutes.

The northern lines show that the 41 cars were not selected by subsample but were later assigned to subsamples and say that this is a distortion of the use of subsamples which throws doubt on the value of the standard error computed therefrom. They point out that the Form A factors are 17.8 minutes for box cars and 19.8 minutes for other cars, which is an average of about 19 minutes and that the principal witness on sampling for respondents did not claim any greater reliability for the switching study factor of 26.03 minutes than a range of about 7 minutes. 26.03 minutes minus 7 minutes is 19 minutes. Thus, they say, "even if the Seigler studies were to be taken at face value, there is no justification for the conclusion that the involved traffic, assuming it could be found to be fairly typified by the 41-car sample, an assumption which offends common sense, is significantly different from average traffic in the South in respect of switching service rendered, since the claimed excess over average minutes and the conceded range of reliability of the study are almost exactly the same."

As to the 41 switching studies, 40 were conducted in 1960 and one in 1957 whereas the 41 cars were handled during the latter half of 1958 or first half of 1959. Switching minutes were developed for each category of service at all industries in the terminal area. Inasmuch as all cars were included in the divisor in each instance, the minutes attributed to each class of service reflect the average traffic at that station and not necessarily the characteristics of official-southern traffic. No investigation was made to determine whether operations were conducted in 1960 in a manner similar to the time the sample car moved, and no comparison was made of the volume of traffic at the study

points between the two periods. The switching studies were made on a single car basis although at least one car in the sample was picked from an "A" abstract containing 82 similar movements. These 82 cars covered a period of a month, and there must have been at least 3 or 4 cars per day, suggesting multiple-car block switching. A witness for the northern lines made a "mere cursory examination" of the switching studies and found six alleged errors amounting to an over-statement of 63.87 minutes out of 1067.20 minutes. Four of the errors were disputed by the southern lines and two amounting to 21.73 minutes were conceded.

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The northern lines point out that the switching minute adjustment was made on an entirely different basis in the North than in the South and that although the increase in switching minutes in the South was 46 percent for box cars and 31 percent for other cars it was only about 9 percent for both kinds of cars in the North. Since the justification for and intent of the adjustments was to offset the effect of volume commodities on the average, the amount of the adjustments would suggest four or five times as much volume commodity traffic in the South, which is not so.

They also take the position that: ". . . assuming that comparable methods had been followed in furtherance of the sought purpose of the switching adjustments . . . . the net effect of such an adjustment upon relative costs would have been virtually nil because of the similar and hence, at the very least offsetting, consist of the general traffic of northern and southern lines in terms of the respective proportions of volume commodities handled by each."

This offsetting effect can be approximated for official territory by the following computations, the first of which assumes that volume switching minutes are the same as in the southern region, and the second that volume switching minutes are greater in the same proportion as the territorial average:

	Proportion of cars originated or terminated	Switching minutes per car	
	Percent		
Southern region:			
All commodities (regional average)	100.00	× 19.2	= 19.2
Other than volume commodities	54.14	× 26.03	= 14.1
Volume commodities (remainder)	45.86		5.1
Volume commodities (5.1 ÷ 45.86%)		11.1	
Official territory:			
All commodities (territorial average)	100.00	× 27.3	= 27.3
Volume commodities	37.19	× 11.1	4.1
Other than volume commodities (remainder)	62.81		23.2
Other than volume commodities (23.2 ÷ 62.81%)		36.9	
Official territory:			
All commodities	100.00	× 27.3	= 27.3
Volume commodities $\frac{27.3}{19.2 \times 11.1 = 15.8}$	37.19	× 15.8	= 5.9
Other than volume commodities	62.81		21.4
Other than volume commodities (21.4 ÷ 62.81%)		34.1	

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Assuming the same difference between box cars and other cars, the switching minutes per car for other than volume commodities in official territory will be:

	All cars	*Box cars*	*Other cars*
First computation	36.9	34.3	38.1
Second computation	34.1	31.7	35.2
Used in southern lines' cost study	xxx	27.65	30.72

The above computations indicate that the adjustment of switching minutes for official territory made by the southern lines is inadequate by from four to seven minutes in comparison with the adjustment they made for their own region.

Territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic going to and coming from terminals in all parts of both territories. The depressing effect, if any, of volume switching commodities on the average would affect both territories and, for purposes of comparison, be largely offsetting.

The switching studies in the South have weaknesses, both in the sample and in the studies themselves. The adjustment in the North was not made on a basis comparable to that in the South, and, in this case where the relationship of North and South is of prime importance, this is a major defect.

For these reasons we conclude that Rail Form A territorial average switching costs are a better measure of the relative switching costs on each side of the border of the official-southern traffic than the switching costs computed by the southern lines.

i. Train tonnage adjustment:

The large volume of coal traffic on the Chesapeake and Ohio and Norfolk and Western railroads has a depressing

effect on the costs of other traffic because it moves in heavier than average trains. Based on testimony in the record that merchandise traffic on the Chesapeake and Ohio moves in trains of 3,200 tons and on the Norfolk and Western in trains of 5,128 tons, the southern lines adjusted the through train weights used in their cost computations, as follows:

	Official territory	*Eastern district*	*Pocahontas region*
Territorial average before adjustment (tons)	3,840	3,434	5,426
After adjustment	3,611	3,434	4,121

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This adjustment had the effect of increasing the costs in the North by $867,319 without any change in the costs of the South and resulted in a decrease of the South's proportion of the costs of 0.14 percentage points.

This adjustment was necessitated by the inclusion of Pocahontas region costs in those of the northern lines and would not be applicable if eastern district costs were used.

Adjustment of constant costs:

The southern lines made two adjustments to constant costs: one, the exclusion of passenger suburban service deficits, and the other, the inclusion in southern lines' costs of the fully-distributed cost deficits on pulpwood and wet phosphate rock which they consider to be related (in transit) to the outbound movement of paper products and dry phosphate rock.

j. Suburban passenger service deficits:

The southern lines argue that the basic reason justifying the inclusion of passenger service deficits as a part of the cost of providing freight services is that such passenger deficits are almost entirely attributable to the apportioned costs of common facilities which must be incurred in any event to provide freight service, and they agree that the

passenger deficits from intercity service should be included in the constant costs assigned to freight service, but they would exclude the deficits from suburban passenger service for the reason that the suburban service facilities are separate and not used in common with the freight service.

They excluded from the cost of official-southern traffic north of the gateways the amount of $2,830,575, based on data presented on behalf of Eastern Territory Suburban Railroads before the Senate Committee on Interstate and Foreign Commerce (April 1960) regarding the suburban service of the Boston and Maine; New Haven; New York Central; Delaware, Lackawanna and Western; Central of New Jersey; Erie; Pennsylvania; and Reading railroads. The amount ($377,070) excluded south of the gateways is based on the suburban service deficit of the Illinois Central Railroad.

The northern lines point out that, putting aside entirely the common expenses that are apportioned between freight and passenger service and considering only expenses that are solely related to passenger service, there is a deficit in the southern region, whereas in both the eastern district and in official territory the passenger revenues exceed the solely related expenses. Further, that it is unfair to exclude suburban service deficits but not the solely related deficits, that if the southern lines should not properly be charged with any part of the deficit in handling commuters from "A" to "B" in the East, it would logically follow that the northern lines should not be required to bear any part of the southern lines' deficit from transporting passengers from "X" to "Y" in the South.

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The southern lines state that, "—the suburban service deficits of the northern roads could be eliminated by the discontinuance of commutation service since the separate facilities maintained solely for suburban service are not used for freight or intercity passenger service". They give the following example: "—Reference to Exhibit J exemplifies

the situation which actually exists. It shows track occupancy by various types of trains in the twenty-four hours of a typical week-day of October 1958 on the line of the Pennsylvania Railroad between Overbrook and Bryn Mawr, Pennsylvania, which is a portion of one of that company's principal Philadelphia suburban lines. It will be noted that there are four main tracks in this territory. The outside tracks—No. 1, Eastbound and No. 4, Westbound—are used primarily by suburban trains; while the middle tracks (Nos. 2 and 3) are used primarily for through passenger and freight trains."

It is true that, in the example given, certain track expenses for tracks Nos. 1 and 4 could be saved by abandoning the suburban service and those tracks; however, other costs related to the roadway would continue, such items as land taxes, grading, ditching, culverts, bridges, and signaling systems. Many large passenger terminals are used by both suburban and intercity passengers. In other words, although many individual items of suburban service can be considered solely related, the facilities and service as a whole cannot be considered solely related to suburban service and treated entirely apart from the freight service and intercity passenger service. Because the suburban service deficit includes costs which must be incurred to provide freight service or intercity passenger service, such costs are properly chargeable to those services to the extent they cannot be recovered from suburban operations, and the deficit from suburban operations should not be excluded from the constant costs.

k. Constant cost of transit commodities:

The southern lines included the following amounts in their costs:

Pulpwood	$7,221,986
Wet phosphate rock	615,883
Total	$7,837,869

These amounts represent the constant costs not covered by the revenue and deficits sustained by the southern lines in handling, within the South, these commodities into mills which originate South to North outbound traffic of paper and paper products and dry phosphate rock.

Both groups have included in their traffic and cost studies the service from point of origin to destination of traffic identified on the interline abstracts as transit traffic. The pulpwood

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and wet phosphate rock movements are not so identified and the tariffs for them do not provide for through rates from the points of origin of the raw materials. However, the southern lines claim that an essentially transit situation exists because they maintain rates on the inbound wet phosphate rock and pulpwood which are conditioned upon the outbound movement by rail of the dry phosphate rock and paper products.

The revenue on pulpwood contributes approximately $5 million per year in excess of out-of-pocket costs, whereas the ton and ton-mile method of distribution assigns about $21 million of constant costs to pulpwood. Therefore, say the southern lines, the constant costs in excess of the contribution of pulpwood ($21 million minus $5 million) must be recovered from the high-rated paper and paper products, including southern-official paper traffic. Approximately 54 percent of the paper and paper products originated by the southern lines moves to destinations in official territory, and this traffic produces revenues 36 percent greater than fully-distributed costs.

The southern lines urge that they maintain the low rates on the inbound raw materials in order to hold the outbound high-rated paper and dry phosphate rock traffic to rail movement for the benefit of all carriers participating in the haul, and since the northern lines participate in the movement of this high-rated traffic they cannot deny the

southern lines divisions which reflect the services performed as an integral part of the joint enterprise.

The northern lines made three principal points in rebuttal:

First: The northern lines can make an even better cost showing on the basis of out-of-pocket costs:

Eastern percentages of total costs on general traffic at average hauls

Year 1956	Fully-distributed 50.7%	Out-of-pocket 51.7%
Year 1957	Fully-distributed 50.9%	Out-of-pocket 52.0%

Even if fully-distributed costs should be completely disregarded the northern lines' case would not suffer, yet the whole basis of the suggested adjustment depends on the use of fully-distributed costs which assign the constant expenses on a ton and ton-mile basis.

Second: The wet phosphate rock and pulpwood move wholly within the South and the northern lines have no participation in their rates, no control over them, and no voice as to their level. These rates on pulpwood "were made on a low basis to attract plants from the North, and now the southern lines want the Commission to require eastern lines to help make up the deficit under constant costs which they incur." The northern lines also point out that another reason for the low level of rates on pulpwood and

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wet phosphate rock is competition from other modes of transportation, also that any commodity which earns $5 million above out-of-pocket costs is, in a sense, very worthwhile.

Third: The northern lines urge that this adjustment cannot be made by the southern lines in their territory alone but, to be fair, must also be made in the territory of the northern lines with respect to the movement of raw materials—like iron ore and coal and fluxing stone, for example—which go into the manufacture of things—like iron and steel—which move from North to South and as to which

there could be no movement without the prior movement of the raw material.

The southern lines justify their adjustment on the basis of "an essentially transit relationship" on pulpwood and wet phosphate rock. On this point the northern lines say: "But a transit relationship is one that is readily identifiable from the tariff and either exists or doesn't exist. If an actual transit relationship exists, then the through rates from the initial origin of the raw material via the transit point to the ultimate destination of the finished product would here be in issue if that movement were between the territories involved. In that situation the through cost would likewise appropriately be considered in fixing divisions. But here no transit is in fact provided by the appropriate tariffs."

They further point out that "The only joint interterritorial rates here before the Commission are those applying on paper and paper products and on dry phosphate rock. The so-called 'tacit transit arrangement' is at best an express recognition of the obvious physical fact that the production of finished and semi-finished products necessitates an inbound flow of basic materials. . . ."

The southern lines' position that losses on pulpwood and wet phosphate rock are incurred in behalf of a joint enterprise (paper and dry phosphate rock traffic) in which the northern lines share is largely refuted by the evidence that these rates are profitable to the extent of $5 million a year above out-of-pocket costs.

The transfer to paper products and dry phosphate rock of that portion of the constant costs allocated to pulpwood and wet phosphate rock which the revenue fails to cover is based on a misunderstanding of the nature, significance, and use of constant costs.

Each shipment must pay its out-of-pocket costs, because they are incurred by and because of that shipment. However, the constant costs, because they are incurred on behalf of the operation as a whole, must be shared by all traffic jointly and in proportion only to the revenue-producing

abilities of each segment. In our judgment, the ton and ton-mile apportionment of constant costs made in the same way in each territory on this large and varied body of traffic is fair to both territories, and the transfer to interterritorial traffic of a part

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of the constant costs which had been assigned to intraterritorial traffic is not well-founded.

Restatement

The cost evidence introduced by both parties was voluminous, appropriate to the issues, and true in the sense that it was represented to be. The differences between the parties were not so much as to the verity of the figures presented as to, first: the degree to which territorial average costs could and should be modified to fit the specific traffic at issue, and second, the meaning and significance of various data and statistics.

Both parties computed the cost of service based on the southern lines' traffic study and the territorial average costs (1956) in Statement No. 2-58, Rail Carload Cost Scales by Territories, prepared by the cost finding section. The southern lines computed costs for all traffic for official territory and southern region and the northern lines computed costs for general traffic (all traffic except citrus fruits and fresh or green vegetables, not frozen-northbound) and citrus and vegetable traffic separately for official territory, eastern district and southern region. The cost computation of each party furnished substantial verification of that of the other party. Further, and positive verification was made by applying the unit costs in Statement No. 2-58, to the service units by type of car.

The charge made by the northern lines that the southern lines omitted 70 percent of the cars in the traffic sample from their cost studies might have been true at some stage of these proceedings but is not true of their final cost presentation.

Our restatement is based on official territory (eastern district plus Pocahontas region) costs north of the break points, for reasons previously discussed, and are at the fully distributed level, as advocated by both groups, on all traffic and incorporates six of the adjustments advocated by the southern lines, as shown in the table below. The figures shown were determined by applying the cost section's unit costs to the southern lines' traffic study.

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Restated costs

All Traffic	*Official Territory*	*Southern Region*
Revenue as settled	$221,431,708	$274,657,572
Percent	44.64	55.36
Fully-distributed costs-unadjusted	169,617,543	194,306,309
Percent	46.61	53.39
Adjustments:		
Exclude platform cost	—2,254,075	— 453,673
Way and thru train separation	—2,283,259	—3,595,230
Switching and terminal companies	— 163,473	+1,039,610
Include short line cost	— 37,725	+ 529,347
Switching minutes—Pocahontas region	+1,310,743	—0—
Train tonnage—Pocahontas region	+ 867,319	—0—
Total adjustment (net)	—2,560,470	—2,479,946
Fully-distributed costs—adjusted	$167,057,073	$191,826,363
Percent	46.55	53.45

As shown above, we have fully reviewed and restated the cost studies as presented by the parties. In addition to these comprehensive studies the southern lines urge that the evaluation of certain additional factors bearing upon costs establishes that their cost study overstates the costs of the northern lines relative to the costs in the South, all to the effect that their showing of the northern lines' costs should be reduced by at least 5 percent. The additional factors which they say should be considered include: (1) overstatement of line haul costs, (2) costs of interchanges between northern and southern carriers, (3) differences in the timing of modernization programs in each territory, and (4) savings which would result from "necessary" elimination of alleged excess capacity and duplicate facilities. The only item to which they attach a cost figure relates to the equalization of gateway interchanges amounting to $1.6 million. As to the balance they agree a precise cost figure cannot be ascertained. We have fully considered these points, and are of the opinion that the service unit costs as determined by the application of rail Form A reflect for the most part the costs which are referred to here, and that as the northern lines contend these factors are partially offset in the South. Our overall appraisal of this evidence is adequately reflected in our conclusions and findings.

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Importance to the public

Section 15(6) of the act also specifies that the Commission in prescribing divisions should give due consideration to "the importance to the public of the transportation services of such carriers". No real issue exists between the contending groups in this respect. Each group is considered to be of equal importance to the public and it is indisputable that this interterritorial traffic could not be handled in one region without the facilities and services of the carriers in the other. In prior territorial-wide divi-

sions cases the public generally has not concerned itself with such issues which primarily are viewed only as a struggle between the railroads.

In this reopened phase, however, certain interests representing the public and certain regulatory bodies were permitted to intervene. The New England Conference of Public Utility Commissioners and the Great Lakes Conference of Railroad and Utility Commissioners intervened purportedly to lend support to the northern lines. These parties did not offer evidence. The Southern Governors' Conference [6] and the Southeastern Association of Railroads & Utilities Commissioners [7] intervened in support of the southern lines, and presented 17 witnesses who introduced evidence designed to show why the divisions of the northern lines should not be increased. Unlike the contentions of the southern lines as a group, their requested finding is that "equal factor divisions should be maintained".

Among the witnesses presented by these interveners were shippers or receivers located at Atlanta, Savannah, and Milledgeville, Ga., Birmingham, Ala., Clewiston, Fla., Winston Salem, N.C., Jacksonville and other Florida points; and Catawba, S.C. Also testifying were representatives of a brick manufacturers association, a textile industry association, the port interests of Georgia and South Carolina, and the agricultural departments of various southern States. In summary they contend that a shift of divisions from the southern lines would result in (1) higher rates on southern inter- and intraterritorial traffic (2) diminution of services, facilities and equipment, both of which in turn would (3) impair the ability of southern shippers to compete in distant markets with consequent less traffic generated, and (4) cause diversion to other modes of transportation, thus impeding the economic growth of the South.

Much of the argument to support these contentions is the same as that made by the southern lines in their brief and discussed elsewhere in this report. There is nothing

concrete of record to support the various assumptions of these interveners. The dire predictions posed by them appear to result from fear rather than fact. The Commission has in the past, particularly in the last two decades, caused a shift of revenues from one group of carriers to another in various divisions cases. Information as to the effect of such shift upon the losing group should be available but the interveners do not substantiate their assumptions with such facts, indeed if any there be.

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Divisions of the Norfolk Southern, et al.

At page 544 of the 1953 report, the Commission quoted portions of the 1939 report, explaining briefly why in that earlier proceeding the divisions of the Norfolk Southern Railway Company, except on peaches, were not made subject to the prescribed basis in 1939, referring principally to the loss occasioned by such basis thus adding to the adverse burden of this railroad.

This line's condition was found considerably improved in the 1953 phase of this case. It then asked for "some small relief" through increased divisions, in which request it was joined by the Atlantic and East Carolina Railway Company. After consideration of the evidence concerning these carriers the Commission was unable to find that a special basis of divisions for them would be justified. One of the considerations which apparently led to this conclusion was the improved financial condition of the Norfolk Southern particularly when compared with rates of return of the northern lines generally and those of the Pennsylvania in particular, with which line it was presumed that the greater portion of traffic through Norfolk was interchanged.

Thereupon these three respondents filed separate petitions seeking reconsideration. It was observed upon reconsideration (289 I.C.C. 4, 8) that the basis prescribed in the original 1953 report would cause these carriers to

incur a proportionately greater reduction in revenue than the southern lines as a whole. The Commission there stated:

> Upon further consideration we are in doubt whether the present record contains all the facts which should be currently considered in establishing a proper basis of divisions of joint rates between official territory and points on these lines.

Accordingly the case was reopened for further hearing, and the order as to these respondents was postponed pending the further hearing which was had in this reopened phase.

Of the three carriers only the Norfolk Southern introduced evidence. Considering first the situations of the Atlantic & East Carolina and the Beaufort & Morehead, the former is now part of the Southern Railway System, which owns all of its capital stock. This acquisition was approved by report decided February 12, 1957, *Camp Lejeune R. Co., Securities and Operation,* 295 I.C.C. 511. This line extends approximately 96 miles from Goldsboro, N.C. to Morehead City, N.C., which is the only interchange point of the Beaufort & Morehead, a line extending 3 miles to Beaufort, N.C. One of the conditions imposed upon the Southern in the cited acquisition proceeding reads (p. 517) as follows:

> That the present divisions of revenues as between the Beaufort and the East Carolina be continued as at present, or as hereafter mutually agreed.

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Inasmuch as the Atlantic & East Carolina now is part of a southern standard line and in view of the above-quoted divisional condition as to the Beaufort & Morehead, it appears that these carriers should not be given special consideration in this phase of the case. Their divisions will be subject to the general basis prescribed.

The situation with respect to the Norfolk Southern, however, does require separate detailed consideration. This line has traditionally been classed as a "weak" line, having been awarded arbitraries in various instances. See *Southern Class Rate Investigation*, 100 I.C.C. 513, 128 I.C.C. 567. As noted in the 1953 report its condition has improved in recent years. Its main line extends from Norfolk, Va., in a southwesterly direction, to Charlotte, N.C., 379 miles, with 210 miles of branch lines; ninety-five percent of its local mileage is in North Carolina, the remainder in Virginia. Its annual system freight revenues approximate $10 million, 34 percent of which is said to be involved here. For purpose of this case, the respondent has divided its traffic into three categories:

(1) Traffic in which the Norfolk Southern participates as an intermediate carrier moving between points in the South and points in official territory. The divisions on this "overhead" traffic is subject to the 1953 prescribed scales. During the constructive year, later described, revenue accruing to the Norfolk Southern in this category amounted to $879,069. No special basis of divisions on this traffic is requested, except that if a change is made in favor of the northern lines, the Commission is asked to see that this line's revenues as a whole will not be diminished.

(2) Traffic originating or terminating on the Atlantic & East Carolina and the Beaufort & Morehead railroads to and from points in official territory moving over the Norfolk Southern as an overhead or intermediate carrier. During the constructive year this category embraced the movement of 1,655 cars, interchanged at Norfolk, 60 cars of which were handled by the Beaufort & Morehead. It is estimated that Norfolk Southern's portion of the revenues would have been about $32,000 less annually if the 1953 prescribed basis had been applicable. All of the traffic in this category must be handled between New Bern, N.C. and Morehead City, or to and from points between Goldsboro and New Bern by

the Southern Railway, a standard southern territory carrier. We are not aware of circumstances which differentiates this traffic from that which originates or terminates on the Atlantic & East Carolina portion of the Southern and is not interchanged with the Norfolk Southern. Revenue accruing to the latter in this category is a matter of subdivisions and should not be made subject to a special basis.

(3) The third category, characterized as "the most important", embraces that traffic which originates and terminates on the line of the Norfolk Southern and moves to or from points on lines of the northern railroads in official territory.

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At page 545 of the 1953 report the Commission stated:

> The divisions of rates to and from the Norfolk Southern are in an unsatisfactory state. To a large extent they are based on rate prorates running back for many years, as to which there is disagreement. The settlements of revenue apparently are determined by the line which collects the charges. It does not appear that the interested carriers have made any effort to adjust their differences, as we suggested in our 1939 report.

In this reopened phase the record fails to indicate that the divisional situation has changed materially since the 1953 report. Substantial evidence was adduced by the Norfolk Southern designed to support a finding that a definite "modernized" basis of divisions be prescribed, all to the end that it "is not requesting an increase in its involved divisions, but requests only that the level of its revenue from this interterritorial traffic be preserved".

For the purpose of showing the characteristics of this traffic the respondent submitted a traffic test covering all shipments of general traffic originated or terminated by it in the two months of November 1958 and March 1959, ex-

panded to an annual basis by multiplying by six, and included separately all shipments of northbound fruits and vegetables for the year 1959. The general study as expanded covers what is referred to herein as the constructive year. The interterritorial traffic originated and terminated on the Norfolk Southern accounted for 15.1 percent of its total carloads, 12.6 percent of its total tonnage, and 23.4 percent of its total revenues, thus indicating that traffic in this category is relatively important to it.

The general traffic test covers 17,292 cars, 638,394 tons, with total revenue of $5,588,844, of which the Norfolk Southern received $2,271,984 (including $10,284 in arbitraries) or almost 40 percent. The northern lines received about $3 million, almost 54 percent. There were 432 cars, 8,501 tons of fruit and vegetables moved in 1959, all of which moved via Norfolk. Of the total revenue, $130,427, the Norfolk Southern also received about 40 percent. About 54.7 percent of the total cars were northbound, accounting for 50.8 percent of the total revenue. Southbound traffic generally consists of higher rated commodities. By far the most important gateway was Norfolk through which moved 13,488 cars, 76.1 percent of the total. Second was Richmond, 1,590 cars, and in third place was Lynchburg, Va., 1,422 cars. The test shows 372 cars interchanged at Roanoke.

The study indicates that if the traffic during the constructive year (including fruits and vegetables) had been subject to the 1953 prescribed basis, the revenue accruing to the Norfolk Southern would have been $450,362 less than that "as settled". The line's net railway operating income in 1958 amounted to $267,700, in 1959, $434,000. It can readily be seen deficits in this respect would have occurred.

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The line is in pressing need of sufficient revenues to improve its physical plant and provide additional rolling equipment. It has paid no dividends since 1957 when it paid 60 cents per share.

Based on average short-line ton-miles distances, the average haul on all originated or terminated traffic during the constructive year was 162 miles south and 365 miles north via all gateways. On traffic moved only through Norfolk (13,488 cars) the averages were 136.6 miles south and 431.3 miles north. On the movement of the 432 cars of fruits and vegetables the averages were 55.2 miles south and 704.2 miles north which tended to reduce Norfolk Southern's average haul down in the over-all figures.

As stated, 76.1 percent of the cars in the traffic test were interchanged at Norfolk. This accounted for 85.9 percent of its total standard line revenue. At that point it interchanges with the Chesapake & Ohio, Norfolk & Western,[8] and the Pennsylvania. Following are various statistics designed to show that the Pocahontas lines (C. & O. and N. & W.) participate in the traffic to a greater extent than the Pennsylvania. During the constructive year the 13,488 cars were interchanged at Norfolk as follows:

	Cars	*Percent*
C. & O.[1]	3,412	25.30
N. & W.[1]	6,503	48.21
Total Pocahontas lines	9,915	73.51
P.R.R.[1]	3,573	26.49
Total	13,488	100.00

The following table shows the number of cars of the numbers shown above which originated or terminated locally on the lines shown:

C. & O.	1,975
N. & W.	3,306
P.R.R.	1,409

On a revenue basis the Pocahontas lines received 52.71 percent of the total (C. & O. 17.70 percent, N. & W. 34.39

1. And/or connections beyond.

percent, R.F. & P. 0.62 percent), the Pennsylvania 24.75 percent and all other northern lines, 22.54 percent. The traffic moved by the Pennsylvania involves a marine service transfer across Chesapeake Bay at an expense of $35 per car.

Rates of return for the southern region and the eastern district plus the Pocahontas region 1952 to 1959 are shown earlier in this report. A comparison of average returns 1946-50 of the latter with the Norfolk Southern and the Pennsylvania are shown at page 546 of the 1953 report. Rates of return 1952 to 1959 of the eastern district (excluding the Pocahontas region), the Norfolk Southern and the three

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connecting lines at Norfolk based on net investment are shown below:

Year	*Percent return Eastern District excluding Pocahontas region*	*N. S.*	*C. & O.*	*N. & W.*	*P.R.R.*
1952	3.43	2.33	6.65	5.43	2.98
1953	3.68	3.39	6.90	5.11	2.98
1954	2.48	1.88	6.16	4.76	1.96
1955	3.64	2.81	7.93	6.94	2.87
1956	3.33	2.81	8.20	7.19	2.76
1957	2.43	2.47	7.88	7.12	1.80
1958	1.13	1.01	6.68	6.63	0.49
1959	1.43	1.50	5.82	7.56	1.26

The northern lines say that the foregoing comparisons of the eastern district, the Norfolk Southern, and the Pennsylvania "are persuasive of the propriety, so far as primary divisions are concerned, of treating the Norfolk Southern in the same manner as other Southern lines, leaving it to

the respective groups to make any neeessary special provisions for the Norfolk Southern through the medium of sub-divisional arrangements."

The Norfolk Southern urges that it would be absurd to diminish its revenue when the major beneficiaries would be the Pocahontas lines whose rates of return are relatively high.

Under a permissive order of the Commission granted in *Pooling of Refrigeration Earnings*, 258 I.C.C. 24, effective as of January 1, 1942, the proprietary lines of the Fruit Growers Express Company were allowed to enter into an arrangement whereby the net loss or gain realized in furnishing protective service could be pooled and at the close of the year such net loss or gain be distributed between the participating proprietary lines on the basis of loaded car miles handled by such lines. Members of the pooling arrangement were the major carriers in the South and "quite a few" eastern carriers that terminated perishable traffic. Norfolk Southern joined about May 1, 1945. However, on and since April 1, 1959, several of the principal official territory lines, including the Pennsylvania, C. & O., N. & W. and B. & O., have withdrawn, so that now only the R.F. & P. is still a member. As a result Norfolk Southern estimates it is losing an average of $49 on each car of originated fruits and vegetables given protective service. It requests that the prorating factor prescribed for it on its originated and terminated

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traffic interchanged at Norfolk be an additional four percentage points higher as a temporary measure until the pooling situation is adjusted.

Norfolk Southern proposes that on traffic originated or terminated by it, interchanged at Norfolk, its prorating factors be made 149 percent of the factors presently prescribed for the northern lines, and on traffic flowing through other gateways, 125 percent. The factors herein prescribed

for application by the Norfolk Southern are deemed to be just, reasonable, and equitable and will apply to all originated and terminated traffic regardless of gateway. In our opinion this will afford the carrier adequate revenues in view of its peculiar situation.

In connection with the second supplemental report, 291 I.C.C. 90, an order was entered making the Atlantic and Danville Railway Company a respondent herein and assigning the proceeding for further hearing with respect to divisions of joint interterritorial rates between points on the lines of this carrier west of Suffolk, Va., and points in official territory. It is understood by the parties that a further hearing in this respect has been afforded in this reopened phase. While there is certain evidence of record of the financial condition of this line, now in receivership, there is nothing specific with regard to the extent of its traffic here involved. It filed no brief and hence has not made any requested finding for special consideration. Its principal connections with lines in official territory are at Norfolk or Suffolk. It is presumed that the remaining traffic is not of considerable consequence. Accordingly, the divisions prescribed herein will apply to the Atlantic & Danville the same as to the southern lines in general.

The Georgia & Florida Railroad (Alfred W. Jones Receiver) also made a presentation in its own behalf, tendered evidence by four witnesses, and filed a brief, although its traffic is included in the southern lines' study and its case was covered by these lines' arguments. This line runs north and south extending from Greenwood, S.C., to South Valdosta, Ga., 284 miles, with branch lines totalling 36 miles. It has never been financially strong, having been in receivership much of its existence, and under its present sole receiver since June 1, 1949. It has never paid dividends and no bond interest has been paid since October 19, 1929. Its annual average net railway operating income 1955-59 was $71,235, rate of return 0.33 percent, with a deficit each year since 1930 in net income after fixed charges.

This respondent submitted a separate traffic study showing the extent of this interterritorial traffic for a constructive year based on actual movements for October 1958 and April 1959. This shows of a total of 3,570 cars, 75 percent were northbound, 25 percent southbound. Revenue thereon "as settled" 45.48 percent north and 54.52 percent south. Further comments on the study are deemed unnecessary.

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So far as shown this is the first time Georgia & Florida has requested special consideration in divisional matters. It now urges that its proportion of through revenues should be not less than the proportion it enjoyed prior to the institution of this proceeding. It suggests that this could "be accomplished by dividing the total revenue on present divisions * * * then reduce official lines' revenue an arbitrary proportion of 10.4 percent" and adding same to its revenue.

This respondent in 1959 was granted loan guarantees for purposes of purchasing new cars and rehabilitation of its line. Because of the use to which the borrowed monies would be put, the receiver submitted figures in *Georgia & F. R. Loan Guaranty,* 307 I.C.C. 707, 307 I.C.C. 453, intimating that its net railway operating income would increase from a deficit of $7,600 in 1950 to $840,000 in 1963. In addition total funds available to meet fixed obligations would increase from $281,952 in 1960 to $514,839 in 1963, the latter exceeding total fixed obligations by $142,977. None of the receiver's optimism was apparently based upon a condition that he receive higher interterritorial divisions.

The Georgia & Florida is the only respondent in either group without direct interchange with a railroad of the other group that is here seeking to be singled out and given preferential treatment. There is no doubt that there are several lines in both groups not differing materially from this respondent. We see no justification upon this record, to give recognition to respondent's requested finding. In

support of the position taken by the southern lines generally in rebuttal of the northern lines showing of the financial condition of certain northern lines, including the New Haven, the southern lines on brief say "If any transfer of the official-southern divisions could be justified on revenue needs grounds, it would not be a change in the primary divisions, but in the subdivisions of the Northern revenue * * *". It is not clear why such argument should not apply with equal force to the Georgia & Florida, a member of the southern lines group. We conclude that the Georgia & Florida is not entitled to a basis of divisions differing from that herein prescribed for the southern lines generally.

Dividing points—In this reopened phase the northern lines again urge that the construction of divisions over fictional break points rather than over actual points of interior interchange results in unjust inflation of southern revenues. They request a finding that the "dividing points to and from which primary divisions shall apply are the points at which the traffic is interchanged between a Northern and Southern line."

This problem has been a vexatious one ever since these general north-south divisions were first considered in Docket No. 24160, the northern lines always contending that actual interchange points should govern, while the southern lines strenuously urged that the primary divide points should be at the territorial border. In the original 1939 report

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(docket No. 24160) the Commission sided with the northern lines, only to reverse its position in its report on reconsideration, 238 I.C.C. 149. Subsequent thereto the interested lines in 1944 entered into what is known as the "Roanoke Agreement" as a compromise on traffic moving through the Ohio River gateways to points in central and Illinois territories. Details of this agreement are stated at page 528 of the 1953 report, and need not be repeated here.

In the 1953 report the Commission again agreed with the northern lines' contentions but upon reconsideration (289 I.C.C. 4) modified its finding, saying: "Upon all the facts before us it would not be desirable to require the use of points in Illinois and Indiana north of the Ohio River as primary dividing points". The northern carriers are dissatisfied with the Roanoke agreement. The southern lines' present traffic test, as stated, embraced a total of 967,554 cars. Of these 86,843 or 9 percent were interchanged at interior Illinois-Indiana junctions, the most important of which were East St. Louis, 28,738 cars, Chicago 19,441 cars, and Indianapolis 12,599 cars.

The following tabulation shows the number of cars so handled by individual lines:

Railroad	*Cars*		
	Northbound	*Southbound*	*Total*
Illinois Central	30,838	15,463	46,301
Gulf, M. & O.	14,476	3,680	18,156
St. Louis-San Fran.	8,832	3,129	11,961
Southern	2,880	2,219	5,099
Louisville & Nashville	2,471	2,798	5,269
Missouri Pacific	—	57	57
Totals	59,497	27,346	86,843

A comparison of the total number of cars moving through primary divide points with those moving through these points but not interchanged follows:

Divide points	*Total Cars*	*Cars not interchanged*	
		Number	*Percent*
Cairo, Metropolis Thebes-Gale	74,504	65,470	87.9
East St. Louis	55,767	11,005	19.7
Evansville	29,342	5,269	18.0
Louisville	90,538	5,099	5.6
	250,151	86,843	34.7

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The total revenue on the 86,843 carloads was $49,642,442, which was settled 63.9 percent south and 36.1 percent north. If the primary break were made over the actual points of interchange the southern lines would have received 58.4 percent, the northern lines 41.6 percent, a result of which the southern lines would receive $2,743,675 less than at present, an average of $32 per car.

If the Roanoke agreement had not been applied the southern lines would have received an additional $1,981,763, or $15 per car on cars subject to the agreement.

We are not aware of any changed conditions since 1953 favoring the northern lines as to the dividing point issue. We are not persuaded that the Commission should again reverse its position thereon. The prior conclusion (289 I.C.C. 4, 8) that the dividing points to and from which the primary divisions shall apply are the present dividing points is affirmed. This is in harmony with the conclusion reached in *Official-Southwestern Divisions*, 289 I.C.C. 11, 16 (1953).

Divisions of rates to and from points on western lines—The western trunklines [10] named in the footnote on page 91 of the second supplemental report, 291 I.C.C. 90, sought interpretation of the findings in the two prior reports whether such findings embraced divisions of rates from and to points on their lines in official territory to and from points on southern lines. In that report dated November 2, 1953, the Commission concluded that such prescribed basis should be applied to traffic in which a northern line participated. This interpretation was affirmed and elaborated on in the third supplemental report, 294 I.C.C. 739. At page 91 of the second supplemental report, however, the Commission stated:

> Because of doubt whether the record would support findings requiring revised divisions on traffic which they interchange directly with southern lines; as

to which the northern lines were not involved, we do not believe the modification sought by the western trunklines should be made. We deem it proper, however, to afford them an opportunity now to introduce evidence which might well have been presented when this proceeding was being heard if they believe that they are prejudiced by the situation which has resulted from our decision. The proceeding will therefore be reopened for that purpose.

Accordingly, the third ordering paragraph of the order which accompanied the November 2, 1953, report reopened the proceeding for further hearing on this issue. A prehearing conference was held on December 2, 1953, after which counsel for these western trunklines advised the Commission by letter dated January 26, 1954, that the interested carriers had reached an agreement and that further hearing was not needed. Thereupon the Commission by order dated February 1, 1954, vacated the aforesaid third ordering paragraph. This record shows that these agreed divisions are published as divisional

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basis 469, with which the western trunklines since 1954 apparently have been well satisfied.

The order herein of July 20, 1959, issued upon petition of the northern lines for general reopening of these proceedings for further hearing should be construed to include issues as to divisions of rates on traffic which the respondent western trunklines interchange directly with the southern lines. There appears to be no question that the general divisions prescribed effective July 15, 1953, and those to be prescribed in this reopened phase apply and will apply to the joint rates on traffic interchanged with southern lines in which there is participation by a northern line. The southern lines' traffic study includes the latter traffic (46,201 cars) but does not include that which is interchanged directly by a western trunkline and a southern line for the

reason that when the northern lines concluded their direct presentation no evidence had been offered by the western lines who should occupy the same position in these proceedings as the northern lines. The northern lines' general traffic study does not embrace either category.

It was not until the third session of hearings in August 1960 [11] that the western trunklines made their presentation which consisted principally of a traffic study [12] covering the months of March and September 1956, showing separately the number of cars interchanged directly with the southern lines and the number so interchanged in which a northern line participated, segregated by direction and commodity groupings. The study shows 9,814 cars interchanged directly with southern lines, 55.5 percent of which were northbound. The study also shows a movement of 7,195 cars interchanged with the southern lines via a northern line connection, 3,813 cars northbound. The latter category is now subject to the general prescribed basis while the former is subject to the aforesaid agreed basis 469.

The western-line respondents request a finding that the divisions on both categories of traffic should now be the same as are prescribed for the northern lines. In their brief they appear to be under the impression that when the Commission reopened the case in 1953 for further hearing (later vacated) with respect to traffic interchanged directly with the southern lines, all the additional evidence the Commission required was a traffic study and this is all they have supplied in this reopened phase. We are unable to gain such an impression from the prior supplemental reports. The findings in this report will embrace divisions of rates on traffic interchanged between the western trunklines and the southern lines in which there is participation by a northern line or lines. However, the record is inadequate to support findings with respect to traffic interchanged without northern lines' participation, because the record does not show present divisions on such traffic nor the relative service performed by each group. These respondents

have not satisfied the requirements under section 15(6) as to traffic interchanged directly with the southern lines.

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Canadian—Northern Maine traffic—The southern lines' traffic study shows 2,955 cars (3 percent of the total) moved to or from Canadian points on combination rates made over an international boundary point, 2,227 of which were northbound, 728 southbound. A slight controversy exists as to the divisional basis applicable to this traffic, since two southern-territory lines settled divisions on 245 southbound cars on the old 24160 basis. The southern lines are now, in this reopened case, for the first time asking the Commission to avoid any similar controversy for the future by prescribing divisions on this traffic "that reflect its demonstrated characteristic, i.e., 'overhead' traffic for the official territory part of the haul." They urge that since the northern lines perform no terminal service thereon the northern factor should be adjusted to reflect the situation.

The northern lines oppose any special basis on Canadian traffic. They point out that these joint rates are the same as the domestic rates to and from the border points and as such contemplate two terminal services of which southern lines perform but one. They show that of the 2,955 cars involved, 1,324 cars moved through the Detroit, Mich., gateway, 609 of them in connection with the Chesapeake & Ohio, indicating that the latter has to bear heavy expense in addition to that entailed by normal interchange in the Detroit-Windsor area, largely because of the international character of this traffic.

A similar situation exists with respect to traffic moving between the South and destinations in northern Maine on combination rates made over Brunswick or Lewiston, Maine. The joint revenue accruing south of these points is divided on the presently prescribed general basis. Thus the southern lines contend that the northern lines receive compensation for a terminal service which they do not

perform. The southern study embraced 3,158 cars in this category, about 90 percent of which consisted of clay from Georgia origins to paper mills in northern Maine, 80 percent thereof going to Maine Central points on combinations over Brunswick. On March 16, 1960, these clay rates were superseded by single-factor joint through rates over protest of the Maine Central. Clay traffic to Bangor and Aroostook points remained on the combination basis.

The northern lines advance several reasons why this Maine traffic should not be excepted from the general basis of divisions. These include characteristics peculiar in part to New England territory, such as lower traffic density, higher level of costs, multi-line hauls north of the gateways and lower rates of return. These lines urge that the general basis of divisions is required to compensate them fully for the services they perform.

The Commission is required under section 15(6) of the act to consider "whether any particular participating carrier is an originating, intermediate or delivering line." It has frequently recognized the fact that intermediate carriers having no terminal service to

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perform in originating or delivering shipments are entitled to a less proportion of joint rates for that reason. See *Through Routes and Joint Rates,* 174 I.C.C. 477, 485; *Official-Southwestern Divisions,* 287 I.C.C. 553, 580; *Divisions of Rates, Official and Southern Territories,* 278 I.C.C. 89, 94. In the latter two decisions a special basis of division on grain and grain products moving on joint proportional and reshipping rates was prescribed.

The southern lines take the position that the divisions of joint proportional rates on grain and grain products from East St. Louis, Ill., Louisville, Ky., and Cincinnati, Ohio, to points in southern territory are not at issue in this reopened phase for the reason that no evidence relating specifically to this traffic was offered. As stated earlier,

in the 1953 report a separate specific scale of divisions was prescribed to reflect the characteristics of this traffic. The northern factors were made 75 percent of the northern general factors to reflect the intermediate service performed by the southern lines. While no new evidence pertaining to such traffic was tendered here, the divisions thereon are still before us, and in accord with prior practice we are of the opinion that the northern factors should remain at 75 percent of the northern general factors here prescribed. We also conclude that the divisions of the joint combination rates on Canadian and northern Maine traffic, hereinbefore referred to, should likewise be prescribed and subject to the same basis. Our findings herein will reflect these conclusions.

Proposals. The northern lines favor simple modification rather than complete revision of the present divisional scales and ask that we make "such modifications therein as shall serve to redistribute the total revenue between the two groups with primary regard for their relative general levels of costs and relative revenue needs." As reflected in our findings, we agree in principle that this course is most practical.

These respondents contend on brief that "because of their greater revenue need, the Commission should add 10 percentage points to the 25 percent increase that would be justified on the basis of relative costs alone, and thus prescribe, on general traffic, the present divisional factors for southern lines and the present factors increased by 35 percent for eastern lines." On citrus and vegetable traffic their proposition is the same except that their present factors be increased by only 15 percent. They estimate that the divisions thus proposed would increase their total revenue about $35 million annually, making the adjusted rates of return for 1959 for official territory lines 2.42 percent, for southern region lines 3.19 percent.

As stated earlier, the northern lines ask that the divisions of the per car rates on vegetables to New York, N.Y.,

be excluded herein from the general basis and a special provision be applied thereto so that the excess of $57 per car in the New York rates, over and above the rates to Jersey City, N.J., shall continue to accrue to the delivering lines before prorating. They also ask that our findings exclude the divisions of rates on liquid

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caustic soda and soda ash from Saltville, Va., to Kingsport and Port Rayon, Tenn., as to which the present order was vacated by orders entered January 29 and September 18, 1959, in response to joint petitions filed by the interested railroads. In addition these lines request that the divisions of joint rates on all trailer-on-flat car traffic be excluded from our findings so that the parties may be free to negotiate divisions on such traffic as it is inaugurated. Since the divisions on the traffic here sought to be excluded were not specifically dealt with in the original phase of this proceeding and no specific evidence thereon was offered in this reopened phase, we are able to exclude only that traffic listed in appendix B. It would appear that the parties could again accomplish this objective by filing meritorious mutual petitions for vacation of the order in those instances upon which they should be able to agree.

The southern lines would abandon the present scales of prorating factors entirely and substitute therefor scales of prorating factors constructed directly from the costs developed in their cost study. They oppose the use of divisional scales derived from rate scales because of the rate of progression, being partly curvilinear and in part straight line, thus they say favoring the short-haul in the North. The mechanics of the construction of the proposed scales are difficult of brief explanation; a detailed description thereof would serve no useful purpose. In addition, we have not accepted at its face value the cost study upon which the scales are based. The initial factors for the 50-

mile block are 155 South and 137 North. Omitting other 50-mile block factors the proposed scales are as shown in columns 1 and 2 below:

Distance	*Column 1 (South)*	*Column 2 (North)*	*Column 3*
100 miles	214	194	204
200 miles	330	307	323
300 miles	447	421	443
400 miles	563	535	563
500 miles	680	648	682
600 miles	797	762	802
700 miles	913	875	921
800 miles	1030	989	1041
900 miles	1146	1102	1160
1,000 miles	1263	1216	1280
1,100 miles	1380	1330	1400
1,200 miles	1496	1443	1519
1,300 miles	1613	1557	1639
1,400 miles	1730	1670	1758
1,500 miles	1846	1784	1878
1,600 miles	1963	1897	1997

The scale in column 3 above are the northern factors based solely upon the southern-cost study. The column 2 scale is column 3 reduced by 5 percent which these lines say is required

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to correct the relative overstatement of the cost for the northern hauls. The 5 percent increment has been discussed hereinbefore. We give little support to the arguments there presented. It will be noted above that the factors in columns 1 and 3 become equal at 400 miles. The only way the southern lines could reduce the northern factors below those for the South on hauls over 400 miles and thus give the southern lines the larger share of the joint revenue was to

utilize the 5 percent reduction tool. This is clearly to their advantage since the longer average hauls are in the South. These proposed scales would be appropriately modified to cover traffic on which one group performs no terminal service. Upon this record it is manifestly impossible to accept the scales proposed which would transfer an undisclosed amount of revenue to the southern lines over those presently in effect.

The progression of the divisional factors was thoroughly considered at pages 526-27 of the 1953 report. We adhere to the views there expressed. The southern lines also oppose the imposition of the 15 percent minimum. Their opposition rests on the assumption that the integer scales would be constructed directly on cost scales derived from their cost study. Such scales if used, would reflect an allowance for terminal service and hence the prescription of a minimum would be unwarranted. Since we are simply modifying the present scales, which are subject to the minimum, similar action is required in this reopened phase to protect the very short haul carriers which for the most part perform principally orginating or terminating service.

General Discussion and Conclusions

Section 15(6) of the act provides in part as follows:

> Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of the opinion that the divisions of joint rates . . . applicable to the transportation of . . . property, are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between carriers parties thereto . . . the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers . . .

In exercising the function placed upon the Commission in the determination of lawful divisions, the second sentence of section 15(6) provides as follows:

In so prescribing and determining the divisions of joint rates, fares, and charges, the Commission shall give due consideration, among other things, to

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the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

It will be noted that we must give "due consideration" to a number of factors. In one of the first decisions involving these provisions, *New England Divisions*, 66 I.C.C. 196, the Commission said at page 199 "that the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive."

In the 1939 report the cost element was given weight upon a showing that from 1932 to 1936 the cost per revenue ton-mile in the South was about 16 percent higher than that in the North. At page 525 of the 1953 report, as previously referred to, the Commission stated that the record then showed that "for more than a decade the southern railroads have not labored under a disadvantage of operating costs generally higher then those of the northern lines."

As stated earlier, both groups rely heavily upon relative costs of service as a determining factor in this reopened phase. The northern lines say:

It is beyond dispute that the power of the Commission to prescribe divisions of joint rates rests upon Section 15(6) of the Act as that provision has been construed by the Commission itself and by the Courts. Those interpretations make it abundantly clear that relative service costs are a primary consideration and that the Commission must, in addition, weigh the relative financial needs of the carriers involved in the light of the public interest. It is the position of Eastern lines that the Commission should, first, undertake to fairly assess the relative service cost levels of the two groups of carriers, parties to the

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involved rates, and should thereafter adjust its determination made upon the basis of such relative costs to reflect any greater financial need on the part of one of the groups.

The southern lines would have these divisions determined almost solely on a cost of service basis, for, as we have earlier shown, their proposed integer scales are directly related to the showing of their cost study. They agree with the northern lines, however, in saying that the rulings of the Commission establish that "cost of service is of paramount importance in this . . . proceeding."

In commenting upon the importance to be given the various factors set forth in the second sentence of section 15(6) of the act, the district court (Massachusetts) in *Boston and Maine Railroad v. United States*, 208 F. Supp. 661, affirmed 371 U.S. 26 (October 15, 1962) said:

> "Due consideration" is not the equivalent of "primary consideration." The importance to be given any of the factors enumerated in the statute must necessarily depend upon the case under consideration. The evaluation of the importance of the various factors in any given case is peculiarly the function of the Commission.

As shown in our review of the cost evidence there was an increase in the northern lines' proportion of costs in 1950 over that shown in the 1953 report for 1947 but that since 1950 there has been no appreciable increase in the trend favoring the South, that is the spread has not increased to any extent. It is shown, however, that the cost level in 1956, the year both groups used, is somewhat higher in the North than in the South for like services. The northern revenue as settled under the southern traffic study, 1958-59, on all traffic was 2 percentage points less than the fully distributed cost of handling the traffic.

Our review of the economic trends and revenue needs leads us to agree with the southern respondent that the South's economic development since World War II has outpaced the national rate of growth in practically every category, while the North has not been so fortunate. The increase in southern growth is reflected in the freight traffic trends earlier set forth, all to the benefit of the southern lines, as shown in freight revenues, net railway operating income, and rates of return. The divisions prescribed in 1953 did not increase the fortunes of the northern lines to the extent warranted upon this reopened

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record, considering the services performed by each group in the joint effort of handling the traffic at issue. We, therefore, deem it wholly proper upon the record before us in this reopened phase that the proportion of the divisions of these joint rates accruing to the northern lines should be increased by a modest amount. Our findings and our prescribed scales of prorating factors hereinafter set forth are designed to implement and carry out this and other conclusions reached concerning all of the factors which must be evaluated under section 15(6) of the act, and in so doing we officially notice the decision of the Commission of March 21, 1963, in docket no. 31503, *Akron, Canton & Y.R. Co: v. Atchison, T. & S.F. Ry. Co.,* I.C.C.

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FINDINGS AND ORDER.

1. We find that the present primary divisions of joint all-rail class and commodity rates (except those on traffic listed in appendix B) between official and southern territories are unjust, unreasonable, and inequitable.

2. We find that except as hereinafter provided, just, reasonable and equitable primary divisions of the rates referred to in finding 1 (including aggregate of intermediate rates which automatically displace single-factor joint rates) would be determined by use of the prorating factors set forth in appendix D in computing percentages expressed as integers, the factor for the northern line or lines being that shown in column 1 for the short-line distance north of the dividing point and the factor for the southern line or lines being that shown in column 2 for the short-line distance south of the dividing point.

3. We find that just, reasonable, and equitable divisions of the joint proportional or reshipping rates on grain and grain products from East St. Louis, Louisville, and Cincinnati to points in southern territory and of the joint combination rates on Canadian and northern Maine traffic from points in southern territory would be determined in the same manner as specified in finding 2 except that the factor for the northern line or lines would be that shown in column 3 of appendix D for the short-line distance north of the dividing point and the factor for the southern line or lines would be that shown in column 2 of appendix D for the short-line distance south of the dividing point.

4. We find that just, reasonable and equitable primary divisions of the rates on traffic originating or terminating on the line of the Norfolk Southern would be determined by the use of the prorating factors set forth in appendix D in computing percentages expressed as integers, the factors

for the northern line or lines being that shown in column 2 for the short-line distance north of the dividing point and the factor for the southern line or lines being that shown in column 2 for the short-line distance south of the dividing point.

The dividing points to or from which the primary divisions shall apply are the points at which the traffic is interchanged between a northern line and a southern line. In no case shall a primary division be less than 15 percent, and in disposing of fractions of 1 percent the odd 1 percent should be added to the percentage which contains the larger decimal, or if the percentages contain equal decimals 1 percent should be added to the smaller percentage.

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Before the divisions herein prescribed are applied, differentials or arbitraries which are included in the joint rates so as to cause them to exceed standard rates, for hauls in either official or southern territories, whether for short or weak lines or otherwise, shall be deducted before prorating and added to the share of the carrier or carriers in the territory in which the differentials apply, provided, however, that in respect of rates on citrus fruit from Florida to official territory which include an arbitrary one percentage point shall be deducted from the northern division and added to the southern division in lieu of specific apportionment of the arbitrary.

It is the order of the hearing examiners that in the absence of a stay or postponement by the Commission or the timely filing of exceptions, the effective date of this order shall be 30 days from the date of service thereof.

It is further ordered, That the respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, within 90 days of the date this order becomes effective, and thereafter to apply, divisions of joint all-rail interstate rates for the

transportation of property between points in official territory, on the one hand, and on the other, points in southern territory, determined as provided in this report.

It is further ordered, That the said respondents be, and they are hereby, notified and required to cease and desist, within 90 days of the date this order becomes effective, and thereafter to abstain from asking, demanding, collecting, or receiving divisions of said joint rates upon bases other than those hereby prescribed.

It is further ordered, That the order entered herein on January 12, 1953, as amended by order dated May 26, 1953, and the subsequent orders entered herein vacating said order of January 12, 1953, as amended, be, and they are hereby, vacated and set aside as of the date the divisions prescribed hereby become effective.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

Dated at Washington, D. C., this 2nd day of July, A. D. 1963.

By the Commission, Oren G. Barber and T. Russell Roper, Hearing Examiners.

HAROLD D. McCOY,
Secretary.

(SEAL)

[1]

APPENDIX A

Footnotes

2. Railroads assigned to the eastern district or Pocahontas region, and the Toledo, Peoria & Western Railroad Company, (291 I.C.C. at 91), are referred as northern or eastern lines, and railroads assigned to the southern region and the lines of the St. Louis-San Francisco Railway Company in southern territory (289 I.C.C. at 9) are referred to as southern lines. Individual carriers will sometimes be referred to by their initials or other short titles.

3. Net investment method is the carriers' investment in road and equipment, material and supplies, and cash; less accrued depreciation and amortization at the end of the year under consideration.

4. Equated car handlings refer to the number of cars originated and terminated and interchanged and weighted by the switching minutes required for such services.

5. The I.C and G.M. & O. reach Chicago, while the I.C., G.M. & O., L. & N., and Southern reach East St. Louis.

6. Insofar as their interest in this proceeding is concerned, composed of the Governors of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

7. Composed of the members and member Commissions charged with the regulation of common carriers and other public utilities in the States named in footnote 6.

8. Data herein with reference to the Norfolk & Western where applicable, include the Virginian Railway. These railroads merged December 1, 1959.

9. On June 22, 1960, the Atlantic & Danville filed a petition asking that it be dismissed as a party defendant, or, in the alternative, be dismissed as a party against which any relief should be granted. By order dated July 21, 1960, the petition was denied for the reason that "it is desirable that lawful divisions applicable to all respondent railroads participating in the joint interterritorial rates in issue be determined upon completion of the record and procedure in this proceeding." Attached to this petition were two verified statements and eight exhibits directed principally to the financial and operating statistics of this respondent. These statements and exhibits were never formally made part of the record although the petition states that the

"exhibits and verified statements attached to this petition constitutes its case." Briefs of both principal

[2]

contending groups indicate that such material is probative evidence herein. Accordingly, in fairness to the Atlantic & Danville the aforementioned documents will be considered in evidence unless objection is taken to such ruling in the parties' exceptions to this report. However, on November 1, 1962, after this record was closed, this line was acquired by the Norfolk & Western and is operated under the name of Norfolk, Franklin and Danville Railway Company, thus in practical effect removing the Atlantic & Danville from this proceeding as a southern respondent.

10. The Minneapolis & St. Louis Railway Company has since been acquired by the Chicago and Northwestern Railway Company.

11. There were five sessions of hearings: November 16 to 19, 1959, January 12 and 13, 1960, August 2 to 5, 1960, September 27 to 29, 1960, and February 7 to 10 and 13, 1961.

12. The study excluded carload movements of coal, coke made from coal, grain and grain products, and transit shipments.

APPENDIX B

Traffic excluded

1. Coal and coke made from coal by common consent of the parties.

2. Trailer-on-flatcar traffic moving entirely over the lines of the A.C.L., B. & O., B. & M., F.E.C., N.Y.C., N.Y.N.H. & H., P.R.R., Reading, R.F. & P., and S.A.L., by stipulation at hearing.

3. Trailer-on-flatcar traffic via Potomac Yard, Va., from and to points on the Southern Railway (including its system lines as specified in the stipulation) and points on B. & O., B. & M., C.R.R.N.J., D. & H., L.I.R.R., N.Y.C., N.Y.N.H. & H., P.R.R. and Reading, by stipulation dated November 13, 1961.

4. So-called border point traffic embraced in Docket No. 32055 (309 I.C.C. 491) by stipulation.

[1]

APPENDIX C

Rulings on Evidence

On brief the parties press certain objections made during the course of the hearings to rulings of the examiners with respect to the receipt or rejection of certain exhibits, documents, or oral testimony offered in evidence by the opposing group. Each of the contentions will be considered separately.

Evidence offered by the northern lines.—

Exhibit J-3 to V.S. No. 80 (except pages 1 and 9). During the last session of hearings, assigned for the purpose of receiving the northern lines' rebuttal and to afford these lines their right of closing, the above-numbered exhibit was offered in evidence. This consisted of applications of the form A unit costs for the several territorial regions or districts for 1957, 1958, and 1959 to the traffic embraced in the studies of both groups already of record. Upon objection this material was rejected as not being proper closing rebuttal. The evidence was offered in purported rebuttal of any claim by the southern lines that the group cost relationships as shown by the northern lines would not necessarily be the same for later years. The southern lines' cost evidence did not deal with trends of cost relationships as between the carrier groups. Of necessity the proferred evidence was not available to the northern lines when they presented their case in chief. Receipt of such evidence at the closing hearing would have necessitated further rebuttal by the southern lines and undue delay in closing the hearings. The northern lines did not wish to offer the evidence on this condition. The evidence was properly rejected.

V.S. No. 68, pages 2-6, and exhibits A and B. This evidence, sought to be introduced as rebuttal at the closing hearing, consists of a traffic study for the full year 1956. It was offered in purported rebuttal of the southern lines' assertion that the northern lines' study for a portion of the year expanded to a full year, fully described in this report, was not representative and hence would not reflect the true overall transportation characteristics of the total traffic covered. A portion of exhibit J-3 to V.S. No. 80, rejected as noted above, contained cost applications to this new traffic study. Upon objection, the study was rejected on the ground that it was improper closing rebuttal, absent an opportunity for the southern lines to examine and fully cross-examine thereon at a later hearing. As the northern lines say, "litigation must one day come to an end." They were not willing to afford their opponents opportunity to present rebuttal

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thereto. The traffic study had been completed at the time the northern lines completed their direct case but they chose not to offer it at that time. The offer of same at the rebuttal stage was too late.

Evidence offered by the southern lines.—

Errata sheets to Verified Statements 40 and 40-A. The southern lines offered these errata sheets at the closing hearing after their attention had been directed to the fact that some 86,000 "A" cars were not applied unit costs in the southern lines' cost studies. The examiners felt that since both groups recognized such error existed, an accurate record warranted receipt of the material. The northern lines stressed that a check of such data would be required with further cross-examination of southern lines' witness but they elected not to prolong the hearings for these purposes. The examiners concluded that a special case was presented under which the southern lines should be per-

mitted to correct known errors even though they had rested their case in chief. We adhere to that view, and conclude that the northern lines' position has not been unduly prejudiced by this action.

Other southern exhibits offered after these lines had completed their case. Revised appendices A and B of Verified Statement 42, said to reflect a degree of refinement in the original appendices A and B were offered as newly acquired evidence not available at the time the southern lines had completed their affirmative case. We declined to mark these exhibits for identification nor did we permit an offer of proof.

An exhibit containing correspondence bearing upon the need for developing separate empty return ratios for general service and special service box cars was offered as a counsel's exhibit at the conclusion of the cross-examination of rebuttal presented by one of the northern lines' witnesses as an admission against interest. Similarly an exhibit, extracts from the record in Docket No. 32055, was offered for the purpose of impeaching a witness who had testified concerning empty return ratios on certain northern lines.

The southern lines also offered two other counsel's exhibits, one purporting to show the disposition of terminal allowances received by Maine carriers and the other being a certified copy of testimony presented by the northern lines in Docket No. 31964 to show that the testimony of a northern lines witness to the effect that "intrastate operations of the southern lines are more expenseive than their interstate

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operations was not a proper conclusion. These exhibits were offered "to explain rebuttal testimony".

The southern lines submit that Rule 1.84(e) of the Commission's General Rules of Practice requires that upon request by the offering party rejected exhibits be numbered, identified, and incorporated in the record, and that so construed the rule provides a simple, proper method for preserving for the Commission without prejudice to any party, the question as to the propriety of the examiner's ruling excluding the exhibit. In view of the fact that the southern lines had rested their case, and the time fixed for the filing of their evidence had expired, we deemed such circumstances a bar to the receipt of additional evidence by them, however admissible, in this stage of the proceeding. It was for this reason that the evidence was not marked for identification and that offers of proof in connection therewith were not permitted to be made or received. This and other rulings not specifically discussed herein are affirmed.

APPENDIX D

SCALES OF PRORATING FACTORS PRESCRIBED.

Distance	*Column 1*	*Column 2*	*Column 3*
50 miles	72	65	54
100 miles	85	77	64
150 miles	98	89	74
200 miles	111	101	83
250 miles	124	113	93
300 miles	138	125	104
350 miles	151	137	113
400 miles	164	149	123
450 miles	177	161	133
500 miles	191	174	143
550 miles	205	186	154
600 miles	218	198	164
650 miles	231	210	173
700 miles	244	222	183
750 miles	257	234	193
800 miles	271	246	203
850 miles	284	258	213
900 miles	297	270	223
950 miles	310	282	233
1,000 miles	323	294	243
1,050 miles	337	306	253
1,100 miles	350	318	263
1,150 miles	363	330	272
1,200 miles	376	342	282
1,250 miles	389	354	
1,300 miles	403	367	
1,350 miles	417	379	
1,400 miles	430	391	
1,450 miles	443	403	
1,500 miles	457	415	
1,550 miles	470	427	
1,600 miles	483	439	

EXCEPTIONS OF SOUTHERN RAILROADS TO RECOMMENDED REPORT AND ORDER

[8]

A. The Unlawful Refusal of the Examiners to Hold that the Burden is on the Northern Lines to Produce the Evidence Necessary to Prove Their Own Costs of Handling the Involved Traffic.

In the case of each adjustment which the Examiners rejected, the Examiners' restatement of costs used territorial averages for the

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cost element in question. As will be shown in discussing a number of the most important individual adjustments, the decisive consideration in the Recommended Report was not the propriety of adjusting the costs to reflect the handling of Official-Southern traffic as contrasted with the average traffic, but whether the data supporting the adjustment was adequate or comparable.

The issue may be illustrated by one example of the several that will be discussed in connection with the various individual adjustments. The unadjusted Rail Form A average costs use territorial average empty return ratios for all refrigerator cars. The Southern lines assembled records for the full year showing the empty return ratios for the refrigerator car ownerships handling Official-Southern traffic on the Southern lines. The Southern lines also obtained all the data that was available to them to show the empty return ratios actually experienced by the Northern lines for the same car ownerships. The purpose was to confine the empty return data to the refrigerator cars handling the traffic at issue so that the average would not be inflated by the higher empty return ratios of other refrigerator cars used in carrying traffic not significantly involved in this case (as more fully discussed at pp. 54-58, *infra*).

The Northern lines, who benefited by the use of the high average empty return ratio in the North for all refrigerator cars, have in their possession the records showing the actual facts as to the kinds of refrigerator cars used in handling Official-Southern traffic. Instead of presenting that data to provide a comparable showing, the Northern lines found it in their interest insistently to remain silent. When this sort of situation arises, as it did repeatedly in this proceeding, the Commission may not lawfully permit the Northern lines to obtain an increase in their divisions by simply resting upon an inapplicable territorial average cost factor that favors their position where they have it within their power to bring forward more reliable data in their possession.

The present divisions are in the form of a uniform divisional scale equally applicable both North and South of the break points. The great bulk of the cost elements underlying Official territory and Southern Region averages, including train costs, maintainance of way costs, station costs, overhead costs and the like, are no greater in the North than in the South, as shown by the fact that the entire difference in

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the average costs is accounted for by only four or five specific elements of cost.* Since Official-Southern traffic constitutes only 6.0 percent of the total traffic of the Northern lines and 21.4 percent of the total traffic of the Southern lines,** there is no reasonable basis for assuming, particu-

* In the case of box cars, the entire difference in average costs is attributable to five elements: switching costs, car costs, empty return ratios, platform costs and switching and terminal company costs (V.S. 39, pp. 62-63). The car cost element does not affect traffic moving in refrigerator cars (sheet 36).

** The percentages shown are ton-miles of Official-Southern traffic related to total ton-miles for each group (V.S. 36, Ex. 5). The percentages of cars of Official-Southern traffic to total cars originated and terminated are only 4.07 percent for the North and 8.93 percent South (p. 60, *infra*).

larly in the North, that the territorial average costs in fact measure the costs of the particular traffic here at issue. The Northern lines have the burden of showing that the present equality of divisions on Official-Southern traffic should be changed in their favor, and their mere showing that several elements of cost are higher for average traffic in the North does not meet that burden in the absence of a showing that the average is, in fact, applicable to the traffic in issue and in the face of the showing by the Southern lines that the average is not applicable in the South. Where, as here, the Southern lines undertake to prove through the best evidence available to them that the average is not applicable to the Official-Southern traffic, the Northern lines cannot fairly be permitted to thwart that proof by withholding data in their possession and, at the same time, criticize the Southern lines' adjustment because the lack of data affected the comparability of the adjusted costs.

Because the Northern lines are proponents of changing the present divisions in their favor and, in addition, are in possession of data which the Examiners find necessary to an adequate adjustment in a number of important areas of the cost controversy in this proceeding, the Examiners err in recommending increased divisions for the Northern lines on the basis of territorial average cost factors. Instead of using such averages in their "Restated Costs," the Examiners should have recommended one of the following lawful alternatives: (1) dismissing the Northern lines' claim; (2) accepting the Southern lines' adjustments where any deficiencies would have been cured by data in the possession of the Northern lines and the Northern lines failed to produce such data; or, (3) initiation of an investigation by the Commis-

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sion to obtain from the Northern lines the facts considered necessary for an adequate adjustment on a comparable basis in both territories. Each of these three lawful alternatives is next discussed.

(1) Dismiss the Northern Lines' Claim for Increased Divisions.

The Administrative Procedure Act specifically provides that "the proponent of a rule or order shall have the burden of proof" (5 U.S.C. § 1006(c)). This statutory provision codifies the rule that has long been enforced in proceedings for divisions of joint rates. The Courts have held that an order of the Commission changing existing divisions must be based upon evidence justifying and requiring the change. *Brimstone R. Co. v. United States,* 276 U.S. 104, 116-117 (1928); *Beaumont, S.L. & W. Ry. Co. v. United States,* 282 U.S. 74, 82 (1930). And the Courts have specifically held that the proponent of a change in divisions has the burden of proof in all respects, including specifically the proof of the vital issue of cost of service. In *Gardner v. Akron, C. & Y. R. Co.,* 276 I.C.C. 655, 658, 661-662 (1949), the Commission, upon finding that the cost evidence was deficient, dismissed the complaint for increased divisions. This action was sustained on judicial review. *Central R. Co. of New Jersey v. United States,* 99 F. Supp. 564 (D.N.J. 1951), affirmed, 342 U.S. 935 (1952).

The Northern lines, relying exclusively upon unadjusted territorial average costs, have not met their burden of proof on the vital cost issue. Specific evidence applicable to the traffic at issue is essential because, as the Supreme Court has stated "averages are apt to be misleading." *United States v. Abilene & So. Ry. Co.,* 265 U.S. 274, 290-291, (1924). In *Advance Transportation Co. v. Allard,* 305 I.C.C. 751 (1959), the Commission dismissed a complaint where the proponent of the change in divisions relied entirely upon average cost data, stating (305 I.C.C. at 758):

> ". . . the regional cost evidence submitted by the complainants is not shown to be typical or representative of the expenses of the complainants and the defendants in performing the interline transportation under consideration."

(2) Accept the Southern Lines' Adjustments Where the Northern Lines Do Not Produce Comparable Data in Their Possession.

A second lawful alternative would be to accept the adjustments advocated by the Southern lines in the absence of contrary proof based upon

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data in the possession of the Northern lines. It is a well-established principle that, where relevant representations are made which would either be verified or impeached by records or other data in the exclusive possession of the adverse party, refusal to produce such records or data creates a presumption that the representations are true.

The rule is stated at 31 C.J.S., Evidence, § 156 as follows:

> "In the absence of explanation, the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to produce is not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him . . . . It has also been held that, where a party fails to present a fact necessary to his case when it is within his power to do so, it will be presumed that such fact does not exist, and the same is true where evidence as to certain matter is introduced, and the adverse party, having it within his power to refute such evidence if it is untrue, fails to introduce any refuting evidence."

In *Interstate Circuit, Inc. v. United States,* 306 U.S. 208, 226 (1939), the Supreme Court applied this rule:

> "The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse. *Clifton v. United States,* 4

How., 242, 247. Silence then becomes evidence of the most convincing character." *

In *Eastern Bituminous Coal Ass'n v. Baltimore & Ohio R. Co.*, 299 I.C.C. 691 (1957), the Commission applied this principle in a rate proceeding in which costs were less decisive. In sustaining adjustments to Rail Form A costs resisted by the Pennsylvania and other Northern lines, the Commission stated (299 I.C.C. 722):

> "Rail Form A permits a large amount of flexibility so adjustments may be made to reflect the operating practices of a single railroad or group of railroads when handling particular commodities. Insofar as they had access to data, the Clearfield complainants developed factors applicable to the coal traffic. The defendants were in possession of the complete data, but they produced no

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> specific performance data for the service required in handling coal from the various districts."

The same principle was invoked in *Chesapeake & O. Ry. Co. v. United States*, 11 F. Supp. 588 (S.D.W. Va., 1935), affirmed, 296 U.S. 187 (1935), where the courts upheld a Commission order based upon evidence of transportation conditions presented by a shipper on the express ground that, "if the operating conditions were not equal, the evidence necessary to establish that fact lay peculiarly within the knowledge of the railroad. Had the operating conditions not been similar, it would have been a simple and easy matter for the railroad to have shown the difference. This it did not do" (11 F. Supp. at 593).

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* See also *Mammoth Oil Co. v. United States*, 275 U.S. 13, 51-52 (1927); *Cliett v. Scott*, 102 F. 2d 725 (5th Cir., 1939); *Hann v. Venetian Blind Corporation*, 111 F. 2d 455, 458-459 (9th Cir., 1940); *Sternberg Dredging Co. v. Moran Towing & Transp. Co.*, 196 F. 2d 1002, 1006 (2d Cir., 1952); *Tendler v. Jaffe*, 203 F. 2d 14, 19 (D.C. Cir., 1953).

The obvious duty of the carrier in possession of relevant cost data to produce that data was recently confirmed by the Supreme Court in *Interstate Commerce Commission v. N.Y., N.H. & H.R. Co.*, 372 U.S. 744, 760 (1963): "Of course, when such an issue is raised, each carrier should bring forward the data relating to its own costs that are required for the resolution of the issue."

This rule has special force here. The whole issue in this divisions case is the proper division of revenues earned by two groups of railroads rendering a joint service. A vital test of the share to which each is entitled is the relative cost contribution of each participant, and each maintains records establishing facts necessary to that determination. The withholding by the Northern lines of their records permits no doubt that their records substantially confirm the adjustments made in the Southern lines' cost study.

This principle provides the strongest support for the reliability of the adjustments in the Southern lines' cost study concerning operating factors on the Northern lines. The Northern lines cannot have it both ways; they cannot withhold data and then assert deficiencies in the study arising from their own failure to come forward with evidence in their possession. The only inference that can sensibly and lawfully be drawn from their failure to produce more refined data in their possession is that such production would either provide further confirmation of the Southern lines' cost study or prove that the study overstated the cost of handling Official-Southern traffic in the North.

The treatment of costs in the Examiners' Recommended Report, using territorial averages instead of the adjustments presented by the

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Southern lines in order to achieve comparability, is in startling contrast to the Commissioner's approach to this same question of comparability of cost data in the *Border Point*

Divisions case, *Louisville & N. R. Co. v. Akron, C. & Y. R. Co.*, 309 I.C.C. 491 (1960). In that case, complainants presented studies of the costs of handling the traffic in issue on their own lines, and defendants (Northern lines here) relied upon unadjusted Rail Form A averages for both groups of roads (309 I.C.C. at 506-509). The Commission recognized the lack of comparability between the costs thus presented, stating that "the only comparable cost data as between northern [Eastern] and southern carriers were on the basis of the territorial or systemwide averages submitted by defendants" (309 I.C.C. at 509). In its conclusion, the Commission rejected use of the Northern lines' unadjusted Rail Form A costs, stating: "However, the only comparable cost data for complainants and the defendants are on the basis of territorial or systemwide averages, which are not determinative of the costs of these particular movements." (309 I.C.C. at 509).

This finding of the Commission, rejecting use of territorial average costs despite their being the only "comparable" cost data of record, was specifically sustained on judicial review. *Boston and Maine R. Co. v. United States*, 208 F. Supp. 661, 676 (D. Mass. 1962), affirmed 371 U.S. 26 (1962). The Court discussed the argument of the New York Central on the question of comparability of the cost comparisons as follows (208 F. Supp. at 675):

> "In the supplemental exceptions, dated March 9, 1959, filed by N.Y.C. to the proposed report of the examiner, it is stated (at page 24) that L & N's restatement of the northern railroads' cost study 'destroyed any possible comparison by adjusting the L & N costs without making similar adjustments in the N.Y.C. costs.' N.Y.C. went on to say that 'it would be unrealistic to expect the New York Central to study the movements at the 130 points involved' on its railroad. N.Y.C. argues that since the burden of proving the unreasonableness of existing divisions was upon the complainant L & N, it was incumbent upon the latter

carrier to produce evidence of the relative costs of handling the traffic in question. L & N,

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however, did introduce in evidence its own actual costs in place of average costs. The costs put in evidence by N.Y.C. were unadjusted average costs for the northern railroads which did not reflect the actual costs. The Commission found that this evidence was not helpful in determining the costs of the particular traffic involved in this case. N.Y.C. now takes the position that the burden of adjusting the average costs presented in evidence by the *plaintiffs* [Northern lines] was on the L & N, even though the data necessary to make these adjustments were not available to the L & N and could only be produced by the plaintiffs themselves. We think this position is untenable."

As the Court held, the New York Central could not properly be permitted to invoke territorial average costs, even where such averages were the only comparable costs, where the Northern lines themselves had in their possession the data which would show the actual costs. This fair rule for dealing with the question of comparability, adopted by the Commission and affirmed by the courts in 1962, has been violated in the Examiners' Recommended Report in this proceeding. Here, there is even more reason for applying the rule in the *Border Point Divisions* case because the Northern lines, who have in their possession the camparable data which did "reflect the actual costs," are also the proponents of a change in the present divisions and thus, as a matter of law, have the burden of proof.

(3) Require the Production of Actual Data on a Comparable Basis.

If the Commission considers the data of record inadequate it may not simply adopt a territorial average cost by default. If the Commission chooses not to dismiss the com-

plaint and not to accept the adjustments offered in the absence of complete data, it has ample power to develop a record that contains adequate and comparable data.

The Commission's duty to obtain adequate cost evidence was emphasized by the Court in setting aside a Commission order in *Pacific Inland Tariff Bureau v. United States*, 129 F. Supp. 472, 486 (D. Ore. 1955):

> "The Commission's criticism of the inadequate evidence offered
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> [16]
>
> by barge and truck operators as well as by the railroads is well-founded. The Commission is not a passive arbitrator of disputes between carriers. It is the instrument chosen by Congress to regulate interstate commerce in the public interest. When carriers fail to produce satisfactory evidence, the Commission may require them to produce additional and more satisfactory evidence. It may make its own investigation. It may consult with 'other interested and presumably better informed agencies of the Government as to particular questions.' Cantlay and Tanzola, Inc., v. United States, supra, 115 F. Supp. 81. However the record does not disclose that any of those courses was followed in this case. The fate of our national transportation system should not depend upon evidence either offered or withheld by competing carriers."

In the *Freight Car Per Diem* case, the Court set aside an order of the Commission for failing to resolve cost issues when the Commission possessed ample power to "turn the matter over to its accounting staff for investigation." *Boston & Maine R.R. v. United States*, 162 F. Supp. 289, 298 (D. Mass. 1958). On appeal to the Supreme Court, the Commission declined to defend its action and expressed readiness to "proceed in accordance with the terms of the remand." 358 U.S. 68, 71 (1958). The Commission there-

upon directed its Cost Finding Section to conduct an investigation, including the preparation of forms for the gathering of detailed, adequate and comparable data from the railroads (orders in I.C.C. Docket Nos. 31358 and 33145, *Railroad Freight Car Per Diem Charges*).

The Examiners' passive reliance upon territorial averages in the absence of comparable data from all the carriers participating in this important *Official-Southern Divisions* case is to be contrasted with the action of the Commission in the *Florida East Coast Divisions* case, Docket Nos. 26459 and 26462. After an initial decision in the case (235 I.C.C. 211 (1939)), the proceedings were reopened (order dated April 8, 1940), and the Commission directed its Cost Section to participate in the case. The Cost section prepared Rail Form C, which refined the costs to a far greater degree than Rail Form A, and submitted forms

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and questionnaires to each of the participating carriers. After assembling the cost data, the Cost Section submitted its report dated April 1944, to the Commission and the parties. The report of the Cost Section effectively disposed of the controversy, as the case was thereafter dismissed (order dated November 13, 1944). Thus, in a division proceeding of far less importance than this *Official-Southern Divisions* case, the Commission did not rely upon Rail Form A territorial averages but took the initiative in assembling actual and comparable cost data from the carriers.

Where, as here, the Commission has the necessary power, it can prevent the Northern lines from blocking the development of actual and comparable cost evidence by requiring the Northern lines to produce the necessary data.

Any of these three alternatives—dismissing the Northern lines' claim, using the adjustments offered by the Southern lines in the absence of data produced by the

Northern lines, or compelling production of comparable data—would have avoided the Examiners' error of transferring the burden of proof to the Southern lines instead of leaving that burden upon the Northern lines who are in possession of the data. The Recommended Report does not discuss, much less give reasons for rejecting, these alternatives. Instead, the Examiners recommend use of territorial average costs in their restatement of costs, thus unlawfully imposing on the Southern lines the burden of proving the contrary and enabling the Northern lines to profit by withholding data in their possession.

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Statement Showing Effect of Further Adjustments on Percentage Distribution of the Costs of Handling Official-Southern Traffic

	Cost of Official-Southern Traffic			Percent South	Difference Percent South from Restated
	In North	In South	Total		
Examiners' Restated Costs (sheet 58) ...	167,057,073	191,826,363	358,883,436	53.45	.00
1a Effect of U.S. Car Costs by Type of Car	—4,937,992	+147,551			
1b Restated Costs plus Effect of U.S. Car Costs	162,119,081	191,973,914	354,092,995	54.22	+.77
2a Effect of Restated Empty Return Ratios	—2,848,428	+647,910			
2b Restated Costs plus effect of Restated Empty Ratios	164,208,645	192,474,273	356,682,918	53.96	+.51
3a Effect of Switching Adjustment	0	+3,648,130			
3b Restated Costs plus Switching Adjustment	167,057,073	195,474,493	362,531,566	53.92	+.47
4a Effect of Corrected Car Count	—2,003,871	—555,541			
4b Restated Costs plus Effect of Corrected Car Count	165,053,202	191,270,822	356,324,024	53.68	+.23
5a Effect of Equalized Gateway Interchange Costs	—797,043	+797,043			
5b Restated Costs plus Equalized Gateway Interchange Costs	166,260,030	192,623,406	358,883,436	53.67	+.22
6a Effect of Cost Application in Accordance with Relative Participation of Carriers.	—602,058	+267,278			
6b Restated Costs plus Cost Application in Accordance with Relative Participation of Carriers	166,455,015	192,093,641	358,548,656	53.58	+.13
7a Effect of Constant Cost for Transit Commodities	0	+7,837,869			
7b Restated Cost plus Constant Cost for Transit Commodities	167,057,073	199,664,232	366,721,305	54.45	+1.00
8a Effect of excluding Suburban Deficits ...	—2,830,575	—377,070			
8b Restated Costs excluding Suburban Deficits	164,226,498	191,449,293	355,675,791	53.83	+.38
8c Effect of excluding Southern Region Solely Related Passenger Deficit	0	—1,502,181			
8d Restated Costs excluding Southern Region Solely Related Passenger Deficit	167,057,073	190,324,182	357,381,255	53.26	—0.19
Total Effect of Above Adjustments	—14,019,967	+10,910,989			
Restated Costs Reflecting All Above Adjustments	153,037,106	202,737,352	355,774,458	56.98	+3.53

Sources: Line 1a, V.S. 40A, Ex. G, p. 5, less Base.*
Line 2a, V.S. 40A, Ex. G, p. 6, less Base.*
Line 3a, V.S. 40A, Ex. G, p. 8, less V.S. 40, Ex. D, p. 1.
Line 4a, V.S. 40A, Ex. G, p. 4, less Base.*
Line 5a, p. 104, *infra*.
Line 6a, V.S. 40A, Ex. J, p. 4, line 6 minus line 4.
Line 7a, V.S. 40A, Ex. J, p. 4, line 2.
Line 8a, V.S. 40A, Ex. J, p. 3, line 2.
Line 8c, p. 119, *infra*.

* Base computed as follows: $168,962,599 North and $193,943,492 South, determined by adding the effect of Platform cost exclusions shown at page 58 of the Examiners' Report to the costs excluding Platform costs (V.S. 40A, Ex. G, p. 2) ($166,708,524 + $2,254,075 = $168,962,599; and $193,489,819 + $453,673 = $193,943,492).

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Not one of the "real differences" whose "causes are known," referred to by the Examiners, provides any basis whatever for finding that car costs of the Northern lines are any higher, much less 32 percent higher, than those of the Southern lines in the handling of Official-Southern traffic.

The first factor referred to is "a difference in utilization of 39.4 car-miles per day in the North and 49.5 car-miles per day in the South." This "difference in utilization" has no rational bearing upon the relative costs of handling Official-Southern traffic. The figures are system average figures. The Northern lines' witness who introduced these figures conceded that they represented "all traffic in all types of cars and without separation of line-haul and terminal" (Tr. R. 2491-92).

The "real differences" in "utilization" relied upon by the Examiners provide no justification for applying territorial average car costs to Official-Southern traffic because the figures relied upon reflect the "utilization," in terms of car-miles per car day, of all traffic in the territory in all types of cars (including hopper cars, serviceable and unserviceable, that carry practically none of the Official-Southern traffic). Low utilization of the average car in the North could explain the 32 percent higher territorial average car costs in the North, but the system average utilization of all cars in the North does not cast any light on the utilization actually experienced with respect to the box cars carrying Official-Southern traffic.

But even if the "utilization" figures cited by the Examiners could be attributed to the Official-Southern traffic, the 25 percent difference in "utilization," in the sense used in the figures 49.5 car-miles per day and 39.4 car-miles per day, would not explain any difference in unit costs which are separated as between line-haul and terminal. The figures cited in the Recommended Report are, literally, car-

miles per day. When a car is being loaded or unloaded, it is accumulating days which add to the denominator without accumulating any miles for the numerator. The effect of terminal service on a computation of car-miles per car days is illustrated in the following table. This computation assumes 4 days to originate (or terminate) a car, and also assumes that the car averages 100 miles per day when in line-haul service. If the car moves

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300 miles in territory A and 450 miles in territory B for each terminal handling, the following relationship of car-miles per day results:

	Territory A	*Territory B*
1. Miles per terminal handling	300	450
2. Days for a terminal service	4	4
3. Days for line-haul service	3	4.5
4. Total Days (line 2 + line 3)	7	8.5
5. Car-miles per day (line 1 ÷ line 4)	42.9	52.9
6. Index, car-miles per day (Territory A = 100)	100	123

As shown, a 23 percent difference in "utilization," as measured in terms of car-miles per car day, is produced by a separation between line-haul and terminal even if there is no difference at all in the cost per car-mile, or in the cost per terminal service, between the two territories. Since Rail Form A does separate line-haul and terminal costs, and since the Northern lines have the short-haul on Official-Southern traffic (sheet 9), the use of equal car costs per terminal handling and equal car costs per car-mile gives the Northern lines full credit for a difference in "utilization" in terms of car-miles per day by assigning greater costs (terminal plus line-haul) per car-mile. But this provides no justification for granting the Northern lines any higher unit costs per terminal handling, or per car-mile, as is the result of using Rail Form A territorial average costs.

Thus, the figures cited by the Examiners as representing "a difference in utilization" cannot be shown to establish any actual difference in utilization at all, either in line-haul or in terminal service, and these figures do not therefore provide any justification whatever for any higher car costs in the North for each car-mile and for each terminal handling of Official-Southern traffic.

The second category of known "causes" of higher car costs in the North than in the South cited by the Examiners are "differences in taxes and wage rates."

There is no evidence in the record to support a claim on behalf of the Northern lines of any difference in taxes which might affect car costs, and, indeed, the Northern lines made no such claim, The argument in

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their Brief (pp. 124-130), based upon a comparison of taxes *per mile of road*, plainly has nothing whatever to do with car costs. Thus, the Examiners' assertion that differences in taxes are one of the known causes for differences in car costs is wholly gratuitous. Moreover, the evidence of record shows just the contrary—that is, that the taxes per dollar of investment, which of course includes investment in cars, are significantly greater in the South than in the North:

	Official Territory	*Southern Region*
1. Taxes (V.S. 80, Sec. M, Ex. F-4)	$ 170,469,035	$ 59,607,746
2. Net investment (V.S. 3, Ex. A, p. 15)	11,632,453,674	3,704,767,995
3. Taxes per $1 of net investment (line 1 ÷ line 2)	.1465	.1609
4. Index (Official Territory = 100)	100	109

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The fact of greater use of Northern-owned cars in the handling of Official-Southern traffic does not explain 32 percent higher costs for the Northern lines in handling the same box car as it crosses the Ohio River. This factor does not even work in the direction ascribed to it by the Examiners, but has just the opposite effect. As will be shown, there is an inconsistency between the base used in computing per diem costs under Rail Form A and in determining the level of per diem rates under the formula approved by the Commission.* The nature of the inconsistency is such as to increase the relative costs of the railroads who use cars owned by other roads and to reduce the costs of the owning roads. If this is so, and we shall show that it is, the fact relied upon by the Examiners that Southern lines use cars of Northern ownership to a greater degree in handling Official-Southern traffic means that the costs of Northern lines in furnishing those cars would be reduced and the costs of the Southern lines increased as a result of the inconsistency inherent in Rail Form A costs and the per diem formula. As a result, the fact of greater use of Northern-owned cars in the handling of Official-Southern traffic does not support 32 percent higher, or any higher costs in the North, but indicates higher costs in the South for the cars actually carrying this traffic.

More important even than this irrationality in the reliance of the Examiners upon the predominant use of

* Southern Railway System lines do not agree that there is any inconsistency between using original costs in Rail Form A and the use of actual per diem debits and credits. Furthermore, the Southern Railway maintains that, in computing the costs of car ownership, it is proper to credit the excess of per diem credits over cost of ownership to the cost of ownership of the cars involved.

Southern Railway joins in the controlling argument in this Official-Southern divisions case that, however the car costs are computed for the particular cars in issue, it is wholly improper to take territorial average car costs influenced by the per diem debits and credits on hopper cars, for example, and apply such average car costs to the box car traffic at issue in the present case.

Northern cars in Official-Southern movements to explain the higher Rail Form A car costs shown for the Northern lines, however, is that this reliance apparently led the Examiners to ignore the really crucial significance of the relative car ownership positions of the two groups of lines. The record shows that *overall,* the Southern lines are heavy per diem credit lines,

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whereas the Northern lines just about break even with virtually offsetting debits and credits (V.S. 39, p. 54):

		Per Diem Net Debits and Credits (Year 1956)
Eastern District	Net Debit	$24,568,808
Pocahontas Region	Net Credit	27,974,634
Eastern District plus Pocahontas Region	Net Credit	3,405,826
Southern Region	Net Credit	23,987,115

The overall relative car ownership positions of the Southern and Northern lines, therefore, are precisely opposite to their relative positions on Official-Southern traffic as found and relied upon by the Examiners. In evaluating relative car costs on a territorial average basis as shown by Rail Form A, it is these territorial average figures which control the result, not the wholly uncomparable figures relating to relative car ownership positions on Official-Southern traffic cited by the Examiners. And these territorial average car ownership figures establish beyond any doubt that the Form A car costs relied upon by the Northern lines are the product, not of higher actual car costs in the North, but of an inconsistency between Rail Form A costs and the per diem formula which artificially reduces the car costs of carriers such as the Southern lines which have heavy per diem credit positions.

The inconsistency between car costs as computed under Rail Form A and under the formula used in determining per diem rates results from the great difference between the original cost and the reproduction cost of railroad cars. Rail Form A car costs include depreciation computed in relation to original cost. Return is computed at 4 percent (after allowance for federal income taxes) on net original cost. However, the per diem rate is determined on a very different base under the formula established by the Commission in *Chicago, B. & Q. R. Co. v. New York, S. & W. R. C.*, 297 I.C.C. 291 (1955). Under the per diem formula, depreciation is computed in relation to reproduction cost new, and return is computed at 6 percent of reproduction cost new less depreciation (V.S. 39, p. 48; Tr. R 2472). With the great inflation experienced in the last two decades, the per diem formula, using the reproduction cost base, produces costs of car ownership for depreciation and return which are much higher than Rail Form A costs using the original cost base (V.S. 39, p. 48).

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Where carriers use each other's freight cars to approximately the same extent, these differences in the formulas have no material effect upon unit costs as developed under Rail Form A. Where one carrier or group of carriers uses cars of other carriers or groups to a greater extent than its cars are used by the other carriers or groups, however, Rail Form A costs are seriously distorted. The mechanics of this distortion were set forth in the record in tables showing that, assuming equality of car costs in all other respects, the inconsistency in the original cost and reproduction cost bases alone produce differences in Rail Form A average costs which equal or exceed the entire 32 percent difference between the territorial average costs for Southern Region and Official territory (V.S. 39, pp. 49-53). As these illustrative tables show, where one group of lines experiences a per diem credit balance and the other group

has a per diem debit balance (or a lesser per diem credit balance), the latter will show higher car costs under Rail Form A solely because of the inconsistency between the original cost and reproduction cost bases used in Rail Form A and in the per diem formula respectively. This effect of the inconsistency between Rail Form A car costs and the per diem formula causes the Rail Form A territorial average costs of Southern lines to be less than the costs of the Northern lines, because, as shown above, the Southern lines' car costs are seriously distorted by their heavy per diem credit position.

The foregoing example is not as extreme as some of the results actually produced by Rail Form A and underlying the Examiners' "Restated Costs." Consider, for example, the effect on the car costs of the Clinchfield. This particular Southern Region railroad participates in Official-Southern traffic moving primarily in box cars. The Clinchfield also originates coal not at issue in this case, and owns a fleet of hopper cars, many of which are interchanged with other railroads, including Northern lines. A box car moving over the Clinchfield obviously occasions some cost, including return on the investment in the box car. However, because per diem credits, computed at the reproduction cost level, are generated by Clinchfield hopper cars while off line and because Rail Form A computes the cost of the same hopper cars on an original cost base and then averages box car and hopper car costs, the absurd result of a *negative* return on both hopper cars and box cars is produced on the Clinchfield (V.S. 39, p. 53). The Northern lines' witness conceded that Rail Form A produces this extraordinary result of negative car costs (Tr. R 2478):

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"[Q.] Let us assume the reproduction cost is twice as high so that the price level was double when the car was built. The return on the reproduction cost was $2.00 under our example, correct?

A. [By the Northern lines' witness] Yes.

Q. If Rail Form A develops the cost of $1.00, and that car goes off line on their to the Pennsylvania and the per diem is calculated at the rate of $2.00, what happens in calculating Rail Form A?

The Rail Form A develops the cost of $1.00, that goes off line onto the Pennsylvania, the per diem rate is calculated at $2. Does Rail Form A then take the $2 and credit it to Clinchfield Form A?

A. The per diem is credited to the Clinchfield.

Q. So, under our example, . . . under Rail Form A, you include a dollar and you credit $2 and you end up with a minus $1 as the return cost on this car, that is the way Rail Form A works, does it not?

A. With respect to the return, yes."

The Northern lines also conceded that such a negative return would be applied to a foreign line box car moving over the Clinchfield (Tr. R 2479):

"[Q.] Given this negative figure for the return as a result of this Form A calculation as applied to this hopper car that went off line, how would you price out a foreign line box car moving from somewhere in the south over the Clinchfield to somewhere in the north?

A. [By the Northern lines' witness] How would I price out a box car—

Q. That is right, moving from the south to the north over the Clinchfield. This is a foreign car.

[Counsel for Northern lines] Your question is, was it priced out in the Eastern [Rail Form A unadjusted] study?

[Counsel for Southern lines]: They used minus a dollar a day.

That was under the eastern lines method. That was done, was it not?

The Witness: For Clinchfield, itself?

Q. [By counsel for Southern lines]: Yes, sir.

A. I guess that is what it would amount to."

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The Northern lines' only effort to avoid this absurd result produced by Rail Form A was to argue that the low or even negative car costs shown for the Clinchfield could be ignored because "if group costs are employed . . . the results for individual road Form A applications are not significant" (V.S. 76, pp. 21-22). The low and negative car costs of individual Southern Region roads cannot be dismissed so casually. The negative return costs of individual roads strongly depress the level of the group average car costs of the Southern Region roads. As a result, the Southern Region average car costs are depressed for a reason that the Northern lines do not even attempt to defend when the cause is shown in the individual road applications.

The Examiners do not discuss directly the effect of the inconsistent bases in computing car costs under Rail Form A and under the per diem formula. The Examiners' only defense of the relationship between Rail Form A costs and per diem cost in their Restated Costs is as follows (sheet 39):

> "The determination and fixing of a rate of per diem which is fair as between all railroads and sections of the country is a difficult and complicated problem into which many considerations enter. However, after the rate is determined it becomes an actual receipt or disbursement settled in dollars and cents and properly a part of the costs for each road and territory in the year incurred."

This theory may be sound if the property base used in the per diem formula is consistent with the property base used in Rail Form A, but the theory stated by the Examiners is simply not responsive to the issue in this case when such inconsistency has been shown.

The theory stated by the Examiners may have been entirely sound at the time Rail Form A was created. At that time (1940), per diem credits did not present the prob-

lem they do today because the reproduction cost level of cars was not significantly different from the original cost level. However, with inflation in the war and post-war period, the costs of replacing cars are far in excess of the original costs for the cars they replace (V.S. 39, p. 53). This substantial difference in the original cost and reproduction cost bases produces an artificial "profit" when per diem credits reflecting the reproduction cost level are applied against Rail Form A costs for the same cars calculated using the original cost base. Actually, there is no real profit since the per diem formula, using the reproduction cost base, was ordered by the Commis-

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sion as the proper measure of "reasonable compensation" to the car owner. *Chicago, B.&Q.R. Co. v. New York, S.S.W.R. Co.*, 297 I.C.C. 291, 301-304, 307 (1955). It would be entirely inconsistent with the Commission's purpose in using the reproduction cost base in determining per diem rates, in the interest of an adequate car supply (297 I.C.C. at 304), to turn around in a divisions case and penalize the car owning roads through the use of inconsistent bases in computing the costs used in fixing divisions.

Where, as here, the per diem formula and the Rail Form A costs use inconsistent bases, some adjustment should be made to place the costs on a comparable basis. In *Louisville & Nashville R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639 (1963), a divisions case decided by Division 2 after the Examiners' report in this Official-Southern case was served, comparable costs were obtained by using reproduction costs instead of original costs in the Rail Form A computation (319 I.C.C. at 654):

> "As the L. & N. furnishes all the coal cars used in the Knoxville movement, the per diem charges paid by the Southern for these cars is the only actual cost of these cars to the Southern, and must be used in determination of the Southern's costs. The per diem charges

paid by the Southern were determined upon a reproduction cost basis. The use of reproduction cost for L. & N. cars, which is readily ascertainable here, makes comparable these costs as between the complainant and the defendant placing them on an equal footing. It is, therefore, appropriate in these circumstances to deviate from Rail Form A."

Whether or not the approach approved by Division 2 in the *L&N* case is correct where the cars that produce the net per diem debits and credits are the cars hauling the traffic at issue, it is perfectly plain that the depressing effect of per diem debits on Rail Form A car costs resulting from the use of Clinchfield, L&N and other hopper cars by Northern roads has nothing whatever to do with the relative costs of hauling the Official-Southern box car traffic at issue in this case, and credits and debits resulting from traffic not in issue should not be used to strike an average cost to be applied to this traffic. In this *Official-Southern Divisions* case, the traffic is handled predominantly in box cars and less than one percent of this traffic is carried in open-hopper cars (V.S. 39, pp. 43-44). The artificial profit reflected in the per diem credits depressing the Southern Region average car costs are generated by use of Clinchfield, L&N and other Southern line hopper cars on Eastern

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District roads (V.S. 39, p. 54). Since hopper cars account for the effect on the territorial averages of the inconsistent bases used in the per diem formula and in Rail Form A, such a distortion must not be permitted to influence the relative car costs to be applied to Official-Southern traffic which does not move in hopper cars.

Because per diem debits and credits, computed on different bases, markedly affect system average costs for a reason that has nothing whatever to do with the relative costs

of handling Official-Southern traffic, the traffic involved in this proceeding should be priced out using car costs not distorted by per diem debits and credits. Since per diem debits and credits are substantially offsetting on a national basis, the use of a national basis of car costs, separated by type of car, avoids the distorting effect of the very different bases used in the development of the per diem rate and in the calculation of Rail Form A costs. It was because the territorial average cost for all cars had no reliable relationship to the traffic at issue that the Southern lines used car costs that did not assume that either group of roads experienced higher costs per mile in hauling the Official-Southern traffic.

The Southern lines' cost study did not use a "national average car cost" as the report states (sheet 39), but a national average cost separated by type of car. Thus, a national *box car* cost was applied to Official-Southern traffic carried in box cars. This is entirely accurate in view of the facts that the railroad cars carrying Official-Southern traffic move indiscriminately among the various territories, repairs performed on these cars are charged to the owner on a national basis, the return and depreciation are prorated between time and mileage under Rail Form A using national averages, the tare weight for the car is on a national basis, the car repair costs are prorated between time and mileage on a national basis, private line cars are leased on a national mileage basis, and the per diem rate charged or collected by each railroad is on a uniform national basis (V.S. 39, pp. 40-57; V.S. 40, Ex. C, pp. 13-19).

The use of national car costs by type of car in the Southern lines' cost study reflects the costs of repairs, depreciation and return of the railroad-owned cars carrying Official-Southern traffic, and certainly is a more accurate reflection of the actual car cost experienced in both Official and Southern territories on Official-Southern traffic than the territorial average car costs, dominated by types of cars of negligible

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importance in handling the Official-Southern traffic, and reflecting expenses incurred and repairs billed back to the owner from other territories, and mileages of cars owned by rail carriers of other territories.

The equal-factor car costs used in the Southern lines' cost studies are consistent with the present equal-factor divisions. The Northern lines having failed to prove any facts relating to the carriage of Official-Southern traffic that would justify any higher costs for handling the same car north of the Ohio River or Virginia Gateways, use of 32 percent higher car costs, as in the Examiners' "Restated Costs," or any higher car costs, would be unlawful as lacking support in substantial evidence related to the traffic at issue and failing to enforce the burden of proof which is lawfully upon the Northern lines.

The requirement that the Northern lines prove with specific evidence that their costs of cars carrying Official-Southern traffic are higher than the costs of the Southern lines for the same cars is particularly appropriate in this case where the Northern lines had in their possession at least at the time of the rebuttal hearing specific facts which would have confirmed or disproved the application of territorial average car costs to the Official-Southern traffic handled in box cars.

The rebuttal hearings in this case were held on February 7-13, 1961. At that time, the carriers had completed but had not released the results of a special study of car costs for the year 1960 which the Commission had ordered in its general investigation, *Railroad Freight Car Per Diem Charges,* Docket Nos. 31358 and 33145. This special study of car costs provided, for the first time, a separation of car costs by type of car (V.S. 40, Ex. C, p. 13).* Despite the

* The Commission's orders, dated December 18 and 23, 1959, required that the individual carriers furnish data in great detail, including information showing car repair costs, investment, utilization and per diem payments and receipts, separately by type of car (home and foreign).

availability of these data, the Northern lines' rebuttal witness on the subject of car costs presented no facts at all as to the actual costs for box cars as contrasted with the average cost for all cars on Northern lines (V.S. 76). Their witness disclaimed any knowledge of the results of the special study of car costs ordered in the *Per Diem* investigation, even of the study made by his own Pennsylvania Railroad Accounting Department (Tr. R 2509-12). It may fairly be concluded that, if the facts as to box cars supported the use of territorial average car costs, such data would have been forthcoming.

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(ii) *Empty Return Ratios for General Purpose Box Cars.*

The box car empty return ratios used in the Examiners' restated costs are in the form of a single ratio for each territory averaging together all types of box cars, including (1) box cars available for general loading and, (2) box cars such as those assigned to automobile parts manufacturing plants which are not available for return loading, as the Examiners acknowledge (sheet 40).

As has been shown, the box cars in assigned service have, for all practical purposes, an empty return ratio of 100 percent. Since the average box car empty return ratio in each territory includes the experience of those box cars having a very high empty return ratio, it arithmetically follows that the correct ratio for the general-purpose box cars is *less* than the average for all box cars in both the North and the South. The extent to which the empty return ratio for the general purpose box cars in each territory is *less* than the average for all box cars, after deducting the experience of the specially assigned box cars, obviously depends upon the relative importance of the specially as-

signed box cars to the total box car movement in each territory.

The arithmetic of the situation is illustrated in the following table (V.S. 39, p. 25):

North	Box (General)	Box (Special)	*Average* Box
Loaded Miles	5,000	750	5,750
Empty Miles	1,500	750	2,250
Empty Return Ratios ...	30%	100%	39%
South			
Loaded Miles	5,000	200	5,200
Empty Miles	1,500	200	1,700
Empty Return Ratios ...	30%	100%	33%

The significance of this illustration is that a seemingly small difference in the proportions of special box cars to all box cars (750 out of 5,750 or 13% in the North and 200 out of 5,200 or 4% in the South) has an important effect on the average box car empty return ratio. Thus, assuming that the empty return ratio for each category of box cars is the *same* in each territory, the territorial average empty return ratio

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for all box cars is 18 percent higher in the North (39 percent instead of 33 percent) solely because of the different and higher proportion of special box car to total box car movements in the North."

The Examiners refer to this illustration (sheet 40) and dismiss it with the statement that it "is merely a computation showing what the effect would be if certain assumptions are made. By itself it does not prove that those conditions actually exist" (sheet 42). Having acknowledged the arithmetic relationship inherent in box car average

empty return ratios, the Examiners again reveal a basic error in their concept of the burden of proof.

The present divisions are based on a uniform divisional scale applying equally in the North and in the South. The Northern lines are the moving parties seeking higher divisions in the North because of allegedly higher costs. The Northern lines do not begin to meet the burden of proof which is theirs by using average box car empty return ratios which are 18 percent higher in the North without proving that the empty return ratios properly applicable to Official-Southern traffic are, in fact, 18 percent higher. The illustration shows that an 18 percent higher average box car empty return ratio is arithmetically consistent with empty return ratios for special cars and, separately, for general purpose cars, which are the *same* in both the North and the South. Having shown this to be the undeniable arithmetic of the problem, the burden is on the Northern lines to prove that the empty return ratios applicable to the movement of Official-Southern traffic in specially assigned box cars, and in general purpose box cars are, in fact, 18 percent higher before the empty return ratios used in the Examiner's restatement of costs can lawfully be supported.

The Examiners do not recite any evidence showing that the average box car empty return ratio is, in fact, applicable to any category of Official-Southern traffic, and the Northern lines presented no such evidence in support of their claim.*

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* The only specific evidence which the Northern lines presented showing the empty return ratio for any particular group of cars dealt with a group of 160 unassigned general purpose cars owned by the Pennsylvania and used to carry general traffic, including Official-Southern box car traffic. The records maintained for these cars showed an empty return ratio of 16 percent on the Pennsylvania Railroad (Tr. R 2419-22), which is substantially less than the 30 percent applied in the Southern lines' cost study for general purpose box cars.

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3. Adjustment of Switching Costs.

An important factor determining the costs of particular traffic is the amount of switching service required in originating or terminating that traffic.

The Examiners do not question, as a matter of cost principle, the propriety of adjusting Rail Form A costs where the switching services per car required in originating or terminating particular traffic differ from the territorial average. Indeed, the Cost Finding Section, in its annual publication, expressly provides for just such an adjustment (Statement No. 5-63, p. 1):

> "The territorial figures reflect the out-of-pocket costs for car-load freight service under a wide range of operating conditions within each territory, including the type of car (tare weight and percent of empty-return movement); the net weight of load, the length of the haul, and the type of train, whether way or through. Aside from the factors listed the costs represent average operating conditions within each territory.
>
> "Methods are provided for adjustments in the costs . . . to show . . . A(3) the effect of greater than average, or less than average, engine-minutes per car in origin and destination switching."

The Commission's decisions fully accept the adjustment of average switching minutes per car to reflect the actual studies of particular traffic in issue. E.g., *Linoleum and Floor Covering from Trenton, N. J. to San Antonio, Tex.*, 311 I.C.C. 505, 508-509 (1960); *Petroleum Products, Portland, Maine, to New Hampshire*, 311 I.C.C. 280, 281 (1960). In fact, the Commission has criticized the use of territorial average switching minutes, stating that "respondent should have made detailed switching studies to determine the switching minutes per car" *Commodities-Pan Atlantic Steamship Corp.*, 313 I.C.C. 23, 57 (1960).

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The real question in this case is not whether an adjustment of territorial average switching minutes per car is proper as a question of cost principle. The question here is whether the Northern lines have sustained their burden of proving that the territorial average switching minutes per car measure the costs of handling the Official-Southern traffic here at issue. This is of particular importance in this case where the traffic at issue constitutes such a small proportion of the total cars originated and terminated reflected in the territorial average, as shown in the following table:

	Official Territory	*Southern Region*
1. Total Number of Cars Originated plus Terminated	23,771,003	10,840,187
2. Number of Official-Southern Cars Originated plus Terminated	967,554	967,554
3. Percent Official-Southern Cars Originated plus Terminated to Total Cars Originated plus Terminated	4.07%	8.93%

Source: Lines 1 and 2, Table at sheet 47 of Recommended Report (for record references see So. Lines' Brief, p. 87.
Line 3, line 1 ÷ line 2.

The Northern lines did not undertake to sustain their burden of showing that territorial average switching costs measured the costs of originating and terminating Official-Southern traffic which is only 4.07 percent of the total cars originated or terminated in the North and 8.93 percent of the total for the South, and the Commission should so find. And, as we shall show, this record establishes: that the territorial average switching minutes per car substantially understate the Southern lines' costs of originating and terminating the traffic here at issue; that the switching minutes

per car used in the Southern lines' cost study for cars originated or terminated in the South are based upon scientifically selected and accurately conducted switching studies; and, that there is no basis for finding that the switching minutes per car used for cars originating or terminating in the North were understated. First, however, we shall show that, even under the Examiners' own conclusions, the Examiners' restatement of costs overstates the costs of the Northern lines by $1,310,743.

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(a) The Recommended Report is Internally Inconsistent in Making an Upward Adjustment in the Average Switching Costs of the Northern Lines.

The closing paragraph of the Examiners' discussion of the switching cost adjustment states as follows (sheet 52):

> "For these reasons we conclude that Rail Form A territorial average switching costs are a better measure of the relative switching costs on each side of the border of the official-southern traffic than the switching costs computed by the southern lines."

The many errors underlying this conclusion will be discussed separately. The point which we are making here is that the Examiners' ultimate "Restated Costs" are not consistent with their adoption of "Rail Form A territorial average switching costs." To be consistent, the "Restated Costs" would necessarily make *no* adjustment in the territorial averages on account of switching. Yet the Examiners' "Restated Costs" include, as one of the "Adjustments," an increase of $1,310,743 in the Northern lines' costs of handling Official-Southern traffic (under the heading "Switching minutes-Pocahontas Region") with no increase at all in the Southern lines' costs (sheet 58). The Recommended Report contains no explanation whatever reconciling the making of this adjustment in the territorial aver-

age costs with the prior finding adopting the "Rail Form A territorial average switching costs."

The Description of the adjustment which was made ("Switching Minutes-Pocahontas Region") is misleading. It is described more fully earlier in the report as an adjustment of "the official territory costs by applying Pocahontas region switching minutes to bituminous coal for the entire official territory and using special minutes per car factors for iron ore and anthracite to washers" (sheet 48). This adjustment in the North was part of the simultaneous adjustment made in the Southern lines' study for both North and South to eliminate from the territorial average costs the effect of below-average switching minutes per car experienced by volume traffic not involved in this case (as the Examiners recognize, sheets 47, 48). The Examiners had previously found that the proportion of volume commodities to total traffic was greater in the South (45.86%) than in the North (37.19%) (sheet 47), but the Examiners' conclusion as to switching is that the difference is not sufficiently great to warrant an adjustment in switching for *either* territory (sheet 52):

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> "Territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic going to and coming from terminals in all parts of both territories. *The depressing effect, if any, of volume switching commodities on the average would affect both territories and, for purposes of comparison, be largely offsetting.*

Thus the Examiners' stated conclusion is that no adjustment should be made for switching in *either* territory, North or South, and the average switching costs should be used for "both territories."

Accordingly, the "Restated Costs," which include a switching adjustment increasing the costs of the Northern lines alone, are completely inconsistent with the Examin-

ers' conclusions and discussion of switching costs. Even if the Examiners were entirely correct in their conclusions and discussion of the subject of switching costs, the Examiners "Restated Costs" must be changed to delete the inconsistent $1,310,743 increase in the costs of the Northern lines.

(b) The Proper Adjustment of Switching Costs.

Turning next to the Examiners' conclusions based upon acceptance of the "Rail Form A" territorial average switching costs, we shall show that average costs cannot fairly be applied to the traffic here at issue because the use of such averages understates the relative costs of the Southern lines in hauling Official-Southern traffic. The Examiners' discussion of switching costs is difficult to follow because it mixes together four separate features of the switching cost problem. To provide a separate analysis of each feature we shall discuss: (i) the showing that average costs in the South are depressed by volume commodities; (ii) the studies of switching Official-Southern traffic in the South; (iii) the extent to which average switching costs in the North are affected by volume commodities; and (iv) the switching of Official-Southern traffic in the North.

i. The Effect of Volume Commodities on Southern Region Average Switching Costs.

The Rail Form A switching costs reflect the services required in switching all cars originated or terminated on Southern Region lines.

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These territorial average switching unit costs are the same for all switching handlings without regard to type of switching (road or yard), type of car or any other characteristic which affects the amount of switching work required. As

the Examiners recognize elsewhere in their Report (sheet 36):

> "There is a great variation from one point to another in the amount of both terminal switching and interchange switching due to the physical layout of the tracks, volume handled, and other causes."

It is because there is such "a great variation" in the amount of switching that it is important to examine the characteristics of the traffic at issue, as contrasted with average traffic, as those characteristics affect the amount of switching services required.

In recognition of the fact that there are great variations in switching costs and that "volume handled" is an important factor affecting the switching services required per car, the Southern lines presented an analysis of the traffic that underlies the Southern Region average. Operating witnesses identified the commodities that are regularly switched in multiple-car blocks in the South (V.S. 28, pp. 17-25; V.S. 29, pp. 26-29; V.S. 30, pp. 8-11; V.S. 31, pp. 5-6; V.S. 34, pp. 12-13). A table in the Examiners' report shows that these volume commodities account for 45.86 percent of the total carloads originated or terminated by Southern Region carriers, but for only 1.52 percent of the cars of Official-Southern traffic which are at issue in these proceedings (sheet 47).

It is apparent from the operating testimony alone that the presence of such a high proportion of volume commodities in the Southern Region average operates to depress that average for a reason that has substantially nothing to do with the handling of the Official-Southern traffic at issue in this case. The Southern lines did not rest upon the operating testimony showing the volume handling of these commodities, but instead, presented a series of thirteen studies of the switching performed to originate or terminate volume commodities. The results of these studies were as follows (V.S. 42, p. 4):

SWITCHING STUDIES ON INTRA-SOUTH VOLUME COMMODITIES

Commodity	Railroad	Study Points	Minutes Per Car To Originate or Terminate a Car
Pulpwood	SAL	Georgetown, S. C.	13.03
Sand	So. Ry.	Gaillard, Georgia	3.74
Stone and Rock	L&N	Boyles-Varnons, Ala	7.15
Wet phosphate rock	ACL	Achan, Florida	2.75
Pulpwood	So. Ry.	Canton, N. C.	5.98
Stumps & Pulpwood	ACL	Brunswick, Georgia	7.24
Sand and Gravel	SAL	Lilesville, N. C.	7.65
Pulpwood	A&StA.B.	Panama City, Florida	11.55
Wet phosphate rock	SAL	IMC Turn, Florida	7.87
Sand and Gravel	GM&O	Bogue-Chitto Br., La.	3.29
Pulpwood	SAL	Vidalia-Abbeville, Ga.	11.73
Stumps & Pulpwood	ACL	Waycross, Ga.-High-springs, Fla	7.24
Sand and Gravel	L&N	Radnor-Mt. Pleasant, Tenn.	4.89

All the studies which were made show that these important commodities are handled in such manner as to experience switching minutes per car substantially below the Southern Region average (19.8 minutes per car) (V.S. 42, p. 2).

The Examiners appear to have rejected these studies on the ground that they were "hand-picked" (sheet 49). There is no substance to the charge. The witness made these "on-the-ground switching studies" of commodities which the operating witness had testified were handled on a multiple-car basis (V.S. 42, p. 4), and the resulting switching minutes per car confirmed the operating testimony.

The Northern lines' criticisms related particularly to the volume commodity pulpwood. The Examiners first refer to an argument that, because two of the illustrative studies of volume commodities "were common to the points sampled as representative of Official-Southern traffic," the conclusion that the presence of volume traffic in the Southern Region depresses the territorial average switching costs

"is necessarily erroneous" (sheet 49). This criticism makes no sense. The two points referred to are Georgetown, S.C. and Panama City, Florida (two of the three highest minutes per car of the thirteen studies, shown in table above). The study at Georgetown, S.C. showed that the switching minutes for originating a car of Official-Southern paper amounted to 17.46 minutes per car (V.S. 42, Appx. A, line 3), which is 34 percent higher than the 13.03 minutes per car required to terminate a car or pulpwood at the same point. The study at Panama City showed

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switching minutes for originating a car of Official-Southern paper was 11.72 minutes per car (V.S. 42, Appx. A, line 32), which is slightly higher than the 11.55 minutes per car required to terminate a car of pulpwood at the same point. These comparisons of the termination of a volume commodity and origination of Official-Southern traffic at the same points provides no rational criticism of the conclusion that the origination and termination of volume commodities, as a whole, substantially depress the Southern Region average switching minutes per car.

The Examiners also appear to accept the Northern lines' argument "that pulpwood, a volume commodity, has average switching minutes" (sheet 49). The sole basis for this argument is the testimony in "a prior case" of a study on one Southern railroad showing 14.62 minutes to originate and 17.81 minutes to terminate a car of pulpwood (sheet 49). Both of these figures are below the territorial average and, these earlier studies did not fully reflect the "revolutionary change in railroad operations in handling pulpwood" which have materially reduced the switching required to originate and terminate pulpwood on that road, as shown on this record (V.S. 28, pp. 18-22).

The most glaring defect in the Examiners' discussion is the rejection of illustrative studies of originating and terminating pulpwood as "hand-picked" and the citation of obsolete testimony of a witness in a prior case, without

so much as mentioning the later and more comprehensive switching studies of pulpwood that had been made at a later stage of the same case, Docket 30958, *Reduced Rates on Pulpwood in Southern Territory*. The results of those studies, presented in this record by the witness who made them, showed that the minutes per car required to originate pulpwood ranged from 4.95 to 8.80 minutes per car and from 10.90 to 13.23 minutes to terminate a car, which is only from one-fourth to two-thirds of the 19.8 minutes per car Southern Region average (V.S. 41, p. 6). After this comprehensive study had been introduced in Docket 30958, the Commission entered its order dismissing that proceeding in light of the "cost data as to the cost of handling this pulpwood traffic in representative periods." (see V.S. 41, p. 6).

The Examiners completely disregard the testimony as to the pulpwood switching studies contained in this record and disregard the action of the Commission based on current and comprehensive studies in Docket 30958, but the Examiners rely upon earlier incomplete studies

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not accepted by the Commission in Docket 30958 when they accept the Northern lines' argument that pulpwood "has average switching minutes" (sheet 49).

Curiously, the Examiners' treatment of another cost adjustment (constant cost of transit commodities) relies upon the same studies in Docket 30958 which showed that, because of the low costs of pulpwood traffic, such traffic is "profitable to the extent of $5 million a year above out-of-pocket costs" (sheet 56). If territorial average costs are used for pulpwood, that commodity would show an out-of-pocket loss of nearly $10 million (V.S. 41, pp. 5-6). The Examiners thus rely upon facts developed in the studies in Docket 30958 which showed that the actual costs of handling pulpwood were substantially less than the Rail Form A average in connection with their rejection of one of the Southern lines' cost adjustments (constant cost of

transit commodities), but the Examiners find just the opposite—that pulpwood is average cost traffic—in rejecting the Southern lines' adjustment of switching minutes per car.

In rejecting the Southern lines' illustrative studies as "hand-picked," the Examiners also disregard the evidence in this record of a study of the origination and termination of wet phosphate rock at *all* stations handling that traffic in the South. That study showed that the average time to originate these cars was 3.22 minutes per car and the average time to terminate these cars was 3.20 minutes per car (V.S. 41, pp. 11-12), which is only about one-sixth of the Southern Region territorial average of 19.8 minutes per car (V.S. 42, p. 2). Such a study, covering the entire Southern Region movement of this important volume commodity, cannot possibly be dismissed as "hand-picked," and yet the Examiners disregard this evidence entirely.

On the basis of all the evidence, it is entirely clear that volume commodities, comprising 45.86 percent of the total Southern Region cars (sheet 47), receive substantially less switching service than the average switching service for all cars reflected in Rail Form A. It follows that the remaining traffic in the South, as a whole, experiences higher than average switching service per car.

Considering these facts—(1) that volume commodities constitute 45.86 percent of the total cars handled, (2) that such commodities require less than territorial average switching minutes per car, (3)

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that there is a great variation in required switching time from one place to another and, (4) that Official-Southern traffic constitutes less than 10 percent of the total cars handled by the Southern lines—it is wholly unrealistic to assume that territorial average switching minutes are applicable to the origination and destination switching of Official-Southern traffic. This, however, is the assumption which the Examiners make (sheet 52):

"Territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic going to and coming from terminals in all parts of both territories."

Even if it were possible that the less than 10 percent of the cars originated or terminated by the Southern lines require no more switching effort than would be required for the territorial average car, there is no reason to leave this important question to assumption one way or the other. It was to avoid the necessity for any such assumption that the Southern lines studied the switching services actually required to originate or terminate the traffic at issue in this case.

ii. *The Switching Services Per Car Performed by the Southern lines in Originating and Terminating Official-Southern Traffic.*

Having shown that the territorial average switching costs are strongly affected and depressed by the presence of volume commodities which are not a significant factor in the movement of Official-Southern traffic, the Southern lines undertook to determine by actual switching studies the switching services performed in originating or terminating the average car of Official-Southern traffic, as contrasted with the average car of the entire Southern Region traffic.

Since the Examiners' discussion of the Southern lines' switching studies is entirely negative, one cannot tell from reading their Report how the Examiners would recommend that the Southern lines go about studying the facts as to the switching performed in handling Official-Southern traffic. One might infer from the Examiners' references to the cities, commodities, directional flow and proportion of yard and train switching (sheets 49-50) that the Examiners believe that the Southern lines should have examined these and other characteristics and selected a sample of cars to be studied that reflected each of these characteristics. Under such a procedure, the sample would have had to

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include a judgment selection of cars of citrus and vegetables, and cars destined to St. Louis and Buffalo, because the entire movement of Official-Southern traffic includes such cars (see sheet 49). Any sample that did not include any such cars would, as a matter of "common sense" be too small (see sheet 50).

If the Southern lines had selected a series of switching studies in the manner implicitly suggested by the Examiners in their criticisms, the resulting studies would have been subject to the charge that they were "hand-picked," a charge which the Examiners make against the studies of volume commodities (sheet 49). More important, the selection of a judgment sample would have violated the ruling in *Increased Parcel Post Rates, 1957,* 309 I.C.C. 59, 72 (1959), in which the Commission stated that the Post Office Department's cost ascertainment system "can and should be improved in the future * * * Scientific or random sampling should be substituted for a series of samplings selected on the basis of the judgment of the Department's employees, no matter how capable the latter may be."

Accordingly, the Southern lines retained a sampling expert, Dr. W. Edwards Deming, to select the switching studies to be made, and the sample was drawn from the Southern lines' traffic study in accordance with a scientific samplying plan designed and applied by Dr. Deming (V.S. 42, p. 6).*

As soon as the particular movements of Official-Southern traffic were selected in Dr. Deming's sample, switching studies were made to determine the switching minutes per car for the services performed in handling each such movement. The switching studies for the cars of Official-Southern traffic selected in the sample were prepared in accordance with the principles of Rail Terminal

* Dr. Deming is described as one of the "outstanding authorities on sampling techniques" in the publication of the Bureau of Transport Economics and Statistics entitled "Waybill Statistics—Their History and Uses" (Statement No. 543, February, 1954, p. 9).

Form F (Statement No. 6-54) developed by the Commission's Cost Finding Section (V.S. 43, p. 1). The entire terminal operations of each railroad at the points where a sample car was originated or terminated were studied in order to develop the switching minutes applicable to the various services performed by the carriers at that terminal (Tr. R 1886). The minutes per car for each element of service (e.g., classification, transfer, place-

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ment, weighing) at each study point, developed by the on-the-ground switching studies, were applied to the services actually received by the study car at that point (Tr. R 1837-39). Thus, when the sampling plan selected a car of paper originating at Georgetown, S.C., a switching study of the minutes per car required for each element of switching services performed in originating a car of paper at the particular mill at which the sample shipment originated became relevant.

The switching study sample covered 41 cars selected by Dr. Deming, and the switching studies for each such car produced an average switching minutes per car for the origination or termination of Official-Southern traffic of 26.0 minutes per car, as compared with the 18.5 minutes per car that the Rail Form A territorial average would assume for such cars (V.S. 42, Appx. B).

The Examiners conclude that "The switching studies in the South have weaknesses both in the sample and in the studies themselves" (sheet 52). This conclusion is wrong in both respects.

First, as to the asserted weakness "in the studies themselves," the Examiners' criticisms are collected in a paragraph at sheet 50 which commingles a number of charges, each of which lacks substance:

The Examiners state (sheet 50):

"Switching minutes were developed for each category of service at all industries in the terminal areas. Inas-

"*The limits of sampling error.* The maximum uncertainty in any estimate that is made from a sample used in place of an equal complete coverage of the same frame may be placed at 3 times the standard error of the estimate.

"a. The actual difference between (a) the estimate produced by the sample and (b) the result of a complete coverage carried out under the same conditions, is usually much less, and may be in either direction. Only about 1 estimate in 40 will fall below 2 standard errors from the result of a complete coverage, and only about 1 in 40 will fall above 2 standard errors."

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Thus, the chances are only one out of forty that the switching minutes per car for originating or terminating all Official-Southern traffic in the South is below the range of 26.0 plus or minus 2 times 2.2, which is a range from 21.6 to 30.4 minutes per car.

Considering the nature of the standard error as explained by the sampling experts of both Southern and Northern lines, the Examiners' acceptance of the calculation of the Northern lines' counsel ("26.03 minutes minus 7 minutes is 19 minutes") is unsound (sheet 50). Moreover, the comparison of the 19 minutes so computed and the use of 19 minutes as the Rail Form A average is misleading. An average of 17.8 minutes for box cars and 19.8 minutes for other cars does not produce "about 19 minutes" but substantially less than that figure where the traffic at issue moves predominantly in box cars (68.97% in the Southern lines' traffic study, as shown at sheet 9 of the Recommended Report).

A proper interpretation of the results of the Southern lines' study, in light of modern sampling techniques, is that the switching minutes per car for originating or ter-

much as all cars were included in the divisor in each instance, the minutes attributed to each class of service reflect the average traffic at that station and not necessarily the characteristics of Official-Southern traffic."

This is not true. Switching minutes were developed separately for the classification services (which properly reflect all cars classified at the particular yard), for transfer services (which properly reflect all cars covered in the particular transfer runs) and, *separately,* for each industry track or group of industry tracks separately switched. This is plainly shown in the illustrative map attached to the switching study instructions (Exhibit R-18, following p. 5), and in the "sample log" attached to the switching study instructions (see separate provision for switch engine time at "Smith & Co." (Exhibit R-18, following p. 9, Supp. 2)). The fact that the Southern lines' switching studies did not average together "all industries in the terminal area" is further demonstrated by the different switching minutes per car developed for two different sample

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cars handled by the same railroad in the same terminal area. The switching factor for one car was 32.83 minutes and for the other was 55.51 minutes (V.S. 42, Appx. A, line 24 and line 26), a difference which could not have resulted if the Southern lines' studies had averaged all industries in the terminal area, as erroneously stated by the Examiners.

The Examiners further state (sheet 50):

"The switching studies were made on a single car basis although at least one car in the sample was picked from an "A" abstract containing 82 similar movements. These 82 cars covered a period of a month, and there must have been at least 3 or 4 cars per day, suggesting multiple-car block switching."

The switching studies were not made on "a single car basis" in the sense the Examiners use the phrase. The sampling

plan selected a car to be studied, but the switching studies did not assume that such a car would be handled "on a single car basis" or on any other assumed basis. The switching studies reflected the switching services that such a movement actually received, as discussed above. The unusual example referred to by the Examiners is entirely consistent with such treatment. This particular car of traffic did come from an industry that originated over 80 cars a month and there must have been at least 3 or 4 cars a day at that industry. The Examiners suggest, in reciting such facts, that the switching actually performed on a car originating at such an industry should be relatively low. What the Examiners do not show in their report is that the 'Southern lines' switching study of the movement in question (a car originated at Prairie, Mississippi, Tr. R 1880; R 1954) did produce relatively low minutes per car (7.39 minutes, V.S. 42, Appx. A, line 36). This shows that the Southern lines' switching studies did reflect the switching services performed in originating or terminating each of the Official-Southern movements, including movements lower, as well as higher, than the 26.0 minute average for the average car of Official-Southern traffic.

The Examiners state (sheet 50):

> "No investigation was made to determine whether operations were conducted in 1960 in a manner similar to the time the sample car moved, and no comparison was made of the volume of traffic at the study points between the two periods."

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A comparison of operations between the time of the switching study and the time the car moved would be irrelevant. The sole issue in this case is the determination of fair divisions for the future, not the historical fact of how a car moved in 1958 or 1959. The traffic study for that period is important evidence not as an historical fact but as the best evidence of the characteristics and distribution of Official-Southern traffic as it moves today and will move in the

future. The switching studies are relevant in showing the services that are and will be performed in handling Official-Southern traffic now and in the future when the divisions resulting from this proceeding will be in effect. As a result, a change in operations or volume of traffic, if any occurred between the movement of the car in the sample and the making of the switching study, should be reflected in the switching study.

The criticisms as to changes in operations is not realistic in any event since operations in yards are influenced by the physical layout of the yard, rebuilding of the yards is not a common occurrence, and any such rebuilding would naturally operate to increase the efficiency of the yard and thus reduce the minutes per car shown in the switching studies as compared to the date on which the car in the sample happened to move.

The volume of cars handled at a terminal during a particular period affects the switching minutes per car, but the important comparison is not between the switching study week and the day on which the car in the sample happened to move. The relevant test of volume is whether the volume of cars handled during the periods in which the switching studies were conducted was higher or lower than the average volume of cars handled at the same points. The Southern lines did make this relevant test of the reliability of the periods in which the switching studies were made and this test showed that the volume of cars handled in the study weeks was, on the average, somewhat higher than the average weekly volume at the points at which studies were made (Tr. R 1940).* The fact that a somewhat higher volume was experienced in the study weeks than in the periods in which the study cars moved resulted in some *understatement* of the switching minutes per car actually experienced by the Official-Southern traffic.

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* This test of the representativeness of the study periods conformed to the principle accepted by the Commission in sustaining the switching studies made by Southern lines in *Increased Switching Charges at Memphis, Tenn.*, 308 I.C.C. 5, 10 (1959).

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The Examiners' last comment directed to the switching studies themselves is the following (sheet 50):

> "A witness for the northern lines made a 'mere cursory examination' of the switching studies and found six alleged errors amounting to an overstatement of 63.87 minutes out of 1067.20 minutes. Four of the errors were disputed by the southern lines and two amounting to 21.73 minutes were conceded."

So far as the "cursory" character of the examination of the switching studies, the Northern lines had ample opportunity to review all details of the studies and undoubtedly brought forward every criticism they could contrive. The total effect of the "six alleged errors," if correct, would be to reduce the results shown in the Southern lines' studies from 26.0 minutes per car to 24.5 minutes per car (1067.20—63.87 = 1003.33 ÷ 41). Four of the alleged errors are not errors at all (as shown in detail in the Southern lines' Brief, pp. 97-99), and the Examiners do not find otherwise. The two errors which were conceded only reduced the final result from 26.0 minutes per car to 25.5 minutes per car (1067.20 — 21.73 = 1045.47 ÷ 41), a relatively insignificant reduction.

As shown, there is nothing in the Examiners' discussion to support any conclusion that there are substantial weaknesses in the Southern lines' switching studies themselves. We next turn to the Examiners' separate conclusion that there were weaknesses in the sample.

With respect to the size of the sample, the Examiners apparently accept the notion, advanced by the Northern lines, that a sample size of 41 observations cannot be fairly typical because this is "an assumption which offends common sense" (sheet 50). The Southern lines made no such "assumption." Nothing was assumed. The sample was scientifically selected by Dr. Deming, not on the basis of judgment or assumption, but on the basis of mathematical

principles. The reliability of the sample result in measuring the average of the whole body of traffic is measured by mathematical principles in terms of the "standard error," as Dr. Deming testified (V.S. 12, p. 10):

> "The ability of a sampling plan to indicate its own margin of error is one of the main features of modern practice. This calculation is possible because the selection and the method of estimation follow a definite theory, the use of which is well understood. The margin of error for a stated probability is not a matter of judg-

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> ment, as it is derived from the sample itself by the laws of probability. It has a standard interpretation the world over. No result derived from this sample is of unknown quality."

In appraising the Examiners' acceptance of the Northern lines' criticisms of the sample size of the Southern lines' switching studies, it is most significant that all of these criticisms were generated by counsel, in cross-examination and on brief, although the Northern lines had retained an expert in modern sampling techniques (see V.S. 2). This expert, Dr. R. W. Van Voorhis, relied upon the very same mathematical principles of sampling as did Dr. Deming. Thus, Dr. Van Voorhis testified at the opening hearing as follows (V.S. 2, pp. 5, 8):

> "The reliability of an estimate made from a sample is measured by its standard error, and is obtained from the sample itself from the laws of probability.

* * *

"The standard error of an estimate makes it possible to make statements in the language of probability about the reliability of an estimate obtained."

Having themselves advocated scientific sampling methods at the opening hearing, the Northern lines did not and could not present a sampling expert at the rebuttal hearing to criticize in any way the sampling plan prepared by Dr. Deming and used by the Southern lines as the basis of their switching studies.

Accordingly, the Northern lines' criticisms of a 41 car sample as being so small as to offend "common sense" is an appeal not to common sense at all but to a rejection of the very scientific sampling techniques which the Commission has called for in *Increased Parcel Post Rates, 1957*, 309 I.C.C. 59, 72 (1959), and which expert witnesses for both Southern and Northern lines have supported in this case.

Under modern sampling "The number of sampling units in the frame is of little consequence to the precision of a sample . . . Thus, the size of sample required to reach a prescribed precision for the valuation of a small lot of material will be about the same as for a big lot." (V.S. 12, Appx. B, p. 10).

As to the "common sense" of the situation, a 41 car sample is not small considering the very substantial effort involved in conducting each separate switching study required to develop the switching min-

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utes per car actually required in originating or terminating a movement of the kind drawn into the sample. A one week study of all switch engine movements in the terminal area, separating the time of each engine as between the various services performed during each tour of duty, is a most extensive undertaking, as is apparent from the instructions and sample forms set forth in the switching study instruc-

tions (Exhibit R-18). To characterize a 41 car sample as small is to ignore the effort involved in each switching study and, in effect, to preclude a party from developing the switching minutes per car properly associated with the traffic at issue as contrasted with average traffic. It is precisely because the Northern lines benefit from the territorial average relationship that they adopt such a negative approach to the whole switching study effort. The Commission should not countenance the Northern lines' negative approach and their entirely destructive criticisms, but should encourage the development of facts relating to the particular traffic at issue in preference to territorial averages. This is particularly true where, as here, it is the Northern lines that have the burden of proving that the average is applicable to the traffic at issue before they can lawfully obtain increased divisions.

The Examiners do not mention at all a most persuasive confirmation of the results produced by the 41 car sample. When it became apparent that counsel for the Northern lines were making an attack on the size of the sample, the Southern lines completed a study of the switching services performed on additional movements comprising a related sample which was twice as large (83 cars) (Ex. R-15). The switching minutes per car for this larger sample were found to be 25.0 minutes with a standard error of 1.7 minutes (Tr. R 1569). The standard error for the enlarged sample was lower than the standard error for the 41 car sample (2.2 minutes), as would be expected (Tr. R 1589-90), and the result of the larger sample was relatively close to the result produced by the 41 car sample (26.0 minutes per car). As Dr. Deming testified, the result produced by the enlarged sample vindicated the integrity of the smaller sample (Tr. R 1602). This vindication of the reliability of the 41 car sample after it had been attacked on cross-examination by counsel for the Northern lines is most significant in considering the "common sense" of the situation, and yet this significant

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evidence is totally disregarded by the Examiners in their discussion accepting the criticisms advanced by Northern lines' counsel.*

The Examiners also accept the argument of Northern lines' counsel which misuses the standard error. The Southern lines' switching study produced an average minutes per car of 26.0 with a standard error of 2.2 (V.S. 42, Appx. B). The Examiners then state (sheet 50): "26.03 minutes minus 7 minutes is 19 minutes." This is a misuse of the standard error.

Dr. Deming stated that "the extreme variation of an estimate made from a probability sample is usefully placed at 3 standard errors above and below the result of the equal complete coverage" (V.S. 12, p. 8). This means that the "extreme variation" of the 26.0 minutes per car result of the switching sample is 26.0 plus or minus 3 times 2.2, which is a range of from 19.4 to 32.2 minutes per car. But why rely on the "extreme?" As Dr. Van Voorhis testified, "the chances are about 95 out of 100" that the result lies within 2.3 standard errors. Thus, the changes are 95 out of 100 that the minutes per car for all Official-Southern traffic are within the range of 26.0 plus or minus 2.3 times 2.2, which is a range from 20.94 to 31.06 minutes per car. And, as Dr. Deming further pointed out (V.S. 12, Appx. B, p. 6):

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* The evidence cited in the foregoing paragraph is all in the record, having been elicited from the Southern lines' witness on cross-examination. When the Southern lines offered into evidence the detail underlying the 83-car switching study sample so that the Commission might have access to the complete facts (Tr. R 1820-21), the exhibit was rejected (Tr. R 1821-22), and the Examiners refused to permit the rejected exhibit to be identified as required by Rule 1.84(e) of the Commission's General Rules of Practice (Tr. R 1823). This rejection of detail underlying facts already of record was erroneous, as was the refusal to identify the exhibit (as discussed at pp. 121-126, *infra.*)

minating Official-Southern traffic in the South are substantially higher than the territorial averages imputed to the traffic under Rail Form A, and that the sample result produces the best estimate of the actual switching minutes per car for the origination or termination of all Official-Southern traffic in the South.

The one finding of the Examiners that would, if true, undermine the integrity of the sampling underlying the Southern lines' switching study is the following (sheet 50):

> "The northern lines show that the 41 cars were not selected by subsample but were later assigned to subsamples and say that this is a distortion of the use of subsamples which throws doubt on the value of the standard error computed therefrom."

It may well be that the Examiners' belief that the Southern lines' switching study was not based upon cars selected by subsample underlies their acceptance of other criticisms of the sample, because failure to select the 41 cars without the assignment of subsample at that time would, if true, cast doubt on the value of the standard error. But it is not true. Dr. Deming selected the 41 cars, and Dr. Deming's sampling plan provided for the designation of the subsample *before* the movement was studied by the Southern lines. When asked how the cars were assigned to subsamples, Dr. Deming testified (Tr. R 1574, R 1575, R 1577):

> "A. That was done in the original sample, an abstract, and the cars thereon, that falls into subsample 2 remains there. It was there and was also there and is still there."
>
> * * *
>
> "Q. And what about "A" cars, where do they belong?
>
> "A. Those I selected, of those I selected ten subsamples."

The important fact in appraising the integrity of the standard error is that the sample consist of 10 independent subsamples, as testified by both Dr. Deming (V.S. 12, p. 10) and Dr. Van Voorhis (V.S. 2, pp. 5-6). The 41 car switching sample were so selected, as Dr. Deming testified and, therefore, there is no basis for any "doubt on the value of the standard error computed therefrom," as erroneously found by the Examiners.

In view of the incontrovertible mathematical significance of the "standard error" in measuring the reliability of results produced by the Southern lines' switching study sample, the Examiners' recitation of variations between the 41 car sample and the entire traffic in terms of directional flow and proportion of yard and train switching (sheets 49-50) is irrevelant. The standard error of a sample conveys all the information that there is in regard to the precision of the sample result, as Dr. Deming testified (V.S. 12, p. 8):

> "That is to say, details concerning the sampling procedure, such as the modes of stratification, the size of the sample, and the statistician's reasons for his choices of plan and for the description of the sampling units, convey no further information about the precision of an estimate, once the numerical value of its margin of error has been calculated."

The same principle is set forth in the Recommended Practice adopted by the American Society For Testing Materials (V.S. 12, Appx. A, p. 3):

> "Details concerning the sample procedure, such as the modes of stratification, the size of the sample, and the statistician's reasons for his choices of plan and for the description of the sampling units, convey no further information about the precision of an estimate, once the numerical value of its margin of error has been calculated."

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The same principle was also adopted in the Standards of Probability Sampling for Legal Evidence published by the Society of Business Advisory Professions, Inc. (V.S. 12, Appx. B, p. 6):

> "*Information provided by the standard error.* Once a sampling survey is completed, and an estimate is obtained therefrom, the standard error of this estimate, or the margin of error and its associated probability, calculated (a) by the proper statistical theory from the results of the sample, and (b) under the necessary conditions for validity (use of random numbers, adherence to the prescribed sampling procedure) conveys all the information that there is in regard to the precision of the estimate in question."

The Examiners' approach, rejecting the scientific sampling plan because the random selections are not deemed "typical," was expressly condemned in the text by Professors Hansen, Hurwitz and Madow, "Sample Survey Methods and Theory" (Vol. I, p. 80):

> "Rejection of atypical or 'unrepresentative' observations. Another procedure which may lead to more or less serious biases is to examine the observations drawn by a random process and then to discard those that, in the judgment of the investigator, are unrepresentative or atypical. In an extreme case, when most of the observations must pass the test of being representative in the eyes of the investigator or else be rejected, the whole selection operation is reduced to one of a judgment or purposive selection."

Besides being irrelevant, the Examiners' analysis of the effects of directional flow, proportions of yard and train switching and other characteristics of the traffic are misleading.

The Examiners' reference to the showing "that the sample included no cars from Boston, Philadelphia, Detroit, St. Louis, or Buffalo, among other large northern cities, and not a single car of citrus or fresh vegetable traffic" (sheet 49) is entirely beside the point. It is not necessary for a random sample to include every city and every commodity to provide a reliable estimate of the average of all traffic covered by the sample. Citrus and fresh vegetables from the South constitute only 3.8 percent of the entire Official-Southern movement.* In any event, the operating testimony indicates that substantial switching services are required in originating these perishable commodities (V.S. 34, pp. 18-

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19), so that the lack of such traffic in the sample in no way prejudiced the Northern lines.

The absence in the sample of cars from five particular Northern cities** has nothing whatever to do with the integrity of the sample as a basis for studies of origin and destination switching services performed in the South. And it is also true that no cars in the sample originated or terminated in the large Southern cities of Miami and Tampa. The reference to the Northern cities further presumes that a representative sample of Official-Southern traffic will necessarily include a high proportion of originations or terminations in the large cities of the North. There is absolutely no basis for this assumption. There is no basis in this record or otherwise for assuming that the sample does not include a fair distribution of large city and small town originations and terminations in both the North and the South.

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* 35,951 cars of citrus and vegetables out of 967,554 cars constituting the annual movement of all traffic at issue (V.S. 11, Ex. 1, Tab. G, commodity classes 59, 61, 77-89).

** Why any cars from St. Louis would be expected in a sample of Official-Southern traffic in which Northern lines participate is far from clear under any circumstances since St. Louis is serviced directly by five Southern Lines (L&N, Southern, IC, GM&O and Frisco).

As to directional flow, the Examiners remark upon the fact that the sample cars showed greater minutes per car for terminating Official-Southern traffic in the South than for originating Official-Southern traffic in the South. The Examiners then find an inconsistency in the operating testimony that "it is more burdensome to originate a car in the South than to terminate it" (sheet 49). There is no inconsistency because the comparisons are different. The operating witnesses were comparing the services required in originating a car as compared with the services required in terminating the same car, other conditions being equal (e.g., V.S. 28, pp. 7-16). The Southern lines' switching studies covered the origination and termination of Official-Southern traffic and, by definition, the Southern lines do not originate as well as terminate any single car of this interterritorial traffic. No operating witness testified that the switching minutes per car required to originate Northbound paper and other Official-Southern traffic were greater or less than the switching minutes required to terminate the different Southbound commodities, which is the comparison produced by the separation of the Southern lines' switching studies as between origination and destination services cited by the Examiners (sheet 49).

The Examiners' reference to the proportion of yard and train move-

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ments is both irrelevant and inconsequential if relevant. Even if it were proper to tinker with the results of a random sample "to restore in the small sample the 60-40 relationship of yard to train switching shown in the more comprehensive sample," the proper way to go about making the adjustment would not be "to drop four cars of yard switching from the small sample" (sheet 50). Why drop the four cars with the largest switching minutes or the four cars with the lowest switching minutes? The Examiners

state that cars given yard switching averaged 30.15 minutes and cars given train switching averaged 17.84 minutes (sheet 49). To create a 60-40 relationship, the direct approach would be to give 30.75 minutes a weighting of 60 and 17.84 minutes a weighting of 40. This produces an average of 25.59 minutes per car (.60 x 30.15 plus .40 x 17.84), which is less than one-half minute per car different from the 26.0 minutes per car result of the 41 car switching sample without such an adjustment.

The Commission should reject the Examiners' analysis of the Southern lines' switching studies and adopt the switching minute factor for Official-Southern traffic in Southern territory as developed in the Southern lines' switching studies in preference to the territorial average which understates the services performed by the Southern lines in handling the traffic at issue. The integrity of the switching study sample has been established and the Northern lines have not shown any substantial error in the individual switching studies.

iii. *The Absence of Any Showing of a Need for an Upward Adjustment in the Average Switching Minutes per Car for the Northern Lines*

The Northern lines relied upon territorial average costs and they presented no proof that would justify any upward adjustment in their territorial average switching minutes per car for application to the origination or termination of Official-Southern traffic in the North.

Nevertheless, the Examiners accept the assertion of the Northern lines that (sheet 48):

> ". . . if volume commodities exert a depressing effect upon system average switching minutes in the southern region, the presence of volume traffic in the North produces at the very least a corresponding influence on the eastern lines."

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The Examiners undertake to calculate the allegedly offsetting effect of volume traffic in depressing the territorial average switching minutes per car through a computation of their own devising (sheet 51) (no such computations having been presented by the Northern lines in their evidence or argument). Solely on the basis of these computations, the Examiners indicate that the switching minutes per car for other than "volume commodities" in Official territory used in the Southern lines' cost study "is inadequate by from four to seven minutes in comparison with the adjustment they made for their own region" (sheet 52).

These computations made by the Examiners make a series of unsupported assumptions and misconceive entirely the basis of the Southern lines' adjustments in territorial average switching minutes per car.

The Examiners' computations start with the territorial switching minutes per car for Southern Region and then assume that the 26.0 switching minutes per car developed in the Southern lines' switching study is applicable to "other than volume commodities" representing 54.14 percent of the total cars originated or terminated in the South (sheet 51). The 26.0 switching minutes per car represents the average for originating and terminating all of the Official-Southern traffic involved in this case. This traffic does not necessarily have the same switching characteristics as 54.14 percent of the Southern lines' total traffic, and the Southern lines never claimed or assumed that it did. The Official-Southern traffic represents only 8.93 percent of the total cars originated and terminated by Southern Region carriers (see p. 60, *supra*), and the 26.0 minutes per car represents the services performed as to that 8.93 percent of the Southern lines' total traffic. The 26.0 minutes per car does not purport to measure the switching minutes per car required to originate or terminate intra-South traffic other than commodities identified as volume com-

modities, termination of western grain traffic in the South or any other interterritorial traffic. The Examiners' calculation of 11.1 minutes per car as the switching performed for volume commodities in the South is thus without foundation.

The Examiners' next computation makes the assumption that the 11.1 minutes per car calculated for volume commodities in the South also measures the services performed in handling the same commodities in the North, or can be used to estimate the services performed in

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handling such commodities in the North. There is absolutely no support in the record for any such assumption.

The term "volume commodities" as used in the Examiner's computations are commodity classes (pulpwood, coal and six other commodities (see sheet 47)), which the Southern lines' operating witnesses identified as moving primarily in multiple-car blocks *in the South* (p. 63, *supra*). No witness for the Northern lines testified that these commodities are handled in multiple-car blocks in the North. No witness for the Northern lines testified, for example, that pulpwood is handled in the North through the new techniques of concentration yards which permit multiple-car handling (see p. 65, *supra,* as to this development in the South). As to coal, the most important commodity in the North, no Northern line presented any evidence showing that coal receives any less switching service than the average car in the North. Indeed, the record in this case shows that Northern lines have testified in other proceedings as to the extensive switching services required in the handling of bituminous coal, including individual weighing of the cars (V.S. 37, Appx. D; Sec. B, p. 2; Sec. D, pp. 2-5; Sec. H, pp. 14, 15, 22; Sec. I, pp. 5-6).

In the absence of any evidence as to the physical handling of these commodities primarily in multiple-car blocks in the North, there is no substantial evidence to support the basic assumption underlying the Examiners' computations

of the effect of "volume commodities" on the switching minutes per car required for the handling of "other than volume commodities" in the North.

Accordingly, there is no basis on this record for any finding that the territorial average switching minutes per car in the North understate the switching minutes per car required to originate or terminate Official-Southern traffic in the North. The Northern lines have the burden of proving that the average costs apply to the traffic here at issue, and they certainly have the burden of proving that their switching costs are higher than average because their average is depressed by cars having lower than average switching costs. Yet, in the absence of any such evidence, the Examiners base their conclusions on calculations which assume for the Northern lines facts which they never even attempted to prove.

Despite the absence of any evidence, the Southern lines' cost study increased the average switching minutes in the North to reflect an

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adjustment made by the Cost Finding Section, imputing Pocahontas Region switching minutes per car to bituminous coal traffic for the entire Official territory, and using special minute per car factors for iron ore and anthracite to washers (V.S. 40A, p. 6). (This is the adjustment referred to as "Switching Minutes-Pocahontas Region" which the Examiners reflected in their "Restated Costs," contrary to their own conclusions on the subject, as discussed at pp. 61-62, *supra*). The record does not support any such adjustment, and it was made by the Southern lines in their cost study solely to avoid conflict with the Cost Finding Section. Strict adherence to requirements of substantial evidence thus calls for the elimination of the upward adjustment in the average switching costs of the Northern lines calculated by the Cost Finding Section and used by the Southern lines' cost study. Indeed, the facts in the record as to the relationship of coal on Pocahontas lines to coal

on other Northern lines shows that the switching experience of the Pocahontas lines is *not* fairly representative of the costs of switching the same commodity on other Northern lines. This was developed in the record, after the Southern lines had presented their cost study, in the form of a comparison of the number of cars of coal originated per active mine on important Pocahontas and Eastern District coal originating roads (comparable data of Southern lines are also shown) (V.S. 80, Sec. M, p. 2; Tr. R 2682):

Pocahontas Lines	*Cars per Active Mine (Year 1956)*
Norfolk and Western	4104
Chesapeake & Ohio	2907
Eastern District Lines	
New York Central	1725
Baltimore & Ohio	1717
Pennsylvania	1392
Southern Lines	
Illinois Central	9265
Clinchfield	3624
Louisville & Nashville	3050

The Northern lines' principal cost witness conceded that "The greater number of cars originated per active mine has, of course, a very marked influence on the cost of origin service on this traffic" (V.S. 80, Sec. M,

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p. 2). Thus, the foregoing table shows that the Cost Finding Section's method of imputing the switching costs of Pocahontas lines to the origination of coal on Eastern District roads assumes a relationship contrary to the facts shown in this record.

Thus, unlike the situation proved for Southern Region carriers, there is no basis for assuming that the switching

costs of originating or terminating other than volume commodities is any higher than the territorial average in the North, and there is certainly no basis for assuming that the upward adjustment of switching costs in the North, made in the Southern lines' cost study, understates the Northern lines' costs of switching Official-Southern traffic. The Examiners' conclusion that the Northern lines experience switching costs "four to seven minutes" higher for "other than volume commodities" is based upon a computation not supported by substantial evidence, and should be rejected by the Commission.

(iv) *The Northern Lines' Failure to Develop Any Facts as to the Switching Services Which They Perform in Handling Official-Southern Traffic.*

As shown above, there is no basis for inferring from any facts in the record, as to the handling of other traffic in multiple car blocks or otherwise, that the Southern lines' cost study understates the switching costs in the North.

Even for the South, where the evidence proved the depressing effect upon the Southern Region average of the switching of volume commodities, the Southern lines did not make any assumptions as to the effect on Official-Southern traffic but made actual studies of a scientifically selected sample of the 8.93 percent of the actual traffic at issue here. The results of these switching studies formed the basis for the adjustment of average costs in the South.

No such switching studies were made by the Northern lines to measure the switching services which they performed in originating or terminating the 4.07 percent of their total cars which constitute Official-Southern traffic. The Northern lines' sampling expert could have selected a sample, and the Northern lines could have conducted switching studies to develop the facts. Instead, the Northern lines chose to rely upon the territorial average costs, not by supporting the

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averages with evidence as to the facts relating to Official-Southern traffic, but by resisting all efforts to develop the facts.*

The Examiners sanction the Northern lines' negative approach in the following conclusion (sheet 52):

> "The adjustment in the North was not made on a basis comparable to that in the South, and, in this case where the relationship of North and South is of prime importance, this is a major defect."

The "adjustment . . . in the South" was based upon actual studies of switching services performed in handling Official-Southern traffic in the South. Under the Examiners' approach, all the Northern lines have to do to defeat the Southern lines' study is to refuse to develop any facts as to their actual handling of the traffic in issue. This refusal to study the facts precludes the making of an adjustment in the North "on a basis comparable to that in the South" and this alone, under the Examiners' analysis, "is a major defect."

This is a grossly unfair approach. It violates all precepts of burden of proof, particularly where the Northern lines alone are in possession of the facts as to the switching services which they perform in handling Official-Southern traffic in the North.

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* The only data presented by a Northern lines' witness that permits any calculation of the minutes per car performed in handling Official-Southern traffic in the North shows services substantially below average. This operating evidence shows that a typical block of 17 cars of Southern perishables arriving at the Pennsylvania's Harsimus Cove yard would be spotted on team tracks at Ball Ground, which is 3 to 4 miles away, within 1½ to 2 hours (Tr. 468-469), or an average of only 5.3 to 7.1 switching minutes per car. Even assuming a 100% empty return, it would require only 10.6 to 14.2 minutes for the round trip as compared with the system average of 28.2 minutes per car for refrigerator car traffic (V.S. 40A, Ex. F). Another witness for the Pennsylvania testified that practically all fresh vegetable traffic destined to the New York area receives team track termination (Tr. R 465, 2643).

Since the Southern lines proved that the territorial average switching costs were inapplicable and studied the switching services actually performed in the South, the results of such studies should be reflected in the costs. The Northern lines' failure to develop comparable data as to the handling of the traffic in their own territory should not be rewarded by having the Southern lines' studies rejected. If the Northern lines' claim that the Rail Form A average costs, as adjusted upward by the Cost Finding Section, understates the costs of originating or terminating Official-Southern traffic in the North, they certainly failed to

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prove it. Indeed, the Northern lines failed to present any substantial evidence supporting the application of even their territorial average costs, much less any higher costs, to the traffic at issue in this case.

For these reasons, the Commission should reject the Examiners' Recommended Report and "Restated Costs" on the subject of Switching Costs and should include in the "Restated Costs" the adjustment of switching costs made in the Southern lines' cost study.

4. Inconsistent Counting of Cars as Interchanged and as Originated or Terminated in Computing Rail Form A Unit Costs.

In their treatment of "Count of cars interchanged and originated and terminated" (sheets 34-36), the Examiners begin with the following statement of the position of the Southern lines (sheet 34):

> "The southern lines contend that for the purpose of determining relative costs incurred by northern and southern lines, it is necessary that cars receiving comparable service be counted in a consistent manner in both territories."

The Examiners never dispute this obviously correct statement of principle, yet they sanction the use of Rail Form A costs in which "comparable service" is counted in an inconsistent manner.

The inconsistency arises from the fact that Rail Form A costs used in the Examiners' restatement of costs are based on the Freight Commodity Statistics in which the Northern lines count as cars interchanged shipments which move by rail to a port for loading onto a boat for water movement to another point in the United States (Tr. R 869-70), whereas the Southern lines report as cars terminated shipments receiving comparable services when carried to a port for loading onto a boat for water movement to a foreign destination (V.S. 21, p. 25; V.S. 22, p. 50). Thus the Northern lines report a large volume of coal, terminated at port dumping facilities for loading onto boats, as cars interchanged, while the Southern lines report the large volume of phosphate rock hauled to ports for loading onto boats as cars terminated. The Examiners describe these facts and correctly state: "These are examples of cars which receive analogous services but are placed in different categories" (sheet 34).

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The Examiners then recite the steps taken by the Southern lines to correct this statistical inconsistency and thus eliminate a situation which "inflates the terminal costs more in the North than in the South" (sheet 34). The Examiners should have found that the inconsistency inflates *both* the terminal costs *and* the interchange costs more in the North than in the South.

The improper counting of a car as interchanged instead of terminated affects the weighting accorded to that car in computing switching costs. A car which is counted as a car terminated is weighted by a factor of 1.0 in computing Rail Form A costs whereas a car counted as a car interchanged is weighted by a factor of only 0.5 in allocat-

ing the total switching costs among the various kinds of switching services (V.S. 40, Ex. C, p. 7). The following tables illustrate the effect which inconsistent counting of cars as between cars interchanged and cars originated or terminated has upon the cost per car. The first table illustrates the allocation of switching costs between terminal and interchange services on the basis of a correct count of cars in each category:

	Origin or Destination	*Interchange*	*Total*
Total Switching Costs ..	—	—	$500
Cars	100	100	—
Weighting Factor	1.0	0.5	—
Weighted Cars	100	50	150
Distribution of Weighted Cars	67%	33%	100%
Distribution of Costs ...	$335	$165	$500
Costs per Car	$3.35	$1.65	—

Thus, in this illustration, Rail Form A would impute a cost of $3.35 per car for origin or destination switching and $1.65 per car for interchange switching on the basis of the correct car count. The next table shows the Rail Form A cost allocations for the same cars, but counting 10 percent of the cars as interchanged cars although the cars actually received origin or destination switching:

	Origin or Destination	*Interchange*	*Total*
Total Switching Costs	—	—	$500
Cars	90	110	—
Weighting Factors	1.0	0.5	—
Weighted Cars	90	55	145
Distribution of Weighted Cars ..	62%	38%	100%
Distribution of Costs	$310	$190	$500
Cost per Car	$3.44	$1.73	—

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A comparison of the two tables shows that the inconsistent counting of 10 percent of the cars which actually received origin and destination switching has the effect of inflating *both* the unit cost for origin and destination switching ($3.35 to $3.44) *and* the unit cost for interchange switching ($1.65 to $1.73). Thus, even if the Northern and Southern lines each terminated the *same* number of cars and interchanged the *same* number of cars for precisely the *same* total switching expense, the inconsistent counting of cars originated or terminated as cars interchanged in the North would produce *higher* unit costs both for origin and destination switching and for interchange switching in the North than in the South.

The arithmetic of the issue of consistency in the count of cars is not disputed by the Examiners. Instead, the Recommended Report adopts irrelevant and incorrect assumptions of the Northern lines which obscured the issue and led the Examiners to conclude: (Sheet 36)

> "It cannot be determined from the evidence whether or not the southern lines' adjustment of the car count would enhance or detract from the accuracy of the costs and for this reason it is not included in our restatement of costs."

Before showing the errors in the Recommended Report which led to the Examiners' conclusions, it is most significant to show that the Commission's Chief Cost Analyst and the Commission itself have recognized the need for, and have made, the very corrections in the car count statistics urged in this proceeding by the Southern lines.

In Docket 28300, *Class Rate Investigation, 1939,* Rail Form A costs were presented in evidence by the Commission's Chief Cost Analyst. The costs in that case were originally computed using the car counts from the Freight Commodity Statistics which contain the inconsistent classification of cars for cost purposes of which the Southern lines

complain here. When this situation was called to his attention by Western *and Eastern* lines, the Commission's Chief Cost Analyst agreed that the criticism was correct, as follows (V.S. 40, Appx. C, p. 8):

> "*Statement of the Effect of a Change in the Count of Carloads Originated and Terminated:*
>
> "The point has been raised by the Western and Eastern carriers that the use of the count of carload traffic appearing in Schedule 541 of the rail carriers' Annual Report Form A resulted in an

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> understatement of the number of carloads originated and terminated. (See transcript pages 88 and 120). The reason given was that the traffic interchanged with water carriers may in some cases be counted as traffic delivered to connecting carriers or received from connecting carriers rather than as traffic originated or terminated.
>
> "For example, ore traffic delivered by rail carriers to the water lines at the head of the lakes, or received by rail carriers from the water lines at the lower lake ports, is counted as traffic delivered to or received from connecting carriers when identified as receiving previous or subsequent rail transportation, or as moving on joint through bills of lading. This treatment is correct for statistical purposes in determining the national production, as it eliminates duplications. *However, from the standpoint of cost, such a count is incorrect as the rail terminal service at point of interchange with water lines is a complete origin or destination operation and should be counted as such.*"

The Cost Section cured this error by preparing a questionnaire under which the railroads concerned reported data for use in correcting the car counts shown in the Freight Commodity Statistics (V.S. 40, Appx. C, p. 9), and the Chief

Cost Analyst corrected the costs. *Class Rate Investigation, 1939*, 262 I.C.C. 447, 576 (1945).*

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* * *

Having shown the dollar effect of this item, the Examiners nevertheless refuse to reflect it in their "Restated Costs." The only explanation given is the following blanket statement (sheet 58):

> "We have fully considered these points, and are of the opinion that the service unit costs as determined by the application of Rail Form A reflect for the most part the costs which are referred to here, and that as the northern lines contend these factors are partially offset in the South."

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* In *Class Rates, Mountain-Pacific Territory*, 296 I.C.C. 555, 604 (1955), the Cost Finding Section did not attempt to correct the recognized error in the "counting of cars of coal and iron ore having a rail-water or rail-water-rail movement as cars originated or terminated in lieu of cars interchanged" because (1) the effect on costs was very small in that proceeding and (2) the relative switching service performed for the coal and iron ore traffic as compared with other carload traffic required further study. Neither of these reasons applies in this Official-Southern divisions proceeding:

(1) In this proceeding, the data obtained from carrier reports on file with the Bureau of Transport Economics and Statistics shows that 5.4 percent of the cars in the Eastern District, 8.7 percent of the cars in the Pocahontas Region, and 5.9 percent of the cars in Official Territory (Eastern District plus Pocahontas Region) were incorrectly counted as cars interchanged rather than cars originated or terminated in 1956 as compared with only 1.1 percent of the cars in the Southern Region (V.S. 40, Ex. C, p. 11). If the car counts are not corrected to show that the 1,803,499 cars incorrectly counted as cars interchanged in Official Territory were actually cars originated or terminated (V.S. 40, Ex. C, p. 11), the Northern lines' costs relative to the Southern lines' costs will be overstated by 0.23 percentage points and this affects the distribution of Official-Southern revenue by over $1 million annually (V.S. 40A, Ex. G, p. 9). The significant effect on cost relationships in this division's case has thus been established, as the Examiners note in their Report (sheets 34-35).

(2) As to the need for documentation of the relative switching services performed on coal and iron ore traffic as compared with other carload traffic, the

This statement provides no rational basis for refusing to adjust the restated costs so as to equalize the interchange costs at the gateways.

The problem of equalizing gateway interchange costs arises from the fact that the Rail Form A unadjusted costs include an average cost of $4.95 per interchange handling in the North as compared with $3.14 per interchange handling in the South (V.S. 31, pp. 12-13). The Northern lines did not prove, nor does the record support, use of costs per interchange handling that are 58 percent higher in the North than in the South for any of the interchange services performed in handling the Official-Southern traffic. But whatever the validity of such an average relationship as applied to interchange services performed elsewhere within the respective territories, the record is conclusive that the costs of interchange services performed at the territorial gateways are not 58 percent higher for the Northern lines than for the Southern lines. The record establishes that the cost per interchange handling in accomplishing the interchange of Official-Southern traffic at the territorial gateways is no higher for the Northern lines than for the Southern lines, and the "Restated Costs" should reflect this fact.

As a matter of common sense, it is apparent that territorial average cost differences, even if applicable to Official-Southern traffic handled within the North and within the South, are not applicable when both groups of lines are interchanging traffic with each other at the territorial gateways. Whatever circumstances affect the costs of performing interchange service at such common points obviously affect both Northern and Southern roads performing services at such points. Any differences in the costs of Northern and Southern lines operating in the same terminal areas would be random differences not inherent in the average conditions within the separate territories.

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The use of territorial average costs for interchange services results in the application of $4.95 per interchange handling for the Northern lines and $3.14 per interchange handling for the Southern lines (V.S. 31, pp. 12-13). These costs should be equalized for the interchange of Official-Southern traffic at the territorial gateways, as follows:

1. Number of cars interchanged at gateways (total cars shown in V.S. 11, less cars shown in V.S. 26, p. 47)	880,711
2. Average cost per interchange handling ($4.95 + $3.14 ÷ 2; V.S. 31, pp. 12-13) ..	$4.04
3. Overstatement of Official territory Costs (880,711 × [$4.95—$4.04])	$797,043
4. Understatement of Southern Region Costs (880,711 × [$4.04—$3.14])	$797,043

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This overstatement in Official territory costs and understatement in Southern Region costs totals $1,594,086 (referred to by the Examiners as "$1.6 million" (sheet 58)). A proper restatement of the costs of handling Official-Southern traffic should reflect such equalization of the interchange costs at the territorial gateways.

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8. Exclusion of Suburban Service Deficits.

The Cost of Service issue in this case is the determination of the cost of handling the Official-Southern traffic at issue. Although acknowledging elsewhere that this is the cost issue (see p. 8, *supra*), the Examiners nevertheless include in their "Restated Costs" a statistically apportioned share of deficits from suburban service (commuter) operations. Since the Northern lines have substantially greater commuter deficits than the Southern Region lines, inclusion

of such deficits as a part of the cost of handling Official-Southern traffic increased the relative costs of the Northern lines as found by the Examiners.

The Examiners include suburban service deficits in their restated costs on the same basis as intercity passenger deficits. They refuse to recognize any difference in the two types of passenger services. The record shows, however, that suburban service and intercity passenger operations are distinctly different, both physically and in the problems which they present.

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The basic reason justifying the inclusion of intercity passenger deficits as a part of the cost of providing freight services is that such passenger deficits are almost entirely attributable to the apportioned costs of common facilities which must be incurred in any event to provide freight service. As the Commission observed in *Railroad Passenger Train Deficit,* 306 I.C.C. 417, 420 (1959):

> "The criticism of our separation rules is based on the fact that only about 75 percent of the passenger operating expenses as reported can be directly separated from those for freight service. These are known as solely related expenses. Obvious examples are wages of trainmen and enginemen in passenger operation. The other 25 percent, which are not solely related, present a typical problem in the ascertainment of the components of common costs. For the most part, the costs which must be apportioned are in the group of accounts for maintenance of way and structures."

Because the statistical passenger deficit includes maintenance of way and structure costs which must be incurred to provide freight service, such costs are properly charged to freight service to the extent they cannot be recovered from passenger operations (V.S. 14, p. 13):

"Intercity passenger service is, in large part, performed over the same tracks, bridges and other facilities as are used in freight service. As a result, an important portion of passenger costs represents the allocation of costs common to freight and passenger service.

"However, elimination of all intercity passenger trains experiencing out-of-pocket losses will not eliminate the reported passenger deficit. The passenger deficit will still reflect the large portion of carrier costs which would continue in any event if all passenger service ended. Under such circumstances, the intercity passenger deficit is treated as a burden to be recovered from the freight service. This becomes largely a matter of terminology, since the freight service is paying for the use of the common facilities that must be maintained for freight service in any event."

The fact that common facilities must be maintained for freight service was emphasized by the Supreme Court in upholding the Commission's consideration of passenger deficits in freight rate proceedings. In *King v. United States,* 344 U.S. 254, 265 (1952), the Court stated:

"In Florida, moreover, the discontinuance of railroad passenger service would not permit the discontinuance of high-speed tracks

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and equipment because of the need for fast freight schedules to transport perishable fruits and vegetables from Florida."

The Examiners invoke the same principle in support of the inclusion of suburban service benefits. They find that "the suburban service deficit includes costs which must

be incurred to provide freight service or intercity passenger service" (sheet 54). So far as appears from the Recommended Report, it would seem that the Southern lines are the authors of the contrary concept that suburban service deficits are incurred in operations entirely separate from the freight and intercity passenger service (sheet 54).

Actually, it is the Northern lines themselves who have stated and shown the magnitude and distinctive nature of the suburban service deficits. Because the passenger service data reported to the Commission by roads which perform both suburban service and intercity passenger service do not show separately the costs, revenues, and deficits for suburban service, the magnitude of the suburban service deficits was not known until the recent presentation of the "Eastern Territory Suburban Railroads" to the special study group of the Senate Committee on Interstate and Foreign Commerce in April, 1960. This separation shows that suburban service deficits account for very substantial portions of the passenger deficits of each of the Northern roads providing suburban service. Thus, suburban service produced only 15 percent of the passenger revenue but was responsible for 23 percent of the passenger deficit experienced by the Pennsylvania. On the New Haven, suburban service accounted for 30 percent of the passenger revenue and 50 percent of the passenger deficits (V.S. 14, Ex. D).

The separate and extraordinary character of the suburban service causing these substantial deficits, as distinguished from freight and intercity passenger service, was also shown by the Northern lines in their presentation to the Senate Committee (V.S. 14, pp. 15-16):

> "Another vitally important feature of railroad suburban service is the subject of wide misunderstanding by the public. This is the extent of railroad investment and railroad costs represented by fixed facilities, such as track. It is a widely held but entirely false belief that railroads use, for their suburban and com-

mutation services, primarily those roadway facilities which they must nec-

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essarily have and maintain for their other operations. The disastrous corollary to this false belief is that little, if any, in the way of operating expenses on the roadway need be assigned or attributed to this service, and that the railroads do not have any substantial investment in these facilities on which, as private businesses, they should earn a fair and adequate return over costs.

"These notions are completely false as applied to railroads handling a substantial volume of suburban passengers. Reference to Exhibit J exemplifies the situation which actually exists. It shows track occupancy by various types of trains in the twenty-four hours of a typical week-day of October 1958 on the line of the Pennsylvania Railroad between Overbrook and Bryn Mawr, Pennsylvania, which is a portion of one of that company's principal Philadelphia suburban lines. It will be noted that there are four main tracks in this territory. The outside tracks—No. 1 Eastbound and No. 4 Westbound—are used primarily by suburban trains; while the middle tracks (Nos. 2 and 3) are used primarily for through passenger and freight trains.

"The symbols appearing on the Exhibit for each of the three types of trains demonstrate immediately that all of the through passenger and freight trains could readily have been handled exclusively on two tracks only—in this case Nos. 2 and 3. It thus follows inevitably that one-half of the track facilities in this territory are maintained solely because of the company's suburban service operations. A far larger proportion of other roadway facilities, such as stations, terminals, coach yards and repair shops, are maintained solely in connection with suburban service."

The Examiners quote a portion of the above-quoted example (sheet 54), but they do not refer to the Northern lines' own characterization as an "entirely false belief that the railroads use, for their suburban and commutation service, primarily those roadway facilities which they necessarily have and maintain for other operations."

The Examiners' conclusions on suburban service deficits are thus contrary to the record made by the Northern lines themselves before the Congress. Moreover, the Examiners' theory of suburban service operations finds no support in any evidence presented by the Northern lines. Indeed, in their brief, the Northern lines did not even argue the theory as to suburban service adopted by the Examiners (see No. lines' Brief, dated June 19, 1961, pp. 173-176). Considering that the Northern lines have the burden of proof, it is not lawful for the

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Examiners to include suburban service deficits which the Northern lines did not prove included costs incurred to provide freight service and, indeed, did not even object to the exclusion of suburban service deficits on any such theory.

The theory which the Northern lines did advocate, and which apparently was also accepted by the Examiners, is that it is no more inappropriate to assign suburban service deficits as a part of the cost of Official-Southern traffic than it is to assign deficits representing a deficiency in all passenger revenues as compared to "solely related passenger expenses" (sheet 53).

This whole line of argument assumes that the expenses denominated as "solely related" to passenger service in the Commission's prescribed accounts include only expenses which the railroads can avoid by eliminating passenger service. The Commission itself has refused to permit some of the "solely related" expenses to be considered as a part of the direct and avoidable cost of pas-

senger service in train discontinuance cases.* As a result, the argument about a "solely related" deficit is based upon an improper assumption, and this is of particular importance where the so-called "solely related" passenger deficit reported for the Southern lines as shown in the Recommended Report is only some 2½% percent of passenger revenues ($4.4 million deficit in relation to $155.3 million annual revenues (sheet 18)).

But even if a "solely related" passenger deficit of this magnitude does represent a deficit assignable solely to passenger operations in the South, this constitutes no justification for including suburban service deficits as a part of the cost of handling the Official-Southern traffic. The argument, if correct, leads not to the conclusion that both types of deficits should be considered costs of handling the freight traffic at issue here but to the conclusion that *both* deficits should be excluded. In order to avoid any argument based on the "solely related" passenger deficit theory, the restated costs which the Southern lines have set forth in these Exceptions (p. 18, *supra*) exclude both suburban

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service deficits and the so-called "solely related" passenger deficits of the Southern lines for the year of the cost study.**

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* *Louisville & N.R. Co. Discontinuance of Service, Ocean Springs, Miss.-New Orleans, La.*, 307 I.C.C. 173, 180-182 (1959); *Chicago & N.W. Ry. Co. Discontinuance of Service Between Chicago, Ill. and Duluth, Minn. and Mankato, Minn.*, 307 I.C.C. 585, 607 (1959); *Texas & N.O.R. Co. Discontinuance of Service between Houston, Texas and New Orleans, La.*, 307 I.C.C. 725, 731-32 (1960).

** The portion of the so-called "solely related" passenger deficit for the year 1956 included in the costs assigned to Official-Southern traffic, and excluded in the Southern lines' restatement of costs in these Exceptions, is computed from the record as follows:

1. Solely Related Passenger Deficit, Southern Region, Year 1956 (Exhibit R-13) $11,302,132

For the foregoing reasons, each of the adjustments discussed herein should be made in a further restatement of the "Restated Costs" set forth in the Recommended Report. Upon such further restatement, the proportion of the total costs of Official-Southern traffic borne by the Southern lines is 56.98 percent (see table at p. 18, *supra*) as compared with the Southern lines' share of the present revenues of 55.36 percent.

2.	Portion of Solely Related Passenger Deficit related to distance (.70† time line 1)	$ 7,911,492
3.	Portion of Solely Related Passenger Deficit unrelated to distance (.30 † times line 1) ..	$ 3,390,640
4.	Ton-miles, Southern Region, Year 1956 (V.S. 3, Ex. A, p. 15)	93,914,726,000
5.	Tons originated plus terminated, Southern Region, Year 1956 (V.S. 3, Ex. A, p. 22)	509,992,564
6.	Solely related passenger deficit per ton-mile (line 2 ÷ line 4)	.00842¢
7.	Solely related passenger deficit per ton (line 3 ÷ line 5)	.66484¢
8.	Ton-miles of Official-Southern traffic south of break points (V.S. 40A, Ex. K)	15,625,356,000
9.	Tons of Official-Southern traffic originated or terminated in South (V.S. 40A, Ex. K)	28,055,721
10.	Portion of solely related passenger deficit related to distance allocated to Official-Southern traffic (line 6 x line 8)	$1,315,655
11.	Portion of solely related passenger deficit unrelated to distance allocated to Official-Southern traffic (line 7 x line 9)	$ 186,526
12.	Total portion of solely related passenger deficit allocated to Official-Southern traffic (line 10 + line 11)	$1,502,181

† 70-30 is the approximate allocation of passenger deficits as between distance and unrelated to distance under Rail Form A. Changing this factor would have no appreciable effect on the result of this calculation since such a change would not change the total amount of the solely related passenger deficit allocated to Official-Southern traffic, but would have only a minor effect on the relationship between terminal and line-haul costs.

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C. Use of Cost Scales Provides the Proper Basis for Determining Fair Divisions.

The basis of divisions prescribed in this proceeding must relate the various components of the scale (i.e., terminal service, way train and

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through train haul, including interchange) to each other in a manner which preserves the essential cost relationships in compliance with Section 15(6), which provides that in prescribing "just, reasonable, and equitable" divisions, the Commission must give consideration to "whether any particular participating carrier is an originating, intermediate, or delivering line."

Prior to the development of Rail Form A by its Cost Finding Section, the Commission refused to construct divisional scales on the basis of cost scales reflecting a single uniform progression of all line-haul costs on the ground that, under such cost scales:

> ". . . it is assumed that the line-haul unit transportation cost does not vary with distance. This assumption is commonly made by statisticians who undertake to make studies of average transportation costs in the form of distance scales. Whether this assumption is true is a question which remains to be answered." *Southwestern-Official Divisions,* 234 I.C.C. 135, 138 (1939).

In the 1939 report in *Official-Southern Divisions,* 234 I.C.C. 175 (1939), the Commission specifically commented on the absence of adequate cost evidence, stating (234 I.C.C. at 188):

> "Some of the speculation and controversy necessarily arising in considering averages of this kind could

be avoided if it were possible to separate terminal and line-haul elements of expense by some satisfactory method."

Since the development of Rail Form A, however, a method has been provided for separating terminal and line-haul elements, and the straight-line progression of line-haul costs has become an established cost principle which can no longer be characterized as an unproven statistical assumption. The Rail Form A formula separates rail costs into terminal and line-haul elements and provides for the further breakdown of line-haul into way train and through train costs. With the separation of way train costs, the straight-line progression of through train costs reflected in Rail Form A cost scales has been fully established in numerous studies made and reviewed by the Commission's Cost Finding Section. These studies have been fully documented and the nature of through train line-haul costs shown in this record (V.S. 38, Appx. G).

In the prior proceedings in this docket, there was no evidence in the

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record to support the progression of costs reflected in Rail Form A. This explains why the Commission stated in its 1953 Report that Rail Form A costs "*assumed* that the line-haul element increases uniformly mile for mile" (287 I.C.C. at 526-527). Uncontroverted evidence in the present record, however, establishes that uniform progression of through train line-haul progression in Rail Form A cost scales is no longer an assumption but is a proven fact which cannot be ignored. Moreover, the cost scales introduced by the Northern lines are themselves based on a straight-line progression of cost (V.S. 3, Ex. B), and the Northern lines thus concede that such progression is proper.

In Docket 31503, the *Transcontinental Divisions* case, Witness Butler, the principal witness for the Northern lines

in the present proceeding, advocated the use of costs as providing the fairest standard for determining divisions (V.S. 38, p. 18):

> "Based upon many years of experience in divisions matters I am of the opinion that relative costs of service here afford the fairest common standard by which to weight the relative contribution of the participating groups of carriers in the performance of the joint transportation."

In Docket 28277, *Official Western Trunk Line Divisions*, the Northern lines criticized the use of a rate scale progression in constructing a divisional integer scale and advocated the prescription of divisional integer scales based on relative costs in their exceptions to the Examiner's first report (V.S. 38, p. 19):

> "Since the proportionate contribution of the two groups of carriers to the performance of the transportation should furnish the primary consideration in the determination of a reasonable divisional basis, and since that contribution of effort or expense can ordinarily be best measured by relative costs of service, it is of major importance that there be taken into account the progressions which relative costs of service would produce in a scale of divisional factors predicted thereon."

The Official-Southern divisional scale prescribed by the Commission in 1953, and now recommended by the Examiners for future applications, violates these principles of proper scale construction which have been advocated by both the Southern lines and the Northern lines. At no time in these proceedings have the Northern lines presented any defense of the construction of the divisional scale which, because of its

relationship to the construction of the Docket 28300 class rates, unduly favors the short-haul Northern lines.

On the basis of the plain command of Section 15(6) of the Act as applied to the record in this case, the divisional scales should be constructed from the evidence of record showing the relationship of terminal and line-haul services, thereby eliminating the unlawful and prejudicial effect of the rate scale progression in depressing the divisional revenues of the long-haul Southern lines.

D. The Southern Lines' Proposal That Divisional Scales Be Constructed Directly From the Evidence of Record.

The Examiners describe the construction of divisional scales proposed by the Southern lines as follows (sheet 72):

> "The southern lines would abandon the present scales of prorating factors entirely and substitute therefor scales of prorating factors constructed directly from the costs developed in their cost study. They oppose the use of divisional scales derived from rate scales because of the rate of progression, being partly curvilinear and in part straight line, thus they say favoring the short-haul in the North. The mechanics of the construction of the proposed scales are difficult of brief explanation; a detailed description thereof would serve no useful purpose. In addition, we have not accepted at its face value the cost study upon which the scales are based."

After setting forth the proposed scales, the Examiners conclude (sheet 73):

> "Upon this record it is manifestly impossible to accept the scales proposed which would transfer an undis-

closed amount of revenue to the southern lines over those presently in effect.*

To the extent the Examiners reject the Southern lines' proposed scales on the ground of the Examiners' contrary view of the evidence, particularly the cost evidence, this does not bear upon the question of scale construction as such. To the extent, if at all, the Examiners are found to be correct in their rejection of specific aspects of the Southern lines' cost evidence (discussed in Exceptions Nos. 1 and 2, *supra*),

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the cost evidence, as thus modified, would provide the basis for constructing the divisional scales.

The Examiners' statement that "the mechanics of the construction" of the Southern lines' proposed scales are "difficult of brief explanation" is misleading since the principles underlying the construction of the proposed scales are simple and direct.

The first step is to determine from the cost evidence for each territory the factors for the initial 50-mile block, which include one terminal handling, the actual miles of the line-haul service in way trains and the actual miles of line-haul service in through trains performed for the average haul of the initial block.

The second step is to calculate the cost of the actual miles of through train service (and additional way train service, if any) for each additional 50 short-line miles. Assembly of the costs in this manner, and rounding to whole numbers, produces divisional scales directly from the evi-

* The Examiners' reference to an "undisclosed amount of revenue" is not correct. The precise revenue effect of the Southern lines' proposed scales was calculated from the record (So. Lines' Brief, p. 275).

dence of record relating to the handling of Official-Southern traffic.*

If any additional allowance were justified for either group on the ground of revenue needs (as it is not on this record), such specific allowance could then be superimposed on the divisional scales, thus recognizing a revenue needs allowance as the special allowance disproportionate to costs that it inherently would be.

There is nothing difficult or complex about the process of constructing divisional scales once the cost evidence has been analyzed and appraised. Indeed, the construction of divisional scales from the cost evidence proposed by the Southern lines in this case is precisely the method recently adopted by Division 2 in *Louisville & Nashville R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639 (1963). Whatever the merits of Division 2's analysis of the particular cost and revenue needs evidence in that proceeding, the approach used in constructing the divisional integer scales was direct and straight-forward. Upon resolving the cost issues, Division 2 stated (319 I.C.C. at 660-661):

> "Utilizing the unit costs for line-haul and terminal services as shown in appendix A, a mileage scale of divisional factors has been devised reflecting the relative fully distributed costs of the carriers and is set forth in appendix B. The scale gives due weight to all

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> material factors, including distance, for any prospective hauls on either line."

The scales set forth in Appendix B to that report are in 20 mile blocks, with the factor for each mileage block measured by the cost at the midpoint mileage of each block.**

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* As discussed in specific detail in the So. Lines' Brief, pp. 271-276.

** As can be calculated by applying the costs set forth in Appendix A, lines 22 and 23 (319 I.C.C. at 664), to the mid-point of each of the mileage blocks set forth in Appendix B (319 I.C.C. at 666).

The "mechanics of the construction of the proposed scales" of the Southern lines in this Official-Southern case present no difficulty of explanation, and are simple and direct compared with the present Docket 29885 divisional scale constructed from the Docket 28300 Class Rate scale in a manner which has never been explained or rationalized by anyone.

E. The Erroneous Refusal to Eliminate the 15 Percent Minimum Provision From the Present Divisions.

If a divisional scale is correctly constructed to reflect terminal and line-haul services, there is no need for any minimum percentage. Separately prescribed minimum divisions are appropriate protection for short-haul carriers only where the division is otherwise based upon a mileage prorate which contains no allowance for terminal service. *Divisions of Freight Rates,* 148 I.C.C. 457, 463 (1928). If a proper divisional scale is used reflecting the services performed in handling the traffic at issue, full credit for terminal service, way-train service and through train service (including interchange services) are reflected in the scale itself and there is no need for a minimum division. Accordingly, the Southern lines propose that the 15 percent minimum for Official-Southern traffic now in effect be eliminated.

In response to this feature of the Southern lines' proposal, the Examiners state (sheet 73):

> "The southern lines also oppose the imposition of the 15 percent minimum. Their opposition rests on the assumption that the integer scales would be constructed directly on cost scales derived from their cost study. Such scales if used, would reflect an allowance for terminal service and hence the prescription of a minimum would be unwarranted. Since we are simply modifying the present scales, which are subject to the minimum, similar action is

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required in this reopened phase to protect the very short haul carriers which for the most part perform principally originating or terminating service."

The Examiners are incorrect in stating that the Southern lines' "opposition rests on the assumption that the integer scales would be constructed directly on cost scales derived from their cost study." The Southern lines opposed the present 15 percent minimum as inconsistent with *any* divisional scale that included an allowance for terminal service. If the allowance for terminal service is adequate, the scale itself protects "the very short-haul carriers which for the most part perform principally originating or terminating service." Use of a 15 percent minimum to apply a different division than the scale would produce is necessarily unfair to the extent of the difference.

This principle is not at all confined to divisional scales constructed from cost scales. Where, as in the case of the present Docket 29885 divisional scale, the terminal allowance (equivalent to 221 miles) is excessive, there is excessive protection for "the very short haul carriers." As a result there is even *less* reason for the use of a 15 percent minimum in connection with the Docket 29885 scale than in the case of a scale which adequately protects the terminal service of the very short haul carriers by providing a terminal allowance reasonably related to the cost of line-haul service.

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Exception No. 6—To the Prescription of Increased Divisions for the Northern Lines on Grain Traffic Moving on Proportional Rates Despite a Total Absence of Evidence With Respect to This Traffic.

A most unusual aspect of the Report and Recommended Order in these proceedings is the fact that the Examiners recommend the prescription of new divisions on a category of traffic while conceding "no new evidence pertaining to such traffic was tendered here." The traffic referred to is the movement of grain and grain products on joint proportional rates from East St. Louis, Illinois, Louisville, Kentucky and Cincinnati, Ohio to points in Southern territory. The grounds stated for this unprecedented action are briefly set out in the Report. The discussion is brief, and for convenience that entire discussion is reproduced in full (sheet 71):

> "The southern lines take the position that the divisions of joint proportional rates on grain and grain products from East St. Louis, Ill., Louisville, Ky., and Cincinnati, Ohio, to points in southern territory are not in issue in this reopened phase for the reason that no evidence relating specifically to this traffic was offered. As stated earlier, in the 1953 report a separate specific scale of divisions was prescribed to reflect the characteristics of this traffic. The northern factors were made 75 percent of the northern general factors to reflect the intermediate service performed by the southern lines. While no new evidence pertaining to such traffic was tendered here, the divisions thereon are still before us, and in accord with prior practice we are of the opinion that the northern factors should remain at 75 percent of the northern general factors here prescribed. . . . Our findings herein will reflect these conclusions."

This recommendation urges the Commission to take action which it has no power to take under Section 15(6). This was settled by the Supreme Court in its decision in *United States v. Abilene & Southern R. Co.*, 265 U.S. 274 (1924), one of the early landmark cases decided after the passage of the Transportation Act of 1920 in which Section 15(6) originated. In that case, Mr. Justice Brandeis, speaking for the Court, made it plain that specific evidence with respect to typical individual shipments is an absolute prerequisite to any lawful order changing divisions (265 U.S. at 290-291):

> "A further objection of the carriers should be considered. They point out that the record does not contain any tariffs showing the
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> individual joint rates, or any division sheets showing how these individual joint rates are divided, nor any information concerning the amount of service performed by the Orient and its several connections under such individual joint rates. As justification for this omission, it is argued that there are in the record exhibits, furnished by the several carriers, containing data from which the Commission could reach a conclusion as to whether or not the divisions, taken as a whole, were equitable as between the Orient and its several connections; that in a general rate case, evidence 'deemed typical of the whole rate structure' will support a finding as to each rate in the structure by raising a rebuttable presumption concerning each rate; that typical 'evidence' in this sense means, not evidence directly representative of every individual rate, but evidence tending to show the general situation; that a like presumption arises in a division case; that the data dealing with the traffic in the aggregate, which was furnished by the exhibits, constituted such typical evidence; that, in this proceeding, information concerning

individual rates and divisions was not essential; and that the course pursued by the examiner is, in substance, that upheld in the *New England Divisions Case,* 261 U.S. 184, 196-199.

"The argument is not sound. The power conferred by Congress on the Commission is that of determining, in respect to each joint rate, what divisions will be just. Evidence of individual rates or divisions, said to be typical of all, affords a basis for finding as to any one. But averages are apt to be misleading. It cannot be inferred that every existing division of every joint rate is unjust as between particular carriers, because the aggregate result of the movement of the traffic on joint rates appears to be unjust. These aggregate results should properly be taken into consideration by the Commission; but it was not proper to accept them as a substitute for typical evidence as to the individual joint rates and divisions. In the *New England Divisions Case,* tariffs and division sheets were introduced which, in the opinion of the Commission were typical in character, and ample in quantity, to justify the findings made in respect to each division of each rate of every carrier. A like course should have been pursued in the proceeding under review."

No evidence at all having been presented with respect to this grain traffic, it is plain that the typical evidence rule has not been satisfied.

The application of the typical evidence rule is not affected by the fact that the change recommended here maintains the same percentage relation that now exists between these grain rate divisions and the general

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basis of divisions. The typical evidence rule is general in its application and precludes any change in divisions, whatever the theory, except upon a record that meets its requirements.

Moreover, the fact that the Examiners are recommending the maintenance of a prior relationship is irrelevant. It is impossible to determine whether a particular percentage relation produces a reasonable result or otherwise meets the standards of the Act without evidence. Consequently, the Commission should not, and may not lawfully, enter an order on this record changing these divisions on grain traffic.

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EXCEPTIONS ON BEHALF OF SOUTHERN INTERVENERS TO RECOMMENDED REPORT

[2]

INTRODUCTORY STATEMENT

In their Report, the Examiners have recommended that the uniform scales presently being used to divide the revenues produced by freight traffic moving between Southern and Official territories be abandoned and that a new basis of divisions be prescribed which would inflate the divisional scale for the Northern railroads and thus result in a drastic decrease in the revenues of the Southern railroads.* In the view of these interveners, this recommendation constitutes a clear and direct threat to the economy of the South. Consequently, as representatives of the public in that part of the country, we feel compelled to take vigorous exception to the Examiners' Report and Recommended Order.

For 15 years, these interveners and others in the South were engaged in a long and bitter struggle to obtain for our section of the country a fair and equal chance to compete with other sections, particularly the North, through uniformity of rail freight rates.

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* Throughout these Exceptions, we shall treat the so-called 29886 uniform scales presently being used to divide Official-Southern revenues as though they provide equal treatment for the railroads in both territories. In view of the substantial factor in these scales for terminal service, it is doubtful that they actually do provide equal treatment to the long-haul carriers, which, in this case, are the Southern railroads. (For a full discussion of the mechanics of scale construction, see the Brief of the Southern Railroads, pp. 249-286.) To the extent that there is such an error in the construction of the uniform scales, it should be corrected, for a discrimination against long-haul carriers would amount to an inadvertent discrimination against the Southern public. Far more important to these interveners, however, is the fight against open and deliberate discrimination to which these Exceptions are primarily directed.

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These interveners vehemently protest such treatment of the economic hopes and aspiration of the people of the South. We expect, and by virtue of the controlling provisions of the Interstate Commerce Act

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and the Administrative Procedure Act, we have a right to demand, a rational explanation of any action taken by the Commission adverse to the interest of the people of the South, including an explanation of any disposition that is made of the substantial arguments which we have tendered in defense of those interests. No such explanation can be found in the Examiners' Report, and the duty is upon the Commission itself to meet this responsibility. In order to facilitate the Commission's task in this regard, the following specific exceptions are directed to the Examiners' Report and Recommended Order.

SPECIFIC EXCEPTIONS

EXCEPTION NO. 1—*To the Refusal of the Examiners to Recognize the Interest of These Interveners, as Representatives of the Southern Public, in the Divisions to be Prescribed in These Proceedings.*

A most fundamental error in the Examiners' Report from the standpoint of these interveners lies in their flat refusal to recognize the existence of a legitimate interest on the part of the people of the South in the divisions to be prescribed in these proceedings. Since this error goes to the very right of these interveners to participate in these proceedings, it obviously must be dealt with at the outset of these Exceptions. Despite its fundamental nature, however, we think this error can be disposed of briefly, for the Examiners' position reflects a refusal to recognize the nature of the public's interest in interterritorial

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divisions, a factually erroneous understanding of the established practice of public representatives in such cases, and a failure to comprehend the inevitable impact of a reduction in the Southern railroads' division upon the rates and services available in the South.

1. The Refusal to Recognize the Nature of the Public's Interest in Interterritorial Divisions.

As was carefully pointed out in our Brief dated June, 1961 (p. 4), neither the Southern Governors' Conference nor the Southeastern Association of Railroad & Utilities Commissioners is interested in the financial well-being as such of the stockholders of any railroad or group of railroads. These interveners are interested, however, and vitally so, in the maintenance of a system of rail transportation adequate to meet the needs of the people of the States they represent. To meet these needs, these interveners must, from geographical necessity, rely upon the Southern railroads. For although the railroads in other territories aid in the transportation of freight moving interterritorially to and from the South, only the Southern railroads can provide Southern industries with many necessary services and facilities at rates which will permit them to compete on equal terms with industries located in other parts of the country.

The needs of the Southern people with respect to their rail transportation system were shown in great detail in these proceedings. Witness after witness was presented by these interveners to testify on this subject. The unvarying testimony of each one of these witnesses was that

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the Southern economy in general, and the business with which they were directly concerned in particular, could not stand either an increase in the freight rates on interterritorial and intraterritorial traffic or a diminution of the

services, facilities and equipment available to handle such traffic. Indeed, these witnesses declared, the crying need in the South is for lower freight rates rather than higher, and for more services, facilities and equipment than less.*

This testimony not only stands completely uncontroverted in the record, but the Examiners themselves seem to have accepted it by implicitly conceding the utter dependence of the Southern economy upon maintenance of at least the present level with respect both to rates and to services and facilities. Notwithstanding this concession, however, the Examiners avoided the normal implication of the evidence produced by these interveners by simply denying that a decrease in the divisions of the Southern railroads would have any effect whatever upon either the rates or the services and facilities available in the South.

The sole basis for this conclusion—a conclusion which, if true, would undercut the whole reason for the participation of these interveners in these proceedings—is set forth in a single paragraph in the Report (sheet 59):

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> "Much of the argument to support these contentions is the same as that made by the southern lines in their brief and discussed elsewhere in this report. There is nothing concrete of record to support the various assumptions of these interveners. The dire predictions posed by them appear to result from fear rather than fact. The Commission has in the past, particularly in the last two decades, caused a shift of revenues from one group of carriers to another in various divisions cases. Information as to the effect of such shift upon the losing group should be available but the interveners do not substantiate their assumptions with such facts, indeed if any there be."

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* The testimony of the witnesses presented on behalf of the Southern public by these interveners was summarized at length in our Brief (pp. 16-27). That testimony appears in the record as Verified Statements, Nos. 45-63.

This paragraph rests upon the assumption that divisions proceedings are mere private disputes between the railroads involved with which the public should not concern itself. Such an assumption is demonstrably invalid.

Proceedings under Section 15(6) are not and were never intended to be mere partitions of property between private parties. Quite the contrary, as was expressly pointed out by Mr. Justice Brandeis in the *New England Divisions* case, the Section makes it "clear that, in fixing divisions as well as rates, the public interest should be considered." 261 U.S. 184, 195 note 16. Section 15(6) thus recognizes an inevitable connection between interterritorial divisions and the public interest. The Examiners' refusal to acknowledge this connection and accord proper recognition to the interest of the public in these interterritorial proceedings is therefore in direct conflict with the nature of such proceedings as established by the Supreme Court.

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EXCEPTION NO. 2—*To the Failure of the Examiners to Give Effect to the Overriding Demands of the Public Interest which Require the Maintenance of Uniformity in the Interterritorial Divisions of the Northern and Southern Railroads.*

For the foregoing reasons, the interest of these interveners as representatives of the public is a substantial one, and the Examiners' failure to recognize that interest constitutes a serious error which must be corrected by the Commission. When it does so, the Commission will then find it necessary to pass upon the public interest considerations which these interveners have urged but which the Examiners have not evaluated. The first and most important of these is the public interest in maintaining the existing uniformity in interterritorial divisions between the Northern

and Southern railroads. Despite our repeated and pointed insistence upon the importance of this uniformity to the public, the Examiners have not recognized any public interest in uniformity at all. These interveners believe that this omission must be remedied by the Commission in furtherance of a sound and lawful administration of Section 15(6) of the Interstate Commerce Act.

Insofar as any reasoning at all is given for the preferential divisions accorded the North in their Report, the Examiners seem to have taken the position that the existing equality between that territory and the South should be destroyed because the Southern railroads, on the average, have slightly more favorable "freight traffic trends"—that is, with respect to freight revenues, net railway operating income and rates of

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return—than the Northern railroads, and because the Northern railroads have slightly higher costs, on the average, than the Southern railroads. The assumption of the Report from which this reasoning proceeds is that, with minor adjustments, these average figures accurately reflect the relative costs and relative revenue needs of the two groups of railroads with respect to the interterritorial traffic at issue in this case. As we shall later show this assumption is itself based upon and affected by serious defects both in the proceedings before the Examiners, and in the Examiners' view of the Commission's proper function under Section 15(6) of the Interstate Commerce Act. For present purposes, however, we will ignore these defects and treat the recommendation of the Report as though it actually had the foundation in fact it purports to have. Even under that generous assumption, the recommendation of an inflation for the Northern railroads is contrary both to sound transportation policy and to the legal duty of the Commission under Section 15(6).

1. The Absence of any Finding of Natural Disadvantages to Justify the Preferential Treatment Accorded the North.

The mere showing of differences in the costs of two groups of railroads in the handling of interterritorial traffic would not, even if properly made, justify the establishment of a system of rates or divisions which prefers one territory over the other. Quite the contrary, in order to justify such a result, it would be necessary not only to show the

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existence of cost differences but also to establish that such differences are the product of the inherent advantages and disadvantages that go to make up the respective overall transportation conditions of the two territories. Differences in cost that cannot be related to such inherent advantages and disadvantages might well be the product of nothing more than inefficieney or overcapacity on the part of the railroads in one territory. And where this is so, to permit such differences to control interterritorial relationships with respect to rates or divisions would only tend to perpetuate an already undesirable situation.

This is precisely the situation here. The traffic involved in this case moves between points in Official territory and points in Southern territory over routes which, for all that appears in this record, are substantially identical on both sides of the territorial border. It is not shown that the Northern railroads must contend with mountains or rivers more difficult to cross, than those found in the South. Nor does the record indicate the existence of any other operating condition which makes the task of the Northern railroads inherently more onerous than that of those in the South. What the record does show is that Official-Southern traffic moves between the territories in the same freight cars, powered by the same kind of locomotives, operated by identical crews. In short, the record shows that the inherent costs of transportation in the North are the same as those in the South.

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In the Docket No. 28300 proceeding, the Commission itself found that there are no inherent differences between the transportation conditions prevailing in the North and those prevailing in the South. Indeed, it was precisely upon the basis of that finding that the Commission found the discriminatory class rates then prevailing in the South to be unlawful. And it was upon the basis of that same finding that the Supreme Court upheld the Commission's action in its landmark decision in *New York v. United States,* 331 U. S. 284 (1947). Thus, the Court said (at 315):

> "* * * the record makes out a strong case for the inference that natural disadvantages alone are not responsible for the retarded development of the South and the West, that the discriminatory rate structure has also played a part. How much a part cannot be determined, for every effect is the result of many factors. But the inference of prejudice from the discriminatory rate structure is irresistible. If this discriminatory rate structure is not justified by territorial conditions, then its continued maintenance preserves not the natural advantages of one region but manmade trade barriers which have been imposed upon the country. Such a result cannot be reconciled with the great purposes of § 3(1) as amended in 1940, 49 USCA § 3(1)."

The Examiners have not even attempted to demonstrate that the Supreme Court was wrong when this holding was made, nor have they set forth anything which demonstrates that the balance of "natural advantages" between the two territories has radically changed in the relatively few years since that decision, even assuming that the term "natural advantages" is to be read broadly enough to encompass ad-

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vantages of so transitory a nature that changes within so short a period of time could even be contemplated. Certainly the improvement since 1947 in the economic conditions prevailing in the South does not support any such conclusion. In the first place, as already pointed out, this improvement was the natural result of the removal of discrimination and cannot properly be used to justify reimposing discrimination in another form. Moreover, even taking into account this improvement, the level of economic activity in the South is still far below the level prevailing in the North.

The seriousness of the situation in the South in this regard is apparent when the critical economic data are examined on a per capita rather than a percentage increase basis, as they were in the testimony of Mr. W. Thomas Rice, President of the Atlantic Coast Line Railroad Company (V.S. No. 15, pp. 4-5):

> "Despite the rapidity of the development of the South in recent years, I would like to emphasize again that the area is still below national levels in a number of respects. For example (see Exhibit No. 11), in 1956 manufacturers' expenditures for new plants and equipment per capita in the South were $48 as compared with $67 in the nation, or only 71 per cent of the national level. In the same year value added by manufacturer per capita in the South was $500 as compared with $835 in the nation, or 60 per cent of the national level. In 1955, total bank assets per capita in the South were $670, or 48 per cent of the national level of $1,398. The total value of farm products sold per capita in the South in 1954 was $131 as compared with $153 in the nation, while retail sales per capita in the South were $815 as compared with $1,054 in the nation in 1954."

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These figures show beyond any real controversy that the post-war improvement in economic conditions in the South, far from amounting to a "natural advantage" in favor of that section of the country, still leaves the South at a substantial disadvantage as compared to the rest of the country, including the North.

2. The Failure to Recognize Inefficiency and Overcapacity as the Real Causes for Whatever Problems the Northern Railroads Might Have.

The still-existing disparity between the economic conditions in the North and the South also graphically demonstrates, we think, the insufficiency of any claimed changes in relative costs and relative revenue needs as a justification for finding substantial changes in the relative transportation conditions prevailing in the two territories since 1947. For, in view of the presence of the huge concentrations of industry and wealth in the North, the higher costs and lower rates of return claimed by the Northern railroads not only cannot possibly be related to natural disadvantages of the North, but, instead, must be attributed to their failure, as a group, fully to utilize the unusual opportunities for savings and efficiency which they quite obviously have.

In this connection, it seems well to point out that, despite a substantial decline experienced since the Supreme Court's 1947 decision upholding uniform class rates, the Northern railroads still have a far greater traffic density on their lines than the railroads operating in

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the South. The data establishing this greater traffic density are uncontroverted in the record (V.S. No. 36, Ex. 1, p. 21):

REVENUE TON MILES PER MILE OF ROAD

	Southern Region	*Northern Region*
1947	2,311	4,774
1948	2,299	4,597
1949	1,948	3,573
1950	2,225	4,049
1951	2,409	4,472
1952	2,379	4,101
1953	2,339	4,045
1954	2,217	3,526
1955	2,432	4,231
1956	2,512	4,569
1957	2,391	4,422
1958	2,231	3,637
1959	2,373	3,723

As the Commission has observed, "This greater density affords the . . . [Northern railroads] greater opportunities for handling heavier trains," and thus should make possible for them savings and efficiencies not available to the Southern railroads. *Louisville & Nashville R. Co. v. Akron, Canton & Youngstown R. Co.*, 309 I.C.C. 491, 501.

The failure of the Northern railroads, as a group, to realize the advantages of their unusual opportunities for savings and efficiency can only be explained in terms of the overcapacity and inefficiency with which those railroads are suffering as a result of the termination of the period of artifically high economic activity in the North. Consequently, the extent of this failure is not uniform among the Northern

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railroads. Indeed, several of the Northern railroads, notably the Chesapeake & Ohio, the Nickel Plate and the Norfolk & Western, apparently are taking full advantage of these opportunities, for these railroads have rates of

return much higher than those of any of the Southern railroads. This proves, we think, that the balance of economic advantages is still very much with the North. Where problems of overcapacity and inefficiency are not operative, the Northern railroads are by far the better earners.

It may be true that economic activity in the North is declining, both in absolute terms and in relation to the South, and that fewer and fewer Northern railroads will have an opportunity to utilize their full capacity. Here again, however, such a decline would be nothing more than the natural result of the removal of the trade barriers that prevented the growth of the South prior to the decision in the Docket No. 28300 proceedings. Having long been the beneficiaries of discrimination against the South, the North should not now be heard to complain of a slight decline in its artificially high level of economic activity brought about by the removal of that discrimination. And the Northern railroads should not be heard to complain of the slightly higher costs and slightly lower rates of return which result from the overcapacity built to serve that artificially high level of economic activity.

The Northern railroads have in effect admitted that the real root of their problem lies in this very overcapacity. In a series of im-

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portant control and merger applications, they have repeatedly urged the Commission to allow them to effect major consolidations which would permit elimination of many duplicate facilities and produce vast savings. These applications, aimed to bring about a complete realignment of the Northern railroads into three systems, are expressly predicated upon the view that maintenance of the existing rail system in the North would be wasteful in view of permanent changes that have rendered large parts of that system virtually useless. The true nature of the Northern railroad problem was spelled out in detail by Mr. Alfred E. Perlman, President of The New York Central Railroad

Company, in his testimony in support of the Penn-Central merger (Statement of A. E. Perlman in F. D. 21990, pp. 6-7):

"* * * The East can or will no longer support the present and increasing capacity of its transportation system. Eastern railroads no longer share in periods of economic prosperity. They are partners only in times of economic downturn. For example, taking the years 1928 through 1930 for a base, the originated freight tonnage for all Class I railroads in 1960 was 98.52% of the base period. The carriers in Eastern District, however, originated only 69.9% of the 1928-1930 freight tonnage originations. Rail carriers in other parts of the country ranged from about 99% for the Northwest to almost 150% in the South.

"Why is this so? Obviously the decline in position of the Eastern railroads is a result of many causes, some of which, such as discriminatory and over-burdensome regulations, are shared with railroads in other parts of the country. But Eastern railroads are particularly plagued with problems of inter-modal competition and of the economic character of their territory that, if not peculiar to the East, are so magnified as to deserve special mention.

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"During my school days at M.I.T., Lynn, Massachusetts was the center of the nation's shoe manufacturing. Worcester was the leather capital. General Electric centered its heavy electrical machinery production in New England. The textile industry employed thousands of New Englanders. All of this has gone in less than forty years. Moving West, the great steel producing areas of the country lay in official territory. Pittsburgh, Youngstown, Chicago and Buffalo furnaces almost exclusively served the steel consumers and were almost exclusively fed millions of tons of coal

and ore scrap by Eastern railroads. At the end of World War II, there was but one integrated steel mill west of the Mississippi—now there are three. The South has its own. Examples can be found in almost every industry.

"What this means is that industry has moved with its markets. Industry has decentralized away from the once-called industrial East. The West and the South have become largely self-contained insofar as industrial production is concerned, and the plants which remain in the East serve relatively compact market areas. There is no sign of any turn away from this trend."

This candid and straightforward approach to the problems of inefficiency and overcapacity in the railroad system of the North is quite obviously the only fair way to deal with those problems, for any other approach would reimpose upon the South, in the form of a permanently inferior rail transportation system, the very discrimination which was removed when uniform class rates were prescribed. Why should the North, as a railroad rate territory, be entitled to maintain, partly at the expense of the South, a rail transportation system far more extensive than that which the South can afford to build for

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itself? Why should the South be forced to subsidize the uneconomic consequences of attempting to maintain facilities that are partly unneeded in the North? And why should the people of the entire country be deprived of the benefits that flow from a unified national economy unhampered by artificial barriers that prevent the most efficient allocation of transportation resources?

Transitory differences in costs and rates of return not related to natural territorial advantages cannot be allowed to create barriers to the operation of normal economic forces without destroying any truly nation-wide market and imposing onerous and discriminatory burdens upon those

territories whose growth is dependent upon the free play of the market. In this respect the situation here is entirely analogous to that presented in Docket No. 28300. For there, too, differences were found in the average costs prevailing in the territories involved. Because these differences could not be related to natural advantages and disadvantages of the respective territories, however, they were not allowed to affect the finding of uniform transportation conditions throughout all of that part of the United States east of the Rocky Mountains. On the basis of that finding, class rate differentials which were sought to be justified by such cost differences were condemned as "man-made trade barriers" (331 U.S. at 315), and uniform class rates were prescribed for application within and between all of the territories involved. The same sort of approach must be taken in this divisions case if the integrity of the Commission's historic order in that case removing discrimination from the South is to be preserved.

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3. The Unfairness Inherent in the Destruction of Uniformity in the Divisional Structure in the Absence of Natural Territorial Advantages.

The real causes for whatever higher costs and lower rates of return might face the Northern railroads are thus shown to be the inefficiency and overcapacity of those railroads and not any natural territorial advantages of the South. In view of this fact, the fairness of an increase in the divisions of the Northern railroads to meet the Eastern railroads' costs or increase their rates of return, even if necessary to offset transitory differences, must be considered.

As shown above, the inevitable effect of any divisional structure that accords higher divisions to the Northern railroads would be to improve the rail transportation system of the North at the expense of the Southern public,

for any transfer of divisional revenues to meet the needs of the Northern railroads could not fail to have an adverse impact upon rail transportation in the South, either through increased freight rates or through a diminution in the availability of rail services, facilities and equipment, or both. Consequently, a transfer of divisional revenues to the Northern railroads would bear heavily upon the Southern public regardless of the reasons that might be offered to support it. Of course, if it could be shown that the South, as a freight territory, possessed natural advantages over other parts of the country, the transfer would be justified under established principles of law and sound

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transportation policy. Were such a transfer to be ordered in absence of natural territorial advantages as recommended by the Examiners, however, the impact upon the South would be unlawful, unsound and grossly unfair to the Southern people.

The absence of natural territorial advantages necessarily means that the preferential divisions recommended by the Examiners for the Northern railroads will put those railroads in a position inherently superior to that of the railroads serving the South. Consequently, they will be able to provide better services, facilities and equipment to the Northern public at lower rates than can be made available in the South. The significance of this superiority becomes apparent when it is realized that *the Northern railroads' primary duty is to serve the competitors of Southern industry.*

It is common knowledge that most of the buying power of the country is concentrated in the North and that, notwithstanding the substantial geographical disadvantage which must be overcome, industries located in other parts of the country must seek to reach that market. The Commission itself recognized this situation in its report in the Docket No. 28300 proceeding (262 I.C.C. at 695):

"Official territory is the largest consuming territory in the country, and is the market that nearly all manufacturers desire to reach, particularly where they have a surplus of their products to sell. In shipping to official territory, manufacturers in the other territories not only have the disadvantage of location, but are subjected to an additional burden in those instances where they must pay class rates on a much higher level than their competitors in official terri-

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tory. This situation reacts to the disadvantage of manufacturers in the other territories, and to the advantage of those in official territory, tends to restrict the growth and expansion of the manufacturers in the other territories, and, to some extent, to prevent the establishment of new manufacturing plants in those territories."

The divisional structure recommended by the Examiners is therefore doubly damaging to the South; first, in bringing about a deterioration in the transportation system which is vitally necessary to move the products of the South; and, secondly, in forcing the Southern people to subsidize a superior transportation system for their competitors in the North who already have the advantage of being located closer to the principal markets in which they compete.

No justification can be found for such flagrant discrimination in the mere fact, relied upon so heavily by the Examiners, "that this interterritorial traffic could not be handled in one region without the facilities and services of the carriers in the other." The overriding factor that dominates consideration of any transportation problem is that of competitive relations. Any improvements in the transportation services available to handle that part of a Southern-Official haul that lies in the North would be more than offset by improved services accorded to competitors

in the North on all of their transportation needs. And the deterioration of services available for the Southern part of the Official-Southern haul and the general transportation needs associated with

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that traffic would leave the Southern shipper at a serious disadvantage vis-a-vis his Northern competitor. Thus, the unfair impact of a divisional structure preferential to the North is in no way ameliorated by the participation of Northern railroads in Official-Southern traffic.

The plain fact is that the only possible justification for an unequal divisional structure is a finding based upon substantial evidence that one of the two territories involved has natural advantages over the other. There being neither finding nor evidence to that effect in this proceeding, the Commission must retain the existing equal-factor basis of divisions.

EXCEPTION NO. 3—*To the Examiners' Superficial Treatment of the Issues Raised in This Proceeding Concerning Relative Costs and Relative Revenue Needs.*

Considerations of the public interest, when properly recognized and given effect, show clearly that the Examiners should not have recommended disruption of the existing equal-factor basis for dividing the revenues from Official-Southern traffic, even if they were correct in their assumption that the costs and revenue needs of the Northern railroads had been accurately shown to be higher with respect to this traffic than those of the Southern railroads. In fact, however, this critical assumption of the Examiners is also not well founded. Instead, their findings as to the relative costs and relative revenue needs of the two groups of railroads with respect to this traffic are also erroneous.

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EXCEPTION NO. 4—*To the Examiners' Imposition of a Part of the Northern Transportation Burden Upon the Southern Public Without Any Finding that the North Is Incapable of Supporting Its Own Transportation System.*

As we have shown above there is no justification, either in law, in policy or in fact, for the Examiners' recommendation that the existing equality between Northern and Southern freight territories be abandoned in favor of a system of divisions highly preferential to the North. Over and above all of this, however, there is yet another defect in their Report which demands correction by the Commission. For even if the Examiners were correct in concluding that the showing in the record with respect to the costs and revenue needs of the Northern railroads requires an increase in their revenues, the burden of that increase could not properly be imposed upon the Southern public, as it was here, without an effort first to determine whether the North is capable of

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supporting its own transportation system through rate increases. Instead, the Examiners should have given serious consideration to this alternative in the light of the uncontroverted evidence of record showing the clear superiority in economic strength still held by the North over the South. It seems plain that, if they had done so, the only possible conclusion they could have reached would have been that the South is in no position to support the Northern transportation system.

1. The Refusal to Give Any Effect at All to the Principal of Primary Local Responsibility.

The Examiners erroneously refused to give any effect at all to the principle that the primary responsibility for

meeting the revenue needs of the railroads of any territory must be met locally by the people of that territory. Yet, this principle has always been applied in dividing the revenues from Official-Southern traffic.

In *Division of Rates, Official and Southern Territories*, 234 I.C.C. 167 (1939), for example, the first case involving the prescription of a general basis for North-South divisions to come before the Commission, the Southern railroads were denied a generally higher basis of divisions on Official-Southern traffic despite explicit recognition by the Commission "that transportation costs on the traffic here considered may properly be considered to be higher in the South, and that, although the exact degree of difference is indeterminable, it is not negligible, as the northern lines argue." 234 I.C.C. at 189. Instead, the Commission pre-

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scribed a higher basis of divisions for the Southern railroads only on those interterritorial rates containing an "increment or excess" due to the higher rate levels then prevailing in the South. 234 I.C.C. at 191. "Where no such increment is to be found in the rates, as those on denatured alcohol and cast-iron pipe prescribed in the decisions before cited, fair application of the principle demands that the divisions of each group of carriers be on the same basis." 234 I.C.C. at 192-193.

The principle applied in the first *Official-Southern Divisions* case was thus that even substantial differences in relative territorial cost would not justify the prescription of a preferential scale for divisions where to do so would necessarily force one territory to support the transportation system of another. An inflation in the divisions of the Southern railroads was necessary on certain traffic, of course, because the excess revenues collected by the Southern railroads were paid by the Southern public, and, as the Commission itself recognized, where unequal rate structures are maintained in two territories, as was the situation

at the time of the first Official-Southern Divisions case, the only proper way to minimize the discrimination being suffered by the territory paying higher rates would be to make sure that the excess revenues thus generated remained with the railroads serving that territory (234 I.C.C. at 190):

> ". . . In view of the factors which have been responsible for the measure of these rates, therefore, there is logic in the argument of the southern lines that 'the rates which contain something above the official level, because of the southern lines' participation, should be divided so as to give the increment in the rate to the southern carriers'."

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But where no such "increment in the rate" existed, a uniform divisional structure was necessary in order to avoid imposition of the Southern transportation burden upon the Northern people.

Since the decision of the Commission prescribing uniform class rates in the Docket No. 28300 proceeding, the differences that originally existed between the interterritorial rate level and the rate level within the North on the same traffic have partially disappeared by reason of the former rates having been superseded by a uniform level. Certainly there was no evidence introduced by the Northern lines to show an increment in the northern portion of the rates to be divided in this case. The interterritorial rates now reflect, directly or indirectly, the mandate of equality handed down by this Commission in the Docket No. 28300 proceeding. And it was precisely for this reason that the Commission, in its 1953 report in Docket No. 29885, removed the selective inflation previously enjoyed by the Southern lines by virtue of the "increment" theory, when the issue of lawful divisions was brought back before it shortly after the termination of that proceeding. In the words of the Commission (*Official-Southern Divisions*, 287 I.C.C. 497, 523):

"Recognition of the increment theory in our 1939 report made it logically necessary to prescribe a special basis of divisions for those rates which contained no increment. The question as to which of the alternative bases should apply to rates established in the future was necessarily left to determination by the two groups of carriers, who have found it a difficult and controversial problem. They agree as to the desirability of a single basis of divisions on general traffic for the future.

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"The differences in general level between the interterritorial rates and those in official territory have been substantially reduced since 1939 partly because of our action in prescribing a common level of class rates and in authorizing larger cumulative general increases in the eastern district than in the southern region and between the two sections. Apparently there are still a considerable number of interterritorial rates which are higher than the official-territory level just as there are many which are on that level or lower. No trustworthy estimate of the average percentage relation as of the present time is possible.

"The fact that at one time the South was considered a higher-rated territory than the North gave some support for the increment theory. From evidence based on our waybill studies, however, it appears that in 1947 the average intraterritorial rate levels in the South and in the North were substantially equal and that subsequent general increases have raised the northern level to a greater extent than the southern."

There can be no doubt that the decisions of the Commission in its previous reports dealing with Official-Southern divisions preclude any inflation in Northern divisions to meet allegedly higher costs in this case. As pointed out above, the Northern railroads could not and, indeed,

did not even try to establish any increment in the rates involved here that can be related to services they perform or costs borne by the Northern public. Moreover, the uniform class rates prescribed in the Docket No. 28300 proceeding are still in effect. This latter fact is particularly significant. Class rate levels are designed to reflect basic differences in transportation conditions from territory to terri-

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tory, and, directly or indirectly, these rates govern the entire rate structure. Where the class rate levels of two territories are the same, the railroads in each territory should ordinarily be treated the same for purposes of divisions. The Commission gave explicit recognition to this fact in its decision in *Official-Southwestern Divisions*, 287 I.C.C. 533, 576-577, 578:

> "In considering divisions in the past, we have observed that if the general rate structure is well adjusted, a very significant and valuable test of divisions may be made by comparing them with the local rates for the same haul. . . . In comparing rates with divisions the pertinent fact is that under our class-rate decision a local class rate for a given distance in southwestern territory is the same as one for the same distance in eastern territory, while for an interterritorial haul including equal distances in each territory the division for the southwestern service is 35 percent higher than the eastern."

> "The issue here with respect to divisions is essentially the same [as the issue in Docket No. 28300 with respect to class rates]. The facts which support a homogeneous class-rate structure are strongly persuasive that there should be no weighting of divisions in favor of either contending group."

And the same approach has consistently been taken in other divisions cases. In the recent *Official-Western Trunk Lines*

Divisions case, for example, the Commission was explicit in its condemnation of a basis of divisions that distributed revenue in a manner inconsistent with the uniform level of class rates between the two territories (*Akron, Canton & Youngstown R. Co. v. Atchison, Topeka & Sante Fe Ry. Co.*, 318 I.C.C. 351, 365 (1962):

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> "The transportation history of the past decade, as shown by the evidence in the present record, confirms the soundness of the decision not to prescribe higher class rates for western trunkline territory than for official territory, and the 500-A basis of divisions with its average 20-percent western inflation is inconsistent with the class-rate decision. As indicated by the traffic studies before referred to, this interritorial traffic consists of commodities of the kind for which class rates or commodity rates related thereto are designed. The common level of class rates in the two territories argues strongly for a single scale of divisional factors, contrary to the position of the complainants."

The overriding principle in all these cases, of course, is that of primary local responsibility—that is, that no consideration should be given to imposing a part of the transportation burden of one territory unless and until it is first determined that the territory seeking preferential treatment is so impoverished that it cannot support a rate level sufficient to carry its own burden. This principle has its roots as far back as the *New England Divisions* case, in which the Commission issued this significant warning (126 I.C.C. 579, 599):

> "The dangers in [the] . . . assumption that deficiencies in local earnings must inevitably be made upon interchange business at the expense of connecting lines are obvious. Communities and the roads which serve them might too readily arrive at the conclusion

that they are 'unable' to increase local rates and, in disregard of the principle of self-help, unduly rely upon others to carry their burdens. However, it is clear that the financial needs of weaker lines are an important factor in our consideration of divisions."

[51]

In line with this long-established principle, these interveners do not contend that the Commission is wholly lacking in power, under any circumstances, to impose a part of the transportation burden of one community upon another. We do contend, however, that such an order represents an extraordinary step which cannot be taken except where circumstances are found to be compelling. The decisions discussed above recognize this principle and establish, beyond question, the proposition that each community should carry its own burdens insofar as that is possible.

* * *

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The record thus shows that the Southern people are fighting a long and uphill struggle in their efforts to raise their standard of living to that already enjoyed in other parts of the country. In such a situation, the South cannot properly be expected to contribute to the luxury of maintaining the elaborately overbuilt rail system of the North. The South has many needs of its own which must be met, and we are striving mightily to meet them despite the handicap of a still woefully inadequate industrial base. There is simply no justification whatever for further shackling the efforts of our people by imposing upon them a permanently inferior rail transportation system.

We think the Commission should not, under any circumstances, impose a part of the Northern transportation burden upon the Southern people. For it to do so without even finding that the North is incapabale of carrying that burden without help would be unthinkable.

* * *

EASTERN [NORTHERN] LINES' REPLY TO EXCEPTIONS OF SOUTHERN RAILROADS

[5]

Reply to Exception No. 1, A, Southern Lines' Contention Concerning Burden of Proof.

On pages 8 to 17 of their Exceptions, Southern lines argue that Northern lines had the burden of proving the cost of performing the service on North-South traffic, and that if Southern lines'

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proof was faulty with respect to any adjustment made in Form A costs, Northern lines had the burden of proving the correct facts with respect to the suggested adjustment, failing which the Commission should either dismiss Northern lines' claim for increased divisions, accept Southern lines' adjustments where the Northern lines had not produced comparable data in their possession, or require the production of actual data on a comparable basis.

This argument concerning burden of proof is carried by Southern lines into the discussion of their contentions with respect to many of the cost adjustments which they urge the Commission to make.

As a background to the discussion of the burden of proof point, it is important to bring certain facts to the attention of the Commission:

1. The cost evidence used by the Commission in prescribing the divisions in which Northern lines now seek a change was based upon unadjusted Form A territorial costs for Northern and Southern lines.
2. The Commission has held that Form A territorial average costs are appropriate in considering large blocks of traffic, such as here involved.

3. Southern lines' evidence in this case is based upon Form A territorial averages. All of the costs in their presentation are these Form A averages except those which they elected, for their own partisan purposes, to adjust.

4. Northern lines presented evidence to show that Form A territorial average costs properly measure the cost for performing the service with respect to the North-South traffic here in issue.

Each of these points will now be briefly discussed.

[7]

1. THE COST EVIDENCE USED IN PRESCRIBING THE PRESENT DIVISIONS CONSISTED OF UNADJUSTED RAIL FORM A TERRITORIAL COSTS.

In the original decision in this case, *Official-Southern Divisions*, 287 I.C.C. 497 (1953), the Commission noted, at p. 507 that the Northern lines "applied Form A to the expenses and statistics for the eastern district (including as well as excluding the Pocahontas region) and the southern region . . ." The result was a showing of higher costs for the Eastern District and for the Eastern District including Pocahontas than for the South (p. 508). At p. 508 the Southern lines' views as to the Form A costs were set forth:

> "Although the southern respondents request a formal finding that 'such Form A average costs do not purport to reflect the cost of transporting any particular commodity or traffic, let alone the interterritorial traffic here in question,' in their exceptions they argue that 'Form A costs . . . require a differential in the South,' and that 'comparative costs under Form A, properly adjusted, fully support the present differential in southern divisions.' This argument appears to involve the premise that such costs may properly be used to determine the relative expense

actually incurred by the respective groups of carriers in transporting the interterritorial traffic."

Then the Commission stated that (p. 508):

"The average interterritorial shipment as shown by the southern lines' traffic test (excluding Florida vegetables) received a haul of 823 miles, of which 478 miles were on southern railroads and 345 miles on northern. For this average service the former received 58.45 percent of the revenue and the latter 41.55 percent."

Continuing, the Commission said (p. 509):

"Using the Form A unit cost of 1948 for boxcar traffic previously shown, the southern lines multiply the average-haul figures for each group by its average line-haul cost and add thereto the appro-

[8]

priate average cost of one terminal service, arriving at a total cost of 24.7 cents for the southern lines and 20.4 cents for the northern, which represent percentages of 54.77 and 45.23 respectively."

Hence the Rail Form A cost comparison presented by Southern lines showed that those carriers were incurring only 54.77 percent of the costs while receiving 58.45 percent of the revenue.

The Commission further stated that the "southern lines say, however, that a number of adjustments must be made in Form A before it can properly be used in this manner."

After setting forth the adjustments for which the Southern lines contended, the Commission stated:

"The adjustments proposed by the southern lines would serve to raise their average line-haul factor 7 percent above that of the northern lines. Under Form A the southern line-haul factor is 5 percent lower.

Accordingly, the adjustments would serve to show higher costs for the southern longer haul on interterritorial traffic than Form A, . . ."

The adjustments were rejected by the Commission, which concluded after thorough consideration that "We find them unconvincing." Then it said, at p. 510:

"This view is not unduly influenced by the fact that Form A is principally the work of our cost section, which is expressly charged with the duty of developing improved methods of determining transportation costs. As we have heretofore had occasion to observe, cost finding as applied to common carriers has been and still is a progressive science to which many students of the subject have contributed. We welcome the results of all research which aids in formulating principles not susceptible of exact proof, but suggestions for improvement advanced by litigants in adversary proceedings must necessarily be received with some degree of skepticism."

[9]

The Commission's conclusions regarding costs were stated at p. 526:

"If we were to give controlling weight to the cost studies of the northern lines for 1946 and 1948 in this record, the differentially higher basis of divisional factors sought by those lines would be justified. We do not accept that showing at face value because, admittedly, there were certain important items of expense in those years which may reasonably be regarded as transient, particularly in the northern lines accounts for maintenance of way and structures and equipment. This was particularly true of the Pennsylvania, which in 1948 and the two following years had high freight-car repair costs apparently cyclic in

nature. We consider it to be the safest assumption for the future upon the facts before us that neither contesting group will have an appreciably lower basis of operating costs than the other, and that there are no other relevant circumstances which are of sufficient importance to justify higher divisional factors for one group than the other."

It will thus be noted that the costs upon which the Commission acted in prescribing the present divisions were those developed by the application of Rail Form A, that adjustments suggested by the Southern lines were found "unconvincing", and that the Northern lines' higher costs were discounted for the future, not because of any deficiency in the formula or misgivings as to its appropriateness as a measure of North-South traffic, but rather because of what were thought to be nonrecurring expenses in the North during the years for which the evidence was developed. It is clear, therefore, that having adopted and relied upon Rail Form A unadjusted costs in fixing the present divisions, the Commission may and should now employ the same standard in determining whether those same divisions should be modified in the light of ensuing developments affecting territorial cost levels. This is especially true in view of the record's disclosure, as we shall later point out, that Official-Southern traffic is handled under the same conditions as other traffic, and that the average costs are therefore fully representative of the cost of handling the traffic here involved.

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2. The Commission Has Held That Form A Territorial Average Costs Are Proper for Use in Cases Involving Large Blocks of Traffic, as Here Involved.

The demonstrated reliance of the Commission upon unadjusted territorial Rail Form A costs in the prior pro-

ceeding herein is completely in accord with its undisputed recognition of the purpose and probative value of Rail Form A in proceedings of this nature. The Rail Form A formula developed by the Commission's Cost Section was first employed in Docket No. 28300, *Class Rate Investigation, 1939*, 262 I.C.C. 447 (1945), in which the Commission had under consideration the lawfulness of interstate class rates in that part of the United States which lies east of Mountain Pacific Territory (p. 454). To assist in this inquiry, the Commission received in evidence studies, prepared by its then Chief Cost Analyst, of the relative cost of rendering transportation service in the various territories. After thoroughly describing the formula at pages 571-591 of the report therein, the Commission, with respect to the reliability of the studies stated (p. 693):

> "There are different degrees of refinement in costs depending upon the purpose for which the costs are intended. The ascertainment of the costs of transporting a particular commodity over a single railroad or a group of roads, for instance obviously requires more refinement in procedure than the calculation of relative costs for transporting all traffic, or important and well-defined segments of traffic, by territorial groups of carriers. It is the latter type of cost computation that we now have before us."

The Commission's order in the *Class Rate Investigation* was challenged by Western Railroads and certain Eastern states in suits reported in *New York v. United States*, 331 U.S. 284 (1947), wherein the Court, after due regard to the relative cost data for the several territories and the conclusions of the Commission with respect thereto (315-332) sustained the Commission's order.

In the *Official-Southwestern* case, 287 I.C.C. 553 (1953), at pages 566-568, the Commission took note of the territorial costs under the

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Rail Form A formula as presented by Eastern lines. The following excerpts therefrom are here pertinent:

"Shortly after our 1939 report was issued, we established a cost-finding section, which is now part of our Bureau of Accounts and Cost Finding, having as one of its objects, the development of improved methods for determining transportation costs. After exhaustive investigation that section constructed what has come to be known as Rail Form A, a formula for computing railroad freight service costs, including a separation of the line-haul and terminal elements and differentiation in respect of load and tare weight per car."

* * *

"The eastern lines applied Form A to the expenses and statistics for the eastern district (including as well as excluding the Pocahontas region) and the southwestern group for 1946, adjusted to the cost level of January 1, 1948. Later they made a study based on 1943 figures."

* * *

"What are here termed 'territorial average costs' are not those which embrace traffic carried wholly within southwestern or eastern territory but are based on all the operations of the railroad carriers classified under those groupings. The cost study is fundamentally based on the principle that the performance of transportation service requires the production of a number of homogeneous service units, such as gross ton-miles, car-miles, consignments billed, cars interchanged by switching, et cetera. The fact that different commodities are handled or that the movement is entirely within one territory or partly within one territory and partly in another does not affect the ac-

cumulation of the homogeneous service units which are necessary to the rendition of the service. Essentially the costs are dependent on the quantities of the service units required of the carriers in moving loads of various weights per car in various kinds of equipment with various percents of empty

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returns and various lengths of haul. Because of the fact that 35 percent of the tonnage of the southwestern lines in 1948 consisted of interterritorial traffic, 8.5 percent being to and from eastern territory, the Form A costs for those lines necessarily reflected conditions affecting interterritorial operations to a considerable extent."

In view of the foregoing findings by the Commission, it is significant to note that both Southern lines and Northern lines participated substantially in interterritorial traffic and that the former emphasized the fact that Official-Southern traffic represents approximately 21.4 percent of their total traffic (V.S. 36, Ex. 5).

By comparison, the volume of class rated traffic involved in Docket 28300 was a small part of the total traffic of the involved carriers, as shown at page 479 of the report in that proceeding (262 I.C.C. 447). The evidence in Docket 28300 indicated that for the United States as a whole the volume of traffic moved under class rates was 4.1 percent of total carloads and 6.3 percent of revenue on all traffic (262 I.C.C. at p. 564). The present record shows that the North-South carloads constitute 10.45 percent of the total carloads of Official Territory carriers (calculated from V.S. 75, Appendix A, p. 3, and V.S. 1, Ex. D, p. 1). The figure for the Southern lines would be substantially higher than that shown for the Northern lines since the proportion of North-South to total traffic is greater for the Southern than for the Northern lines. The revenue involved in the North-

South traffic, as shown in Southern lines' traffic study, constitutes 10.06 percent of the combined total freight revenue of Northern and Southern lines during the twelve-month period. It constituted 6 percent of the total freight revenue of Official Territory lines and 21.4 percent of the total freight revenue of Southern lines, during the twelve-month period (V.S. 36, Ex. 5).

It is very clear, therefore, that the block of traffic involved in this case is considerably greater in relation to the total traffic of the lines involved than was true of the block of traffic that was involved in the *Class Rate* case. This is true of both sets of lines. It is very markedly true of Southern lines. The Commission having found,

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therefore, that class rate traffic constitutes one of the "important and well-defined segments of traffic" moving by "territorial groups of carriers" for which territorial average Form A costs were appropriate, that conclusion must *a fortiori* be true in the present case which also involves all railroads in the North and all railroads in the South and a much higher percentage of their total traffic than was true in the case of the traffic under review in the *Class Rate* case.

In Docket 30416, *Class Rates, Mountain Pacific Territory,* 296 I.C.C. 555 (1955), which also included Docket 30660, *Class Rates, Transcontinental Rail, 1950,* in which the Commission also considered group average Form A costs, the involved class rate traffic was only 1 percent of the total traffic (p. 614). The instant proceeding involves a much larger block of traffic, being all class-rated, exception-rated and commodity-rated traffic moving on joint rates between Official and Southern territories, with the exception of coal, coke and certain items of traffic eliminated by stipulation.

On the basis of these important precedents, therefore, it is clearly proper to use Form A territorial average costs in determining the relative cost to Northern and Southern

lines of transporting the traffic. Reliance on such costs in this case would be in harmony with the Commission's conclusion in its decision of March 21, 1963, in No. 31503, *Akron, C. & Y.R. Co. v. Atchison T. & S.F. Ry. Co.* (mimeographed sheet 45). There, after considering a number of adjustments in Rail Form A costs proposed by the Transcontinental lines as restated by it in comparison with unadjusted territorial costs, it concluded:

> "One substantiates the other and supports the view that, *for a large and varied body of traffic as here* at issue, *territorial average costs will be the substantial equivalent of specific costs.*" (Emphasis supplied.)

It is respectfully submitted that the Commission should make a similar finding in the instant proceeding.

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3. Southern Lines' Costs Are Simply Form A Averages With Adjustments Selected With the Object of Improving Southern Lines' Relative Cost Position.

The costs upon which Southern lines rely are basically the same costs as set forth in Northern lines' evidence, namely, costs resulting from the application of Form A to their traffic study.

Southern lines' costs are average costs, system averages and territorial averages, which do not even purport to pertain only to the transportation services rendered on the traffic here in issue. These averages inhere in the very vitals, in the most basic figures, of their cost study. The expense figures for the amounts paid employes, for the purchase of fuel, materials and supplies, for taxes, for passenger deficits and return on investment, the number of cars, tons, ton miles, car miles—all of these expenses and the statistical units by which they are apportioned relate to the entire operations of both the Southern and Northern lines. The basic unit costs that underlie Southern lines' cost evidence are developed from and reflect the cost of

handling all traffic moving over the lines of the two contending carrier groups.

With regard to evidence of the relative costs of service, the Commission is confronted with the basic question of whether the Rail Form A formula more nearly reflects the relative costs of the North-South traffic to the two groups if it is applied on this tremendous body of traffic in the manner which the formula intends under these circumstances or whether those costs are more accurately developed through highly selective adjustments made by partisans who would not suggest such adjustments were it not to their advantage to do so.

Having started out then, with the same average costs for handling all traffic by types of car, which the Commission previously found and Eastern lines here urge to be appropriate, Southern lines proceeded to make "adjustments" which are said by them to bring the average figures closer to the cost of handling the North-South business here

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in issue. As might be expected, the effect of the adjustments turned out to be an increase in Southern lines' proportion of the total cost and a consequent reduction for Northern lines (one adjustment slightly increased Northern lines' shares if Pocahontas costs are used (V.S. 80, Section E). For equally obvious reasons the selective adjustments that were made on this occasion differed from those made by Southern lines and urged as appropriate to reflect the characteristics of the traffic when these divisions were previously before the Commission, at which time Southern lines' efforts at adjustments were found to be "unconvincing".

If Southern lines had a genuine desire to make impartial adjustments in Rail Form A in pursuance of their stated objective of bringing the costs closer to the involved North-South traffic, there are other adjustments that might well have been made with at least equal appropriateness.

But these would have had the result of substantially reducing their costs and increasing those of Northern lines. For example, in testifying for the Southern railroads in *Crude Sulphur, Louisiana and Texas to Virginia,* I.&S. 6177, Mr. Cole, a cost witness for the South herein, stated, in 1954:

> "I would like to make a few comments with respect to Rail Form A: In 1942 and '43 I was employed as senior transportation cost analyst for the Board of Investigation and Research, and one of the duties of that organization was to determine the relative economy and fitness by carriers by rail, water and truck. Among other things, I made a very intensive study of Rail Form A as it existed at that time. I pointed out to the public, through a report that was circulated to the railroad industry, and was also given to Dr. Edwards for criticism, and to Dr. Lorenz, who was Chief Statistician for the Commission at the time, that the method used in Form A, the cost formula, certainly had a tendency to overstate long-haul costs and understate short-haul costs, for this reason: Once a long-haul shipment makes its first junction point it tends to move by two [through] routes to its final destination, or to the last junction point."

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Notwithstanding the fact that the Southern haul on North-South traffic is substantially longer than the haul of the Northern lines (about 40 percent according to the Southern lines, V.S. 11, Tab. A, p. 1), and notwithstanding Mr. Cole's conviction that the cost formula "certainly had a tendency to overstate long-haul costs and understate short-haul costs", no adjustment for this factor was offered by Southern lines (V.S. 80, Section H, p. 4).

Moreover, although over 67 percent of the traffic handled by the Southern lines within the South (South to South) is intrastate traffic, and although Southern railroad witnesses have testified in case after case, covering the en-

tire South, that the cost of performing intrastate transportation is higher than that of providing interstate service, there is no suggestion by the Southern lines, despite their professed desire to provide "refined" costs, that the higher cost of such intrastate transportation be extracted from their average costs so as to recognize and arrive at the lower-than-average costs to Southern lines of performing interstate transportation service which alone is here involved. The various witnesses for the Southern railroads in the 13th Section cases, the testimony from some of which appears in V.S. 80, Exhibits G-1 to G-11, inclusive, were quite specific as to the reasons that Southern intrastate transportation is more costly than interstate operations. They pointed out in each instance that a much greater proportion of intrastate traffic is handled in local trains than is the case with interstate traffic and that the former are substantially more costly to operate than through trains because, *inter alia* (1) the average train tonnage is less, (2) the rate of pay is higher, (3) more overtime is incurred, (4) the number of men on the crew is greater, (5) more locomotive units are tied up, and (6) the locomotive's ultilization is much less on the local than on the through trains (see, for example, the statement of Witness Tolleson, Ex. G-1, to V.S. 80 and that of the other witnesses whose testimony is reproduced in Exhibits G-1 through G-11 to V.S. 80, all to the same effect). The greater relative amount of intrastate than interstate transportation on branch lines was another factor mentioned by the Southern witnesses whose testimony appears in Exhibit G-7 to V.S. 80.

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It should be noted that these witnesses did not testify in these several 13th Section cases simply that there was nothing about intrastate transportation which called for lower rates than interstate. They did not testify simply that operating conditions or costs were substantially the same. They uniformly testified that *costs are higher on intrastate than on interstate traffic.* Their evidence was

consistently to the effect that conditions were generally the same with the exception of the more burdensome and costly attributes of intrastate transportation which they emphasized.

Sand and gravel, crushed stone, and pulpwood are said in this divisions case to have very favorable cost characteristics which must be extracted from Southern lines' costs on North-South traffic lest they dilute those costs. But in the 13th Section cases the Commission was told that these commodities move in local trains and that the cost of transporting them is higher than the cost of transporting interstate shipments (see *e.g.*, Forlines, V.S. 80, Ex. G-6, pp. 137, 8; Rush, V.S. 80, Ex. G-7, p. 52). One of the witnesses pointed out that not only does the pulpwood move generally in locals but that it has special cars, which entail an empty return movement (Forlines, Ex. G-6, p. 138, V.S. 80). And in the South 67 percent of all pulpwood traffic and from 82 percent to over 90 percent of sand and gravel, crushed stone and phosphate rock moves intrastate (V.S. 80, Table G-1).

Thus, the Southern lines, had they submitted the objective adjustments that might have been made by a neutral actually seeking to produce more reliable relative cost comparisons would properly have allocated a larger part of the territorial average costs to the traffic handled within the South (over 67 percent of that traffic being intrastate and of higher cost), thus reflecting the fact that, judged by their own statements, their costs on Official-Southern traffic are lower than average. But they did not do so; since obviously it was not their objective to lower the costs on interterritorial movements over Southern lines.

Rail Form A costs are used, of course, day in and day out by litigants before the Commission and constitute the basis of countless

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Commission decisions. Northern lines have shown a large, but still only partial, number of recent proceedings in which

they have been relied upon by Southern lines, even with respect to individual commodities between individual points (V.S. 80, Sec. H). Clearly no case could be more appropriate for the use of the average costs produced by Rail Form A than the present one which involves the divisions of *all* rates on *all* classes, *all* exceptions, and *all* commodities (except coal, coke and those few stipulated out) between *all* stations on *all* railroads in the North, and *all* stations on *all* railroads in the South.

4. Northern Lines Presented Evidence to Show That Form A Average Costs Properly Measure the Cost Pertaining to the Traffic Involved in This Case.

In addition to the precedents cited above as establishing that Form A average costs properly may be used in a case such as this, Northern lines presented evidence to show the propriety of the use of Form A averages in this proceeding. They presented, through Witness Nancarrow (V.S. 8), a train utilization study for the Pennsylvania, Baltimore and Ohio, Erie, Nickel Plate and New Haven (Ex. A) and a detailed diagrammatic tracing of 14 Pennsylvania Railroad trains moving to and from the principal gateways of Cincinnati and Potomac Yard, at which traffic to and from the South is delivered and received (Exhibits C-P).

a. *Train Utilization Study.*

The train utilization study, as stated by Witness Nancarrow (V.S. 8, p. 6) "is simply intended to demonstrate the extent to which the total train service of Eastern Railroads participates in the movement of Southern interterritorial traffic." In order to achieve a representative cross-section of Official Territory lines in this study, the Erie and Nickel Plate, which are both primarily East-West rather than North-South carriers, were included along with carriers such as the Pennsylvania and Baltimore and Ohio, which participate very substantially in Official-Southern traffic. The five study lines were

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asked to furnish, for a selected week in May of 1959, the total number of freight trains operated during the week, classified between through and local trains, and the number of the trains in each such classification which were found, upon investigation, to contain at least one car of Official-Southern interterritorial traffic.

As shown in Witness Nancarrow's Exhibit A, as revised, of the total of 13,647 loaded trains shown for the five study lines, 6,099 trains, or 44.7 percent, were found to be transporting at least one loaded car moving from or destined to Southern territory. And, of course, additional trains undoubtedly participated in the movement of empty cars between the two territories. Thus, it is seen that traffic which, according to Southern lines' evidence, is claimed to represent only 6 percent of the total carload traffic of Eastern lines (V.S. 36, Ex. 5), nevertheless, was found to require utilization of almost half of the train facilities of those lines in its movement *during the brief period of one week.* And, as Witness Nancarrow further pointed out (p. 9), obviously if train utilization tests were to be extended over a longer period, it would be found that every transportation facility maintained by Eastern lines is, at one time or another—even if not always concurrently—necessary to the *assembly, movement and distribution of Southern business.* Hence, it cannot be said that Official-Southern traffic does not encounter all of the operating conditions and transportation burdens incurred by Eastern lines on their general traffic.

b. *Train Tracing Studies.*

The diverse character of Official-Southern traffic and its movement within Official Territory as an integral part of the general traffic complex of that territory is also demonstrated by the studies of selected representative Pennsylvania Railroad trains depicted in Exhibits C through P, inclusive, to Verified Statement No. 8 of Witness Nancar-

row. The Pennsylvania Railroad serves both Potomac Yard and Cincinnati, the two principal points of interchange between Northern and Southern carriers, and its service to and from those gateways is typical of that provided by Eastern lines on the involved traffic (V.S. 8, pp. 4-7).

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Accordingly, Mr. Nancarrow, supervised the study of both long distance preference trains and shorter haul trains between the foregoing two gateways and important Northern terminals. The operations of 14 such trains in both directions on March 16, 1956, the day during that study month which most nearly reflected average volume (V.S. 8, p. 11), were traced in detail. Four of the selected study trains operate to and from Cincinnati and the remaining ten have as their southernmost terminal Potomac Yard. In each case, the schematic diagrams, Exhibits C-P inclusive, trace from Pennsylvania Railroad origins or connections to Pennsylvania Railroad destinations or connections, as the case may be, every car which was, at any time during its journey, a part of the consist of the subject train, whether or not that car moved interterritorially to or from the South. Official-Southern cars, however, are readily identifiable in Exhibits C-P, and their movement in both the particular study trains and in the complex of connecting trains required to effect their origination or delivery is clearly shown, thus permitting a ready appraisal of the relationship of such cars to the total traffic handled. It may be noted that included in the exhibits was traffic to and from Canada requiring additional interchange service, some of which was described by Witness Shea in Verified Statement No. 78, as well as other extraordinary operating burdens.

It is unnecessary, at this point, to further elaborate upon the details of the schematic train diagrams. The very intricate detail of these exhibits itself demonstrates the complexity and extent of the railroad plant which must be maintained by the Pennsylvania, and similarly by other

Official Territory carriers, in order to provide necessary service on Official-Southern traffic. The foregoing Exhibits C-P of Witness Nancarrow provide a documented and detailed demonstration of the fact that Official-Southern traffic is not and cannot conceivably be handled in the North nor, indeed, as it will be seen below, in the South, as a distinct entity. Rather, they establish that it is transported as an indiscriminate part of the whole influenced by and in turn influencing the general traffic of the involved carriers.

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On the basis of the foregoing studies and in the light of his experience, Mr. Nancarrow concluded that a car of Official-Southern traffic utilizes the transportation facilities and services of Eastern railroads to the same degree as any other car; that such cars receive service no less complex than that of traffic generally; that such cars, by virtue of their integration into the general traffic pattern, receive substantial cost benefits as a consequence of the existence of other traffic with which they are transported; that correspondingly, the services rendered by Eastern lines on Official-Southern traffic create burdens upon the other traffic of those carriers; and that Official-Southern traffic is so commingled with other traffic "that it is erroneous to conclude that Eastern lines' costs of handling Southern traffic, if possible of determination, are any different from their average costs of handling traffic generally" (V.S. 8, p. 43).

The witness made it plain of course, that in thus referring to average costs he referred to Form A costs, such as those used by Witness Heywood, rather than some outmoded method of costing on a per-car or per-car-mile basis with all expenses aggregated (both line-haul and terminal) in one lump sum (R. 552). Mr. Nancarrow expressed confidence, in view of the method by which railroad facilities and services are planned and operated, that the North-South traffic is handled on Southern lines as well as on Northern lines as an indistinguishable part of the overall

operation (V.S. 8, p. 3) and he concluded that the involved interterritorial traffic is average traffic, judged by every criterion of service and "hence may properly be measured by the Eastern and Southern Region costs attributable to all traffic" (V.S. 8, p. 44). Mr. Nancarrow's conclusion, as it relates to Southern lines, is strongly supported by the fact that their North-South traffic is a higher proportion of their total traffic than is true in the case of the Northern lines.

In connection with this point, reference is made to Eastern lines' brief at pp. 44-64 in which the operating testimony of Southern lines is analyzed and in which by this and other evidence it is shown that the attempt of Southern lines to make the North-South traffic appear to be more burdensome cannot possibly succeed.

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5. Northern Lines Have No Burden in This Case to Disprove Cost Adjustments Suggested But Not Proved by Southern Lines.

In the light of a background which includes the prescription of the present divisions on the basis of the Form A average costs, the holdings by the Commission that such costs are appropriate in cases involving large blocks of traffic, the fact that Southern lines' own costs are basically territorial average costs, and the fact that Northern lines gave evidence of the propriety of using territorial average costs herein, it would seem clear that Northern lines made a *prima facie* showing of the relative service costs properly applying to the traffic here involved by the presentation of evidence based on Form A average costs for the Northern and Southern roads.

If Southern lines desired, then, to establish that in some respect the territorial averages used both by Northern and by Southern lines themselves did not properly measure the cost of performing the service on the North-South traffic here in issue, clearly the burden had shifted to them to

establish their contention by proper proof. It would manifestly be improper to hold that when one litigant establishes a *prima facie* case, the opposing litigant can defeat such a case by bringing forward speculations and contentions based upon surmise and assumption concerning some part or parts of the first litigant's proof. The adjustments in the Form A averages which Southern lines offered were either patently unsound or were based upon inapplicable facts, surmise and assumption. This is demonstrated in a discussion of each of these adjustments in Eastern lines' brief at pp. 103-187.

Southern lines endeavor to overcome the effect of their failure to prove their adjustments by stating and reiterating throughout their discussion of the burden of proof point that Northern lines were at fault in this failure by the "withholding by Northern lines of their records", by Northern lines' "failure to produce more refined data in their possession", by Northern lines' "blocking the development of actual and comparable cost evidence . . ." (Southern lines' Exceptions, pp. 13 to 17).

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Let us examine this contention with respect, for example, to the most important adjustment for which Southern lines contend, namely, that relating to cost of cars. It is discussed in Southern lines' exceptions at pp. 19 to 36. A reference to that discussion will show that the only thing said to be in our possession and not available to Southern lines is that indicated by the following on p. 35 of Southern Railroads' Exceptions:

> "The requirement that the Northern lines prove with specific evidence that their costs of cars carrying Official-Southern traffic are higher than the costs of the Southern lines for the same cars is particularly appropriate in this case where the Northern lines had in their possession at least at the time of the rebuttal hearing specific facts which would have confirmed or disproved

the application of territorial average car costs to the Official-Southern traffic handled in box cars.

"The rebuttal hearings in this case were held on February 7-13, 1961. At that time, the carriers had completed but had not released the results of a special study of car costs for the year 1960 which the Commission had ordered in its general investigation, *Railroad Freight Car Per Diem Charges*, Docket Nos. 31358 and 33145. This special study of car costs provided, for the first time, a separation of car costs by type of car (V.S. 40, Ex. C, p. 13).* Despite the availability of these data, the Northern lines' rebuttal witness on the subject of car costs presented no facts at all as to the actual costs for box cars as contrasted with the average cost for all cars on Northern lines (V.S. 76). Their witness disclaimed any knowledge of the results of the special study of car costs ordered in the *Per Diem* investigation, even of the study made by his own Pennsylvania Railroad Accounting Department (Tr. R. 2509-12). It may fairly be concluded that, if the facts as to box cars supported the use of territorial average car costs, such data would have been forthcoming."

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Now, let us see what the record shows with respect to the "availability of these data" to Northern lines. The record reference on the subject, as given in Southern lines' exceptions, is R. 2509-12. At R. 2509-10, the following appears:

"Q. [Counsel for Southern Lines] I would like to ask you whether you are familiar with the Commission's orders in what you will probably recognize as the

"* The Commission's orders, dated December 18 and 23, 1959, required that the individual carriers furnish data in great detail, including information showing car repair costs, investment, utilization and per diem payments and receipts, separately by type of car (home and foreign)."

per diem litigation; are you familiar with the Commission's orders and questionnaires calling upon the individual railroads to develop facts, both as to costs and as to operating data, respecting car costs?

"A. I would say I know that there are orders on that subject. I am not familiar with them.

"Q. You are sufficiently familiar, are you, with them to know whether the Pennsylvania, as an example, has already completed and filed with this Commission a statement for at least one quarter of the year showing the percent that user car costs are of account 314?

"A. I do not know. I do not even know whether it has been filed."

Then, on R. 2511, counsel for Southern lines stated:

". . . in the near future, both as to your road and as to all roads, . . . we will have the facts as developed by this rather detailed questionnaire."

And on R. 2512, the following appears:

"The Witness: When all of the facts would become available to me or to anyone else and when I could understand those facts and know that I was able to use them properly, they could be of value. But they have not been available to me; *they will not be available for a long time*—in fact you said that the figure that was furnished so far was one-quarter of the year or represents one quarter of the year, I forget how it was phrased."

* * *

"Q. (By Mr. Trienens) ". . . we are in this *interim period* awaiting the results of that study . . ." (Italics supplied.)

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Thus, with respect to the most important single cost adjustment contended for by Southern lines, the data alleged to have been withheld and said in Southern lines'

Exceptions to have been "completed" but ". . . not released", it appears (a) that at the time of the rebuttal hearing the data would "not be available for a long time" and (b) that the small fragment thereof which had been completed was "filed with this Commission" and as available to Southern lines as to Northern lines.

The second most important adjustment for which Southern lines contend in the Form A average costs relates to empty return ratios on box cars. With respect to this adjustment, in what respect was there "withholding by the Northern lines of their records . . . .(Southern Exceptions, p. 13). The only such thing charged by Southern lines with respect to this adjustment regarding box cars was that Southern lines proposed that a joint study be conducted and it is stated that all that Northern lines were requested to contribute to the proposed study were the car initial and number and the loaded and empty miles of each box car moving over their lines during the study period. It is then stated that Northern lines refused to furnish the data in the form requested or to make any alternative suggestions that would provide any separation in the empty return ratio as between general purpose box cars and box cars used for automobile parts (Southern Exceptions p. 46).

It will be seen that what was here proposed entailed far more than simply handling over to Southern lines some record in the possession of Northern lines. Southern lines proposed a joint study. The essential theory of the study was so faulty that the study would have been worthless (Eastern lines' brief, pp. 140-142). Moreover, whereas the Commission's seven-days study embraced days that were spaced throughout a twelve-month period, the three-day study suggested by Southern lines would have been for Monday, January 25, 1960, Wednesday, February 3, 1960, and Friday, February 12, 1960, or a period covering a span of but eighteen days. It is obvious that the period was not representative. In addition, specially equipped cars were in heavy demand during that period because the movement

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of auto parts in the Fall, when model changeovers take place, was seriously curtailed by a strike and was, therefore, heavy during the period which would have been covered by the three-day study, thus resulting in a heavy demand for the cars and a consequent greater empty return movement to meet this demand than would have applied throughout the year (V.S. 73, p. 4).

But Southern lines say that Northern lines did not "make any alternative suggestions" for the study. A proper study would have required the selection of days *through a year's period.* Not only would such a study still have been subjected to the unwarranted assumptions which would have rendered it worthless, but, in addition, it would have resulted in an intolerable delay in the disposition of this proceeding. And Southern lines repeatedly refused to stipulate that the Commission's findings might be made retroactive. Hence the delay would have been at the expense of Northern lines.

With respect to refrigerator car empty return ratios it is charged that Northern lines did not "come forward with the data in their records showing the empty return experience of other ownerships" (Southern lines' Exceptions, p. 58), that is ownerships other than those studied by Southern lines.

Northern lines acceded to Southern lines' request that the former's consent be given to Southern lines examining the records of Fruit Growers Express. The data put in evidence as a result of this examination and the examination of other refrigerator car ownerships related to empty versus loaded car mileage of the entire operations of those car lines, not to the North-South traffic. It is not stated that Southern lines asked Northern lines for records relating to refrigerator cars and that such a request was denied. Northern lines pointed out that Southern lines' adjustment related to the entire operations of the refrigerator car

lines, including a very large use of refrigerator cars of F.G.E. in the West and that, therefore, the result was no closer to the North-South traffic involved in this case than the figures used in Form A; indeed, not as close. So, when Southern lines say, as they do, on p. 58 of their Exceptions, that ". . . Northern lines have the

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comparable figures in their records", and that in their rebuttal Northern lines did not come forward with that data, Southern lines are simply saying that Northern lines failed to produce "comparable data" which also would have shown empty versus loaded miles of *all refrigerator cars wherever used.* In other words, Southern lines failed to relate the information relied upon in any manner to the Official-Southern traffic, and the same would have been the result if "comparable data" had been brought forward in rebuttal by Northern lines.

It is very easy, therefore, for Southern lines to charge that Northern lines withheld evidence in their possession. But when the charges are examined, they are found to be baseless.

With respect to their next adjustment—switching costs —the Southern lines do not allege that Northern lines refused them access to any data or failed to produce any document within their possession. They say merely that Northern lines failed to make switching studies comparable to the hand-picked switching studies made by Southern lines at selected origins in the South (Southern Exceptions, pp. 84-85), which were shown by Northern lines to be worthless (Eastern lines' Brief, pp. 151 to 172), and so found by the Examiners (Sheet 52). The Northern lines having presented evidence that North-South traffic was inextricably intermingled with the rest of the traffic handled by Official Territory lines and that the interterritorial traffic between North and South "is average traffic (except in

relation to heavy-volume coal and ore traffic) judged by every criterion of service, and hence may properly be measured by the Eastern District and Southern Region costs attributable to all traffic" (V.S. 8, p. 44) and having thus made out a *prima facie* case for the use of Form A average costs, Northern lines had no duty of any nature to make individual cost studies either to rebut the obviously worthless cost studies of Southern lines, or otherwise.

The remaining adjustments made by Southern lines in average Form A costs relate to the count of cars, equalization of gateway interchanges, application of costs in accordance with relative participation of the carriers, constant costs as related to transit com-

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modities and the exclusion of suburban service deficits. In only one of these is there any suggestion about "withholding data". That appears on p. 99 of Southern lines' exceptions, relating to the count of cars point. We shall now discuss that matter and, having done so, shall then have discussed each and every one of the contentions made in Southern lines' exceptions that Northern lines had data dealing with Southern lines' cost adjustments which was withheld by Northern lines.

The count of cars originated or terminated and interchanged, which is used as a divisor to get a switching cost per car for these services comes from the Freight Commodity Statistics. The Southern lines were not satisfied with these figures in a certain respect, contending that specified traffic should have been reported as originated or terminated rather than interchanged. They believed that certain data from the One Percent Waybill Study would enable them to adjust the figures and they filed a petition requesting that the data be made available for the purpose of adjusting the car count. This is recited on p. 96 of their Exceptions. It is not there stated, however, that Eastern

lines consented to Southern lines having access to that data, a fact which is recited in the Commission's order of March 18, 1960 granting the request of Southern lines' petition. The data thus sought and made available with the consent of Northern lines was the only data with respect to this adjustment which was sought by Southern lines.

What, then, is it that Southern lines now say was "withheld" by Northern lines? The testimony of Southern lines' witness purporting to make adjustments in the Freight Commodity Statistics on the basis of the One Percent Waybill data is contained in V.S. 40, Ex. C, pp. 5-12. The testimony given therein simply indicates that the witness testified "I summarized the data necessary to remove the inconsistency . . ." (p. 11). It was pointed out in Northern lines' rebuttal evidence, V.S. 80, Sec. A, p. 5, that the information requested by the Commission based upon the One Percent Waybill Study "is not sufficiently complete to permit the making of the adjustment even if it were otherwise appropriate . . ."

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It was also pointed out by Northern lines that the Southern lines' witness had made no attempt to eliminate company material cars from the car counts other than where the carriers' only reported adjustment covered such cars. Company material cars cannot be considered as a part of any such adjustment as they are not included in the car count in the Freight Commodity Statistics (V.S. 80, Sec. A, p. 6). In discussing this subject, at Sheet 36, the Examiners pointed out that "The reconciliation between the Waybill Study and the Freight Commodity Statistics has to do only with terminations, and therefore the large blocks of traffic received by boat, transferred to car, terminated on rail, and which were counted as interchanged at the port had to be estimated by respondents. How much was estimated, or how reliable the estimate, is unknown."

Southern lines now first go outside the record to tell how much was estimated (a large amount) and then urge

that the Northern lines are guilty of "withholding data in their possession" (Southern Exceptions, p. 99) by not developing the facts which were assumed by their witness in making the secret, undisclosed estimate. It is obvious that Northern lines had no duty to correct the estimates and unsound assumptions made by Southern lines' witness in support of a point which Northern lines believed to be erroneous in any event. Moreover, the task of going to the billing and compiling information in some way other than as compiled pursuant to the Commission's order governing the compilation of commodity statistics is obviously a long and time-consuming process. It is not a matter of looking into the file and getting the desired figure. Finally, in stating that the Northern lines withheld data in their possession which would have enabled them to correct Southern lines' estimate and assumptions, Southern lines overlook the fact that not only the Official Territory carriers were involved in the "correction" of the car count, but the Southern Region lines as well (V.S. 40, Ex. C, p. 11).

Each of the charges of withholding information that has been made by Southern lines in connection with the cost adjustment

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submitted by them has now been reviewed. It is respectfully submitted that each is shown to be devoid of merit. None could have any effect whatever from the standpoint of transferring to Northern lines the burden of proving the adjustments advocated by Southern lines. The charge of withholding data is patently a charge that is made to give flavor to a law point which Southern lines are endeavoring and hoping to develop. In the light of the above analysis, Northern lines are confident that the Commission will not be misled by Southern lines' reckless charge of "withholding data".

One last word on this subject, and this relates to Southern lines' quotation from Corpus Juris on page 12 of

their Exceptions. It is clear from a reading of the rule, as there stated, that said rule has no application with respect to the several situations reviewed above, as to which Southern lines would invoke it in the present case. The unfavorable inference from failure to produce applies, according to the rule, only "in the absence of explanation" and as to data which is within the power of a party to produce and not equally accessible to his opponent. It clearly does not apply, moreover, where the fact is not readily available but would have to be made the subject of time-consuming and costly studies (see in this connection, *Boileau v. Pittsburgh & Lake Erie Railroad Co.*, 22 I.C.C. 640, 651 (1912)). Moreover, in quoting as they did from § 156 of 31 C.J.S. Southern lines omitted to bring to the Commission's attention the fact that § 156 goes on to say that:

> "The unfavorable presumption or inference arising from the withholding of evidence is not conclusive against the party, but is merely a fact for the consideration of the jury; *and such failure cannot be relied on by the other party as affirmative proof of facts as to which the burden of proof is on him.*" (Italics supplied.)

Hence, even if it were to be assumed, contrary to fact, that Northern lines had withheld evidence in their possession, the very section of the authority upon which Southern lines rely establishes that any such withholding would have availed Southern lines nothing in the way in which they seek to use it.

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6. The Authorities Support Northern Lines' Position With Respect to Burden of Proof.

The principle which governs with respect to Southern lines' contentions concerning burden of proof is set forth in summary fashion in *Delaware Coach v. Savage*, 81 F. Supp. 293, 296 (Del. 1948):

"Upon the establishment of a prima facie case the burden of evidence or the burden of going forward with the evidence shifts to the defensive party. It then becomes incumbent upon such defensive party to meet the prima facie case which has been established."

To the same effect is *Terminal Charge on Order Bills of Lading Shipments,* 315 I.C.C. 327, 329-30 (1962), where the Commission referred to the provision of Section 7(c) of the Administrative Procedure Act that "Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof", and went on to state:

"In most proceedings before the Commission, the burden of proof is primarily a rule of evidence to insure orderly procedure. Its principal effect is to require the party who asserts the affirmative of an issue—that is, the party who would fail if no evidence were offered—to go forward in the proof. *Cf. Pacific Portland Cement Co. v. Food Mach. & Chem. Corp.,* 178 F. 2d 541 (9th Cir., 1949). However, the other parties who are proponents of a different result then must proceed to sustain their burden of going forward." *Att'y Gen. Manual on the APA 75* (1947).

Also, in *2 Davis, Administrative Law Treatise* § 14.14, it is stated:

"Section 7(c) of the APA provides: 'Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof.' The Committee reports explained: 'That the proponent of a rule or order has the burden of proof means

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not only that the party initiating the proceeding has the general burden of coming forward with a prima facie case but that other parties, who are proponents of some different result, also for that purpose have a burden to maintain.'"

Clearly, therefore, after Northern lines had established their *prima facie* case, it was incumbent upon Southern lines to implement by proof whatever contentions they saw fit to make in their effort to overcome that *prima facie* case.

With respect to Southern lines' burden of proof argument, the Commission should find as follows:

Northern lines established a prima facie case (and established prima facie the propriety of using unadjusted Form A Group average costs in this proceeding) in support of an increase in divisions for that group. Thereupon, the burden of adducing evidence to rebut that case shifted to Southern lines. No part of Southern lines burden of going forward with such evidence can properly be put onto Northern lines, either with respect to individual adjustments in items of cost for which Southern lines contend, or otherwise. Northern lines are not guilty of withholding any information from Southern lines (or of failing to cooperate in making studies to produce information) which properly should have been produced.

Reply to Exception No. 1, B-1, Regarding Southern Lines' Contentions Concerning Car Costs.

Several times in the course of their discussion of this subject, Southern lines say that Official-Southern traffic moves in the same car between the North and the South and that the characteristics of that car do not change as the car crosses the territorial border. This, of course, is a misleading oversimplification of a complex set of facts. The car costs of a given railroad are influenced by such things as wage rates, relative use of its cars by other lines and by it of the cars of other lines, utilization of equipment, depreciation and return factors, charges for repairs to its cars while being used

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by other lines, and many others. The combination and interplay of all of these factors results in that railroad

having a certain cost per car and per car-mile with respect to the cars used and owned by it. More accurate than Southern lines' statement that the characteristics of a car do not change at the territorial boundary would be a statement that car costs do not change for a railroad when it delivers a car to another railroad at a territorial gateway.

Throughout the Southern lines' discussion of the car cost exception, it is stated that the Northern lines' car costs are 32 percent higher than those of the South. This 32 percent results from an assumed set of facts under which unit costs are applied to hauls of 350 short-line miles in the North and South respectively (V.S. 39, p. 62). The assumption is far removed from the actual facts with respect to movements between the North and the South, wherein average route of movement miles for box cars North and South are 428 and 564 miles respectively. Moreover, at any distance greater than 396 miles, the percent of cost North versus South must be less than 32 percent even on a mile for mile comparison.

It is interesting that, although professing in justification of most of the cost adjustments urged by them to "refine" the group Form A cost to bring them more close to the handling of the traffic involved, when it comes to the adjustment in car costs Southern lines disregard the car costs for the two territories and substitute average car costs for the United States, thereby greatly reducing the costs shown for Northern lines below the actual expenses incurred on this account while at the same time increasing their own. Southern lines say (at p. 21 of their Exceptions) that Northern lines had the burden of proving that car costs with respect to North-South traffic are 32 percent higher in the North, and that the Examiners shifted to Southern lines the burden of establishing that average United States car costs should be used in place of the costs of the Official and Southern groups respectively. The Form A formula which both Northern and Southern lines used establishes a method of accounting for all of the

complex car costs incurred by a railroad or group of railroads. Northern lines established

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the propriety of using in this case costs produced by that formula (see discussion re burden of proof, *supra*, at p. 5 et seq.). They made their *prima facie* case. If Southern lines wanted then to rebut that case and establish that car costs for all railroads of the United States are closer to the costs of the Northern and Southern groups respectively, in the transportation of North-South traffic than the average costs for Northern and Southern lines themselves, it was quite obviously Southern lines' burden to prove that patently extreme proposition. Moreover, the reasons for the differences in costs are established by the record, as appears in the Examiner's report and as will appear in the following discussion.

In discussing the Examiners' conclusion that the national average car costs conceal important territorial differences in costs and that separate territorial car costs will be used, Southern lines first discuss the Examiners' reference to the fact that utilization of cars is greater in the South than in the North, 49.5 car-miles per day in the South as against 39.4 car-miles per day in the North (Southern Exceptions, p. 24). Southern lines argue that these figures are average figures representing all traffic in all types of cars. It is important to note that Southern lines concede (Exceptions, p. 25) that "Low utilization of the average car in the North could explain the 32 percent higher territorial average car costs in the North . . ." But they say that system average utilization does not cast any light on the utilization experience with respect to box cars carrying Official-Southern traffic. It may be observed that Southern lines would impute to average car utilization by all railroads throughout the United States a closer relationship to North-South traffic than the average utilization on the lines which perform the North-South transportation.

Contrary to Southern lines' contentions, Northern lines showed that North-South traffic is handled in all respects the same as traffic in general on their lines. It is handled in the same trains, in the same yards, and in all other respects the same as average traffic (V.S. 8). Southern lines say, however, that the record establishes that the utilization of hopper cars is "especially low in the North because of the special car

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detention privileges granted by Northern lines to coal shippers and receivers" (p. 23 of Southern Exceptions). From this, of course, Southern lines (p. 23) ask the Commission to infer that the lower utilization in the North is due to the high percentage of hopper cars "both serviceable and unserviceable". The record shows, however, that (a) the Pocahontas Region, with 67.6 percent of its ownership of per diem cars in open hoppers, secured a utilization in terms of car-miles of 72.2 percent for hopper cars, or considerably more than the percentage that their open hoppers were of their total ownership; (b) Eastern District carriers with an open hopper ownership of 33.5 percent secured a utilization of 30.6 percent thereon and Official Territory as a whole with open hoppers comprising 40.4 percent of their ownership had a utilization of hoppers of 40 percent in car-miles, in contrast with the Southern Region, where the ownership consisted of open hoppers to the extent of 32.8 percent and a utilization in terms of car-miles of only 23.6 percent (V.S. 76, App. A). The poor utilization of hopper cars, therefore, is in the South and Southern lines have no proper objection to a comparison of average utilization on this basis. Indeed, it substantially favors them.

Southern lines insert a table on sheet 26, which purports to show, by an example, that a 23 percent difference in utilization, as measured in terms of car-miles per car day, is produced by a separation between line-haul and

terminal "even if there is no difference at all" in the cost per car-mile or in the cost per terminal service between the two territories. This is an impossible hypothesis. If there is a difference in utilization there is a difference in unit costs. Hence Southern lines' argument that the use of equal car costs per terminal handling and equal car costs per car-mile gives the Northern lines full credit for a difference in utilization by applying those equal unit costs to the cars and car-miles of Northern and Southern lines is entirely without substance. If all of the conditions which a railroad encounters enable it to get substantially more use out of a car than another railroad gets, it is quite obviously cheaper for the first railroad to provide that car than for the second.

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Coming to the second category of causes for higher costs in the North than in the South—differences in taxes and wage rates—Southern lines say first that there is no evidence to support a claim of any difference in taxes "which may affect car costs . . ." (Southern Exceptions, p. 26). They say that the tax comparison was based upon taxes per mile of road and that this "plainly has nothing whatever to do with car costs" (p. 27, Southern Exceptions). This is not correct. The taxes included in Northern lines' figures related to cars, among other things. They embraced all taxes "Other than Federal Income and Payroll Taxes" (Ex. F-4 to V.S. 80). For comparison between the North and the South these total tax figures were expressed in dollars per mile of road, but they applied to cars, to car shops, and other items of property.

Southern lines also state that the "only relevant difference in wage rates cited by Northern lines was a 3 percent difference in maintenance of equipment wage rates" and that such a difference "alone" hardly explains, for application to Official-Southern traffic, "a 32 percent difference" in car costs (p. 27, Southern Exceptions). The fact is that

the wage difference is 4 percent rather than 3 percent. Moreover, it is not claimed that this "alone" explains the entire difference in the costs as between the Northern and Southern roads.

Next, Southern lines say that the difference in wage rates must be considered with "the offsetting fact that material prices are higher in the South than in the North . . ." (Southern Exceptions, p. 27). For this statement they give reference to Tr. 2494-96. A reference to those pages will show that they do not in any way support this statement of Southern lines. There is not one word on these pages, or elsewhere in the record, to establish that material prices are higher in the South than in the North. The fact that they have risen at a higher rate in the post-war period obviously does not establish that prices in the South now are higher than those in the North.

Southern lines also contend that the car costs as presented by Northern lines from Rail Form A are faulty in that those for Southern lines

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are reduced by per diem payments made to Southern lines by other lines for use of Southern cars while operating on the roads of said other lines. They say that if car costs as calculated under Rail Form A were produced by the same methods as under the formula approved by the Commission for per diem rates in *Chicago, B. & Q. R. Co. v. New York, S. & W. R. Co.*, 297 I.C.C. 291 (1955), the fact that differences exist between the two groups of railroads with respect to per diem debits and per diem credits would not be of significance. But Southern lines say that there is an "inconsistency" between the two formulas which results in giving the credit road—the Southern group—an "artificial profit" which is used to reduce its car costs even though the credits accrued to Southern lines with respect to cars carrying traffic not here in issue. The inconsistency is said to result from the fact that depreciation and return on in-

vestment are calculated in the per diem formula on the basis of undepreciated reproduction costs (as to depreciation) and cost of reproduction less depreciation (as to the return element) with return on the latter calculated at 6 percent, while Form A uses original cost in both instances and a 4 percent return.

It may first be observed with respect to this matter that the Commission's decision last cited did not prescribe per diem rates. As the Commission stated, at p. 294:

> "The complainants expressly disclaim any intention to invoke the only specific power with respect to per diem which we have; namely, in section 1(14)(a) of the Interstate Commerce Act to establish 'the compensation to be paid and other terms of any contract, agreement, or arrangement for the use of any locomotive, car, or other vehicle not owned by the carrier using it (and whether or not owned by another carrier), * * *.'"

The Commission's finding, at p. 308, was:

> "We find and declare that the per diem charges of $1.75, $2, and $2.40 were not in excess of reasonable compensation during the periods in which they were effective, and that the latter charge is not in excess of reasonable compensation for present use."

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The $2.40 per diem rate which the Commission found and declared to be not in excess of reasonable compensation was based, as to value of cars, not on cost of reproduction less depreciation but upon an "investment base which was the average of depreciated cost of reproduction and depreciated ledger value" (297 I.C.C. at p. 303).

It may be observed, also, that the per diem formula approved in *Chicago, B. & Q. R. Co. v. New York, S. & W. R. Co., supra,* was designed to give the owning road more than merely the cost of money as measured by current in-

terest rates (297 I.C.C. at 304). Southern lines here recognize "the Commission's purpose in using the reproduction cost base in determining per diem rates" as being an inducement "in the interest of an adequate car supply . . ." (Exceptions, p. 33).

The Southern lines did not show what the effect of the difference in method amounted to, in dollars, in this case. They cite some evidence to the effect that the net credits earned by the Clinchfield's hopper cars result in giving it a negative car cost with respect to the traffic here involved. Instances such as this may be found with respect to individual roads within the groups, but it is group costs which are controlling. Apparently Southern lines did not examine to see if they could duplicate that situation with respect to individual Northern railroads which are heavy per diem credit roads.

After quoting from the recommended report to the effect that the fixing of a per diem rate which is fair as between all railroads and sections of the country is a difficult problem "into which many considerations enter", and that after the rate is determined "it becomes an actual receipt or disbursement settled in dollars and cents and properly a part of the costs for each road and territory in the year incurred" (Southern Exceptions, p. 32), Southern lines state that the theory of the Examiners may have been sound before the inflation of the postwar period but that since the inflation the difference between original and reproduction cost bases produces an artificial profit when per diem credits reflecting the reproduction cost level are applied against Rail

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Form A costs for the same cars calculated by use of the original cost base. It is submitted, however, that the Examiners were correct and their comment is correct now as well as in former years. It is not the manner of determining the per diem rates that is significant. It is the

fact that money was collected for the rental of cars and that the money so collected reduced to the owning roads their total outlay for the provision of a supply of cars to be used in performing their transportation services.

It should be noted that while the stated basic cause of the problem which Southern lines erect is the so-called inconsistency between the per diem base and the Form A base, one of the Southern roads principally involved in the North-South traffic does not agree that there is any inconsistency. In the Southern Exceptions, it is stated at p. 28:

> "Southern Railway System lines do not agree that there is any inconsistency between using original costs in Rail Form A and the use of actual per diem debits and credits. Furthermore, the Southern Railway maintains that, in computing the costs of car ownership, it is proper to credit the excess of per diem credits over cost of ownership to the cost of ownership of the cars involved."

While the Southern Exceptions then go on to say that Southern Railway joins in "the controlling argument" that it is improper to take territorial average car costs influenced by per diem debits and credits on hopper cars, for example, and apply such average car costs to the box car traffic at issue in the present case, it should be noted that actually Southern lines' point is dependent upon the alleged inconsistency (denied by Southern Railway) between the use of original costs in Rail Form A and the reproduction cost in the per diem formula (Exceptions, p. 32).

The case of *Louisville & Nashville R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639 (1963), cited on page 33 of Southern lines' Exceptions is not applicable here. In that case, as the Commission pointed out (p.

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654) the L.&N. furnished "all the coal cars used" in the movement involved, and the per diem charges paid by the

Southern for these cars was "the only actual cost of these cars to the Southern, and must be used in determination of the Southern's costs." It was then stated that the use of reproduction cost for the L.&N. would place the carriers "on an equal footing". Here, no one group or groups of carriers furnishes all of the cars used in the movement. We have here the whole complex of car costs to deal with. It is not the simple situation involved in the cited case. It is interesting that Southern lines have reservations about the sentence of the decision which they cite, for they observe on page 33 of their exceptions, "Whether or not the approach approved by Division 2 in the L.&N. case is correct where the cars that produce the net per diem debits and credits are the cars hauling the traffic at issue, . . ." Thus, Southern lines seem to be suggesting that the L.&N. decision may not have been correct in the L.&N. case but that it may be correct for application in this very different divisions case now before the Commission.

Northern and Southern lines have provided a large number of all kinds of cars that are used in transportation locally on the line of the owning railroad, intraterritorially within the South and within the North respectfully, on one or more lines of railroad, between the North and the South, and between those areas and other sections of the country. The cars are used by shippers and receivers for all of those movements. Rail Form A devises a method to account for the costs of using the cars for transportation on a unit basis. Amounts received for the use of these cars with respect to movement other than those here in issue obviously must be subtracted from the amounts that are otherwise aggregated in arriving at the unit costs per mile and per car. As a matter of principle, the procedure of Form A which require this are, therefore, correct.

It may be observed, in this connection, that in applying Form A in making its burden studies, the Cost Section of the Commission follows the formula just as Northern lines

have followed it in this case. They do not substitute national average costs (V.S. 76, p. 3).

In arguing for the substitution of nation-wide car costs, Southern lines, as previously observed, are proposing that the Commission take

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the cost showing away from the lines which perform the traffic and substitute for their figures a national figure. This, of course, is contrary to what they have been urging with respect to other adjustments. They state that the per diem debits and credits are "substantially offsetting on a national basis" (p. 34, Southern Exceptions). This cannot be persuasive. The Official territory car-mile costs included in Group I for running service, interchange switching, and intertrain and intratrain switching total approximately $291 million. Using the United States car costs as computed by Southern lines' Witness Remington and as applied to the total car miles of Official territory railroads produced $250 million, an amount which is short of the total dollars expended by those lines to the extent of nearly $41 million. While only North-South traffic is involved in this case, if Southern lines' theory with respect to United States car costs were carried to its ultimate conclusion, other interterritorial traffic in which Eastern lines participate (Transcontinental and Western Trunk Line, for example), would have to be priced out on the same basis, thereby leaving Official territory intraterritorial traffic to bear not only the burden of car costs associated with the handling of that traffic but also a large part of the burden of car costs properly assignable to the interterritorial traffic. This, obviously, is improper (V.S. 76, pp. 14-15).

A computation similar to the foregoing one showing a car cost deficit of $41 million for Official Territory carriers on all traffic shows that as to the Eastern District lines United States car costs would leave almost $62 mil-

lion that Eastern District lines would have to "absorb"—an obvious impossibility—by their intraterritorial traffic. This figure represents 25 percent of the total car mile costs of the Eastern District lines. On the other hand, United States car cost applied to the Southern Region statistics in this case would add costs amounting to nearly $9 million, which were never, in fact, incurred by those lines (V.S. 76, pp. 14 and 15).

Southern lines also state that United States car costs are "separated by type of car" (Exceptions, p. 24). This alleged separation by type of car was made by Witness Remington. In the first place, it may be observed that the witness allocated the aggregate car costs among the several types of cars and, in so doing, he assumed that the average

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cost for expenses, rents, and return on investment are the same per car regardless of the type of car (V.S. 76, p. 22). It is superficial in the extreme for Southern lines to say that Northern lines showed costs without separation as between type, while Southern lines separated the costs "by type of car". Secondly, the point is shown to amount to nothing in the light of Mr. Remington's admission that the differences between the several types of cars is insignificant (V.S. 40, Ex. C, p. 14).

Southern lines also contend that the Rail Form A costs for Northern lines represent to the extent of 40 percent the cost of hopper cars "including both serviceable and unserviceable hopper cars" (p. 23 of Southern Exceptions). We have already answered Southern lines' contention with respect to *utilization* of hopper cars. In addition, it should be pointed out that if the effect of a large ownership of open top hopper cars were to increase average car costs, it would be expected that Pocahontas Region car-mile costs would be substantially greater than those for the Eastern District, since, based on the 7-day study, 72 percent of Pocahontas lines' car-miles were made in open hopper cars

as against only 34 percent for Eastern District lines. Yet the car-mile car cost for Pocahontas lines developed by Rail Form A was 1.79 cents as against 3.27 cents for the Eastern District (V.S. 76, pp. 10 and 11).

In here taking the position that hopper car costs are a major factor in making Eastern District car costs higher than those in the Southern Region, Southern lines are inconsistent with the testimony given by their present cost witness on this point, in *I.&S.* No. 6177, *Crude Sulphur—Louisiana and Texas to Virginia,* wherein, at the hearing on April 2, 1954, he testified at page 435 of the transcript as follows:

> "I previously testified in the Grain Case, Docket No. 30744, that in my opinion the cost of maintaining a box car was considerably higher than the cost of maintaining an open trap [top] car."

And certainly the difference in cost (which influences the return and depreciation factors) as between the purchase of a box car and that of an open hopper or gondola is not in favor of Southern lines'

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contention that average car costs deal unfairly with box cars. In 1959, for example, the average cost of general service box cars in the United States was $9,851; that of open hoppers, $8,715; and gondolas, $8,409 (V.S. 76, p. 11).

It is stated also by Southern lines on p. 23 of their Exceptions that a greater percentage of Eastern District hopper cars are over 25 years old than is true with respect to the hopper cars of the Southern Region roads. If the percentages of hopper and all freight cars given for Official Territory and Southern Region on p. 47 of V.S. 39 are applied to the cars owned as shown in Appendix A to V.S. 76 and the "old" hopper cars are subtracted from the "old" freight cars of all categories it will be found that the re-

mainder of the cars over 25 years old—that is cars of this category other than open hopper cars—are as follows:

	Cars	*Percent of Old Cars that are Non-Hopper*
Official Territory	181,784	57.96
Southern Region	54,641	69.48

If the age of freight carrying cars is an important factor in accounting for car cost differentiation within territories, Southern lines may not properly object to the use of a territorial Rail Form A cost which reflects the cost of maintaining cars involved in handling the traffic at issue which constitute approximately 69% of their cars that are over 25 years old.

Moreover, with respect to the matter of old cars in the North, it should be observed that many of these cars have been rebuilt. This is true, not only with respect to hopper cars, but applies to all freight cars and the rebuilding, at least from a cost standpoint, puts so much new material into an "old" car that it may be considered as a new car (V.S. 76, p. 10).

Southern lines' complaint that there are unserviceable hopper cars in the North also overlooks the fact that there are cars undergoing or awaiting repairs—"unserviceable" cars—of all types, not just in Official Territory but in the South as well (V.S. 4, Ex. A, p. 8).

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It is stated on p. 20 of Southern lines' exceptions that the Examiners seek to minimize the importance of the difference in car costs by showing that the difference for an illustrative box car is $3.93, and comparing this with the total out-of-pocket cost of the same service in the Southern Region of about $85.00. Southern lines state that the source of the $85.00 figure is not known. The sentence may be eliminated as not important to the consideration of car costs.

Southern lines suggest that car costs are greatly influenced by types of cars owned by each group and that over 80 percent of the per diem cars used in the North-South traffic are box cars. But if national car costs are to be used because box car use is here greater than the percent of box car ownership by Official or Southern lines, the same reason would disqualify the use of the national average since national box car ownership is only 43.3 percent (V.S. 76, pp. 7-8 and App. A). Even the box car percentage in the Western District, which is the highest, does not approach the percentage of box car use here.

The fact that the same tare weights are used by the Cost Finding Section obviously does not mean, as Southern lines would have the Commission infer, that a national car cost should be used. The matters are completely different.

The allegation of Southern lines on page 35 of their Exceptions to the effect that Northern lines withheld certain information relating to box car costs was answered under our discussion of burden of proof, *supra*, at pages 23-25.

The Commission should find that the Examiners were correct in adhering to the car costs as produced by Rail Form A, that each of the objections of Southern lines with respect thereto is without merit, that the average car costs of Northern and Southern lines as determined under Rail Form A is closer to the traffic here in issue than the average car cost of all railroads in the United States as calculated in connection with the per diem rate, and that the use of the United States average costs, as suggested by Southern lines would be improper.

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Reply to Exception No. 1, B-2 Concerning Empty Return Ratios.

Southern lines' criticisms of the Examiners' conclusion as to the appropriateness of suggested adjustments in box and refrigerator car empty return ratios for the two terri-

tories, clearly reveal the oversimplification indulged in by Southern lines in their "special studies" of this important element of cost. Alleged "refinements" which, as here, cannot be shown to constitute a measure of the traffic at issue, except through reliance upon the feeble foundation of half-truth and uncorroborated assumption, cannot properly be substituted for valid and comprehensive studies affirmatively shown to be applicable to the subject traffic.

Southern lines themselves display a noteworthy lack of confidence in their own proposed adjustments in box car and refrigerator car empty return ratios by arguing upon Exceptions in the alternative (1) that such adjustments are sound and should have been adopted by the Examiners and (2) that even if those adjustments weren't very reliable, Northern lines have not sustained the burden of establishing the appropriateness of the territorial empty return ratios based upon the Commission's 7-Day study. It will be seen that both of these contentions are utterly lacking in substance.

Southern lines are understandably content to gloss over the precise details of the special studies upon which they rely for the suggested adjustments of empty return ratios—notably that for box cars in Official territory—since they will not withstand careful scrutiny, as the Examiners recognized. This demonstrated tendency towards reliance upon the unproved generalizations is best typified by the frequency with which the Exceptions employ the word "solely" in claiming cause and effect. Such obvious oversimplification demonstrates an inexcusable failure to appreciate the intricacy of railroad operations and the fact that the interrelationship of a number of variables often pulling in opposite directions, precludes the determination of the effect of a

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given influence. It is fair to characterize this failure as inexcusable because the Southern lines' witness who made and sought to justify the suggested "refinements" in empty

return ratios readily acknowledged that many factors contribute to empty ratios (R 1665).

The impression is conveyed upon Exceptions that the special studies made by Southern lines were simply aimed at correcting the box car empty return ratios for automobile parts traffic and the refrigerator car ratios for fresh meat traffic and that the adjustments largely reflect the elimination of such influences. Only casual reference is made to the fact that the suggested adjustment for Official territory from 39% to 30% was originally said to be premised also in part upon alleged imbalance in Official-Canadian traffic and most significantly, no mention whatsoever is made of the last stage of that adjustment (from 32.53% to 30%) which rests upon nothing more substantial than the admittedly untested assumption by Witness Cole that there is more assigned box car service in the North, on commodities other than automobile parts, than in the South because the former is said to be more industralized (R 1694-95). It will hereinafter be demonstrated in further detail that each of the suggested adjustments in territorial empty return ratios is the result of a pyramiding series of assumptions, each more drastic and unreliable than its predecessor, and all rendered the more misleading by being interwoven with facts the existence of which, in some undisclosed degree, no one has ever denied.

It is further submitted that Southern lines' argument respecting the burden of proof is effectively disposed of and, indeed, the Examiners' ultimate conclusion confirmed, by the holding of the Commission in the *Transcontinental Division* case, *supra*. Northern lines' burden of demonstrating the relative service costs which justify the relief sought herein, was fully satisfied by the presentation of cost studies which reflected, among other refinements, the territorial average empty return by car types developed in the Commission's 7-Day study. The factors used reflect the compilation of actual data on a comparable basis under

the Commission's order and, for this reason, are clearly superior to the unsubstantiated and non-comparable adjustments advocated by Southern lines.

The appropriateness and fairness of applying the Commission's empty return factors to the involved Official-Southern traffic is amply demonstrated by the evidence of record that this substantial block of traffic partakes of all of the myriad operating conditions which influence the loaded and empty movement of railroad equipment. In the *Transcontinental Divisions* case, *supra*, the Western railroads likewise disputed the applicability of territorial empty return ratios and introduced a cost adjustment based upon a partial tracing of a traffic sample.* The Commission expressly rejected such adjustments in its restatement of costs in that proceeding and adopted the empty return ratios from its 7-Day study. The Commission there concluded that "for a large and varied body of traffic as here at issue, territorial average costs will be the substantial equivalent of specific costs" (Sheet 45).

(a) Box Car Empty Return Ratios.

The Examiners have accurately summarized the several adjustments in box car empty return ratios developed by Southern lines as reflecting a decrease for Official territory from 39% as developed in the 7-Day study to 30% and a corresponding, but vastly more modest, "refinement" from 33% to 30% for Southern Region. The very fact that Southern lines undertook to reduce Northern lines' box car ratio by three times as many percentage points as their

* It is interesting to observe that the adjustment urged by Western lines in the *Transcontinental Divisions* case would have substantially reduced the Official Territory empty return ratio to 18%. If credence were to be given to each of the adjustments separately urged by Western and Southern carriers in the several interterritorial divisions proceedings, it would be necessary to conclude in defiance of the laws of mathematics, that each of the parts has a lower average ratio than the whole.

own ratio is so striking as to require a clearcut showing of justification for such obviously biased adjustments. This becomes particularly true when it

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is noted that the methods employed for each were markedly dissimilar, as the Examiners properly recognized (Sheet 44). This will become more apparent upon detailed consideration of the Official territory adjustment submitted by Southern lines. It is not here proposed to discuss the box car adjustment for Southern Region (from 33% to 30%) which must fall of its own accord for lack of comparability upon demonstrating the invalidity of the adjustment made in the box car empty return ratio for the Official territory carriers.

Southern lines' great emphasis in their Exceptions upon automobile parts traffic previously noted, would leave the impression that the entire adjustment in the box car empty ratio for Official territory, from 39 to 30 percent, or in any event the greatest part of it, had been made to allow for the asserted influence of this traffic upon the costs here shown by Northern lines. In actuality, however, no such broad claim was made by Southern lines' witnesses. As Witness Cole very clearly indicated on the record, the adjustment in the box car empty return ratio for Official Territory carriers which he had developed for Southern lines, was accomplished in three independent stages. Only the first of these steps, the net effect of which was to reduce the ratio from 38.93 to 34.66 percent, purported to eliminate the claimed influence of automobile parts traffic upon empty box car miles in the North. It necessarily follows, therefore, that even if the Commission were to embrace all of the assumptions upon which the vehicle parts portion of the total adjustment is premised, the box car empty return ratio for which Southern lines contend could not be sustained. Those lines did not contend that the asserted influence justified reducing the Official Territory ratio below 34.66 per-

cent, still substantially higher than the adjusted box car ratio of 30 percent computed for Southern Region.

The second stage in Southern lines' box car adjustment for Official Territory was said by Witness Cole to account for a further reduction in the ratio from 34.66 percent, which naturally assumes the validity of the first step adjustment for auto parts, to 32.53 percent (V.S. 39, p. 32). This further decrease was sought to be justified by an alleged inbalance in the directional flow of Official-Canadian traffic to be further discussed below.

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Of most striking significance is the third stage of Southern lines' adjustment of the box car empty return ratio for Official Territory from 32.53 percent to the final 30 percent figure reflected in Southern line's cost studies. Whereas the auto parts and Canadian traffic steps which produced the 32.53 percent ratio had at least some pretense of justification, the third stage adjustment is clearly a blatant "judgment" distortion. Southern lines' noteworthy silence concerning this stage upon Exceptions is readily understood in the light of the testimony by the witness who undertook to support this adjustment that he hadn't even made a calculation, let alone an investigation, of the purported basis for the adjustment (R. 1694-95). It is in part upon the strength of this unadulterated assumption, accounting for almost 30 percent of the total claimed adjustment, that the Commission is here asked to reject the results of its comprehensive 7-day study of box car empty return experience. The particular arguments respecting box cars advanced by Southern lines upon Exceptions will now be examined in further detail.

(i) Empty Return Ratios for Application to Automobile Parts Traffic.

The careless generalizations and assumptions to which reference has previously been made are rampant in Southern lines' discussion of the influence of auto parts traffic

upon box car empty return ratios in Official territory. The Examiners have very carefully considered the five categories of proof adduced by Southern lines in support of this adjustment and, after analysis, soundly concluded that while they "tend to show that these cars have an effect on the empty ratio", they "do not support any conclusion as to the amount of the effect" (Sheet 42).

This is a necessary conclusion from the series of assumptions made by Southern lines to bridge the gap between evidence isolating empty experience by car types and statistics showing the volume of commodities handled. The sequence of assumptions underlying Southern lines' adjustment whereby they sought to bridge this gap, reduced to its fundamentals, is, in effect, that (1) automobile parts move in special device box cars, (2) special device box cars are un-

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suitable for return loading, (3) box cars unsuitable for return loading move in assigned service, and (4) cars in assigned service incur a 100 percent empty return movement (V.S. 39, 24-25). The auto parts portion of the adjustment falls down, however, once it is recognized that none of these assumptions is entirely true. It is Southern lines' willingness to generalize about mixed factual situations (degree of fact and fiction unknown) which is here so inconsistent with the purported purpose of producing more accurate refinements in costing out the particular traffic here in issue.

The general categories of special device and general purpose box cars here sought to be distinguished by Southern lines each include numerous distinct classes of equipment of varying physical characteristics. The general description of special device box cars was employed by Southern lines to refer to the six classes XAP, XAR, XML, XMP, XMR, and XT (R. 1690-91). Thus, while it is true that "many of these cars are fitted with special devices to pro-

tect the automobile parts in transit" as stated by Southern lines (p. 39) it is equally true that many others are not so equipped. Hence, as Witness Clark pointed out (V.S. 73) some special device cars, particularly Classes XML, XMP and XMR, need not be dedicated to particular commodities and are regularly used for a variety of miscellaneous commodities with consequent reduction in empty mileage. It naturally follows that cars falling within the category of special device box cars which are, in fact, suitable for return loading do not incur the 100 percent empty return assumed in Southern lines' cost restatement, and are actually indistinguishable from general purpose cars in this respect.

Neither may it fairly be assumed, as Southern lines have done in endeavoring to distinguish between special device and general purpose box cars, that the latter cars are *not* in assigned service and, hence, would not incur a 100 percent empty return with any degree of frequency. Witness Clark pointed out that in Official Territory, in any event, general purpose XM cars are often assigned to particular industries (R. 2383).

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The degree to which empty return mileage is incurred depends, in the ultimate, upon the service in which the car moves rather than the Railway Equipment Register classification of the car as a general purpose or special device box car. It is not disputed that the tendency on the part of many shippers to request assigned cars has had an effect upon the empty mileage of carriers in all territories. But such assignments are found for both special device and general purpose box cars and there is no study of record which will enable the Commission to determine the degree to which each type of car is moving in assigned service. Certainly the extent of box car assignments and, hence, of empty return mileage, cannot be determined with any reasonable degree of accuracy from the commodity statistics as here urged by Southern lines.

A major illustration of the foregoing defect in the causal chain here sought to be forged by Southern lines is found with respect to the very commodity, vehicle parts, upon which they rely in justification of the first stage in the advocated adjustment. It is acknowledged upon Exceptions that not only does 12 percent of the Official territory automobile parts traffic not move in any type of box car, but the record is clear that, of the box car movement of this commodity, a substantial proportion moves in general purpose cars (R. 2393). Moreover, included among the other commodities regularly handled in special device box cars within the South as well as elsewhere are stoves, refrigerators, freezers, washing machines, dryers, dishwashers and numerous other commodities (R. 2355). Clearly, therefore, the claimed direct relationship between special device box car equipment and the volume of automobile parts traffic moved in the North, has not been established.

Southern lines' reliance upon the findings of the Commission in the so-called *"Border Point" Division* case, *Louisville & N. R. Co. v. Akron, C. & Y. R. Co.*, 309 I.C.C. 491 (1960), cannot properly be made the basis for here rejecting the conclusions recommended by the Examiners. As indicated by the Southern Exceptions (P. 42) that proceeding involved but about 32,000 cars as contrasted to the 967,554 cars here involved. Even more significantly, the L.&N. "border

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point" traffic was largely composed of vehicle parts and electric appliances moving to or from Louisville, Ky. It is a vastly different situation to suggest the development of specific data for a dominant commodity such as vehicle parts in the *Border Point* case, and to here conclude, as urged by Southern lines, that a "large and varied body of traffic" "including virtually all commodities and all types and degrees of service and equipment be similarly adjusted.

Whatever the appropriateness of the Commission's finding as to the heavy automobile parts traffic involved in the *Border Point* case, clearly they should here be governed by their more pertinent and more recent conclusion in the *Trans-continental Divisions* case that the empty return ratios developed by the Commission's 7-Day study are a fair and valid measure of the entire body of interterritorial traffic such as here in issue, and that relative service costs should be restated accordingly.

(ii) Empty Return Ratios for General Purpose Box Cars.

The difficulty of matching separately developed data respecting car types owned and operated to statistics showing commodities transported, even for all traffic in the aggregate, has already been discussed. The additional problem, where a particular body of traffic is sought to be isolated from the total, of assigning intervening empty mileage in whole or in part to prior or subsequent loaded movements presents still another insuperable task. Manifestly, if equipment were to be exclusively dedicated to a particular body of traffic such as the Official-Southern interterritorial movement here in issue, the latter task would be vastly more possible of achievement, but that, of course, is hardly a practical solution. This difficulty becomes significant with the realization that cars, of whatever type, often incur empty mileage between two loaded moves only one of which may be here involved. The Commission early recognized the difficulty of allocating such empty mileage to particular traffic. *Rate Structure Investigation, Part 12 Nonferrous Metals,* 204 I.C.C. 319, 351. More recently, the essentially systemwide overhead character of empty cars and empty miles was reiterated in *Export Soybeans—Southwest and South to Gulf Ports,* 309 I.C.C. 455, 459.

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The problem of allocating empty miles which is common, of course, to all cars, is worthy of comment at this juncture because it points up the difficulties inherent in all

necessarily arbitrary allocations of data respecting versatile and interchangeable units, including that workhorse of the railroads, the box car. Southern lines' practice of concealing significant distinctions by employing sweeping—but inaccurate—generalizations is aptly illustrated by their reference to special device box cars as being synonymous with assigned cars, and general purpose box cars as being equivalent to cars which are not in any assigned service. In actuality, while the degree of assignment, and, hence, presumably empty miles, may well prove to be greater for special device cars, nevertheless as previously demonstrated, there are a substantial number of box cars, classed as special device in the Railway Equipment Register, which are suitable for and in fact used for general loading. Correspondingly, there are a growing number of general purpose box cars which, in practice, are assigned to a particular service. Thus, where the inquiry is directed towards determining empty miles, the distinctions, whether in terms of car types owned, or tonnage handled by commodity, tend to break down and merge together.

Southern lines persist in "fighting the problem" by repeating upon Exceptions (p. 44) the arithmetic of applying an empty return ratio of 100 percent to special device box cars (or asigned box cars; it's not clear which) and 30 percent to general purpose box cars. This is precisely the same computation considered by the Examiners (Sheet 40) as to which they thereafter concluded:

> "This is merely a computation showing what the effect would be if certain assumptions are made. By itself it does not prove that those conditions actually exist." (Sheet 42)

While Southern lines' mathematical ability is here again above reproach, it is noteworthy that they do not even attempt to meet the Examiners' criticism by undertaking to show that the conditions in question do "actually exist". Instead, they resort once more to the oft-repeated argument,

apparently deemed to provide a valid excuse for their failure of proof, that Northern lines failed to sustain

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the burden of proof and were at fault in refusing to supply the voluminous data sought by Southern lines to make further special studies of box car loaded and empty movements in Official Territory.

The soundness of the Examiners' rejection of the foregoing mathematical exercise as founded upon pure conjecture is confirmed by Southern lines themselves. The following statement upon Exceptions (pp. 44-45) is worthy of quotation for a number of reasons as will presently become more apparent.

> "Thus, *assuming* that the empty return ratio for each category of box cars is the *same* in each territory, the territorial average empty return ratio for all box cars is 18 per cent higher in the North (39 per cent instead of 33 per cent) *solely* because of the different and higher proportion of special box car to total box car movements in the North." (Some emphasis added.)

The 18 percent difference in the territorial empty return ratios upon which Southern lines here concentrate their firepower, represents the actual recorded difference between the two territories shown in the Commission's 7-Day study. The essence of the foregoing statement is that if things are assumed to be alike, they shouldn't be different, with which no one will disagree. It is abundantly true that if the ratios are assumed to be the same in each territory, as Southern lines suggest, one might well demand an explanation of the difference in the territorial average. But the simple fact is that the box car empty return ratios are not the same for the two territories; and all the illustrative computations in the world, even though they may be expected to be "arithmetically consistent" with Southern lines' theory underlying the adjustment in question, cannot make them the same.

It is consistency with fact, rather than with theory, which must here be controlling, and that showing, as the Examiners properly found, is noticeably lacking.

The above-quoted statement from Southern lines' Exceptions is additionally misleading and highly inconsistent in its suggestion that the assailed 18 percent difference between the territorial empty return ratios of 39 percent in the North and 33 percent in the South

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exists "solely" because of the greater proportion of special device to total box car movements in the North. As indicated earlier, the cumulative three step adjustment in the ratio for Official Territory from 39 to 30 percent was based upon three independent assumptions and did not even purport to "solely" reflect any one of the assumed conditions. Thus, only a portion of the overemphasized 18 percent difference was ever claimed by Southern lines' witnesses to be justified by the "higher proportion of special box car movements in the North."

The basis for Northern lines' refusal to join in the empty return study, once again assailed upon Exceptions, is fully stated in their Brief (pp. 138-144), here requested to be incorporated by reference. It was there demonstrated in detail that Northern lines declined to furnish the data requested for the good reason that it could not be meaningful for the purpose for which it was sought. The soundness of Northern lines' conclusion not to join in the studies is confirmed by the Examiners' findings as to the inconclusiveness of Southern lines' special studies.

It is interesting to note that Southern lines' exact request contained in Appendix B to their Notice of February 15, 1960, was that Northern lines "join in furnishing data which will provide a precise separation of box car empty return ratios as between box cars available for general loading and special device cars not suitable for return loading." The statement upon Exceptions that "all that the

Northern lines were requested to contribute to the proposed study were the car initial and number, and the loaded and empty miles of each box car moving over their lines during the study period" (p. 46) makes it clear that no worthwhile data could thus have been developed. Any such tabulation would still have left unanswered the questions of: (1) the degree to which cars classified as special device box cars are suitable for and employed in handling general commodities; (2) the extent to which commodities predominantly moved in special device cars, such as automobile parts, also move in general purpose box cars; (3) the extent to which all box cars, whether general purpose or special device cars,

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move in assigned service and incur 100 percent empty return mileage; and (4) the standards by which such a study could be used to develop empty return ratios "appropriate" to Official-Southern traffic.

Since it was clear that Southern lines' requested study would have disclosed no information whatsoever with respect to the commodities contained in the study box cars nor would it have provided any specific data as to empty return experience on Official-Southern traffic, the request was declined. This is the reason that Northern lines' witness explained the necessity to "consider the object when we consider whether we want to comply" (R. 2371) in the testimony quoted upon Exceptions (p. 46), and not because Northern lines had any crystal-ball indication of the result of such inquiry as Southern lines suggest.

The purport of Southern lines' Exceptions is that they should be excused for a failure of proof on their part and Northern lines should be penalized in this case because the latter declined to cooperate in a costly and time-consuming compilation of data which they knew to be useless for the purpose for which it was sought, in order to expand a study which the Examiners have now properly recognized

to be defective. The Commission will quickly recognize the substantial distinction between a request to produce *relevant* data in the possession of one party to a proceeding and the request of Southern lines on this record. The latter request would have shed no light upon Southern lines' contention that the Official Territory empty return ratio developed by the Commission's 7-day study is heavily influenced by the movement of a particular commodity, automobile parts, by allegedly imbalanced Official-Canadian traffic, and by allegedly greater industrialization in the North.

The necessary transition from empty return ratios developed by types of equipment to the application of those ratios to particular commodities or bodies of traffic has not been bridged by Southern lines' evidence on this record and would not have been accomplished had Northern lines joined in making identically deficient studies in Official Territory. In simple terms the issue here is not empty return

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ratios separated between special device and other box cars, but rather the proper relative cost of handling the involved traffic. On the latter issue, the several assumptions inherent in the special studies of Southern lines produced a "generous margin of error", as the Examiners properly recognized, which would have been equally present in any corresponding application of data for Northern lines that might have been provided.

The second category of evidence presented in support of Southern lines' auto parts adjustment, fairly summarized by the Examiners at Sheet 40, partakes of the same difficulties as the requested study and Southern lines' other computations, in that the Commission is asked to translate car ownership into empty return ratios appropriate on Official-Southern traffic with no assistance other than a series of uncorroborated assumptions. Southern lines now

seek to nullify the Examiners' criticism of the ownership test as failing to reflect car miles operated in other territories, by indulging in still another assumption from their seemingly inexhaustible supply. It is now urged that the acknowledged fact that special device cars of Northern lines' ownership incur car miles in other territories "does not affect the comparison because this is offset by the fact that special device cars of Western (and Southern) ownerships run car-miles in the East." (p. 48).

The further assumption that car-miles in the several territories are equal and offsetting is entirely uncorroborated and, indeed, would seem to be effectively rebutted by the disparity in the numbers of special device cars owned, earlier pointed out by Southern lines. Neither is there any justification for the subsequent assumption by Southern lines that the ownership of special device cars "is in proportion to the service performed by the participating railroads" (p. 48). While it is undeniably true that car pools serving important plants at specified points are frequently composed of equipment contributions reflecting the line-haul participation of the contributors, it is unreasonable to make such an assumption with respect to the entire ownership of special device cars recited by Southern lines.

As a necessary part of Southern lines' contention that automobile parts traffic exerts a substantial influence upon box car empty return

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experience in the North, they undertook to show, by reference to the commodity statistics, that Commodity Group 623, Vehicle Parts, represents a greater proportion of total Manufactures and Miscellaneous traffic in Official Territory than in Southern Region. This showing, reproduced by the Examiners in the Table at Sheet 41 of the Report, was appropriately recognized to provide an imperfect guide to the attempted distinction between special device box cars and general purpose cars. Thus, the Examiners soundly

concluded that the foregoing commodity comparison "does not measure the relationship of special box cars to total box cars for the reason that many box cars carried commodities other than manufactures and miscellaneous and that vehicle parts do not all move in special box cars" (Sheet 42).

The assorted utilization of box car equipment has already been discussed and is fully confirmed by Southern lines' comments upon Exceptions. Recognizing that only 88 percent of the total vehicle parts movement in the North was in any type of box car, Southern lines now suggest that it is immaterial whether the aggregate box car movement of this commodity group was in special device or general purpose box cars (p. 49). Certainly, this highly indiscriminate approach is at odds with Southern lines' earlier emphasis upon the necessity for segregating empty box car miles between special device and general purpose cars which, it might be noted, was the only thing that could conceivably have been accomplished by the extensive study in which Northern lines were requested to join.

Southern lines now seek to overcome this dilemma by arguing that it is of no consequence whether or not the box car movement of automobile parts was in special device or general purpose cars because "all the cars are assigned to the automobile parts movement and are returned empty to the parts mnaufacturing plants'" (p. 49). Analysis of this rather broad generalization reveals two familiar assumptions, neither of which is sustained by the record as previously demonstrated. First, there is no evidence that all of the box car automobile parts traffic moves in assigned cars. Secondly, to the extent that general

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purpose cars are employed for this commodity, not only are such cars "suitable" for return loading but an illustrative study made by Northern lines established that the box cars carrying auto parts, even some of those classified as

special device, are in fact used for return movements (V.S. No. 73, pp. 14-15).

The further argument that traffic statistics for Manufactures and Miscellaneous afford "a convenient measure of total box car traffic, no other measure being available in the annual reports" (p. 49), hardly justifies substituting convenience for accruacy. Southern lines do not dispute the Examiners' finding that "box cars carry many commodities other than manufactures and miscellaneous" but rather urge that this defect in their evidence is "offset" by the further deficiency in the involved comparison occasioned "by the fact that many manufactures and miscellaneous commodities move in cars other than box cars" (p. 49). These contentions merely serve to confirm the Examiners' conclusion that there is no measurable correlation between commodity statistics showing the volume of Manufactures and Miscellaneous shipments and the type of rail equipment in which such commodities are in fact transported. If further support for this finding is required, it might be noted that a substantial volume of Manufactures and Miscellaneous movements including freight forwarder shipments, provide return loads for refrigerator car equipment. All of these comparisons confirm the comment by a Northern lines witness quoted upon Exceptions (footnote p. 46) that Southern lines' studies assumed "an inevitable relationship between a commodity class and type of equipment" (V.S. 73, p. 3).

Turning now to the fourth showing made by Southern lines summarized by the Examiners at Sheet 41 of their Report, it is submitted that the compared box car empty return ratios for selected Northern lines serving Detroit, Mich., likewise fail to sustain the adjustment for Official Territory here being considered. This comparison is but another illustration of Southern lines' undertaking to account for all differences in terms "solely" of the particular variable that they deem to be influential which, of course, necessarily assumes all other things to be equal. Whatever

the nature and degree of the influence of automobile parts traffic upon the empty return ratios of participating carriers

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whether serving Detroit or not, which clearly has not been determined on this record, the Commission is well aware that such ratios are a composite reflection of a number of independent variable factors. Absent a showing that all other variables affecting empty return miles of the compared carrier groups are equal, it is impossible to attribute any differences between the respective ratios to the influence of automobile parts traffic, as Southern lines here urge, or to any other category of traffic. The Examiners properly recognized the presence of such other factors in concluding, as they did with respect to this showing, that "a comparison based on only three observations could easily be a coincidence or caused by some unknown factor" (Sheet 42).

The existence of such other factors influencing empty return ratios is demonstrated by the very comparison upon which Southern lines here rely. Referring to the subject Table at Sheet 41 of the Report it should be observed that for the Official lines, other than those shown as serving Detroit, vehicle parts traffic represents 4.2% of total box car traffic. These "Other Official" lines are shown as having a box car empty return ratio of 34% based upon the 7-day study. Similarly, the Southern region carriers with but 2.6% of their box car traffic represented by vehicle parts have the almost identical empty return ratio of 33%. Thus, it can be concluded from this comparison with equal appropriateness that a 60% increase in the vehicle parts proportion of total box car traffic (4.2% as compared to 2.6%) exerts virtually no influence whatsoever upon the box car empty return ratios of the compared "Other Official" and Southern Region carriers (34% v. 33%). This conclusion is equally as reasonable as that here urged by Southern lines from the same data based upon the total experience

of the Detroit carriers and serves to substantiate the Examiners' conclusions that, first, the data is too sparse for any sound conclusions and, second, there are clearly other unknown and untested factors present which likewise affect the several empty return ratios here compared.

The foregoing comments apply with equal force to the argument premised upon the empty return experience of the Detroit, Toledo & Ironton Railroad, an acknowledged volume auto parts carrier. As

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may be noted from the testimony of Witness Heywood, to which Southern lines refer upon Exceptions (p. 51), Northern lines have never disputed the likelihood that auto parts traffic has some unmeasured influence upon box car empty return ratios to the extent that the traffic may move in directly assigned cars. The Examiners have expressly found that such cars "have an effect on the empty ratio, but do not support any conclusion as to the amount of the effect" (Sheet 42). The record here confirms this conclusion by demonstrating, first, the impossibility of measuring that effect with any degree of reliability and, second, the existence of other variable factors which likewise "have an effect on the empty ratio" and cannot properly be discounted on the uncorroborated assumption that all such variables are equal in the two territories. Clearly, the pyramiding assumptions indulged by Southern lines in seeking to isolate the influence of vehicle parts traffic upon territorial box car empty return ratios cannot properly be made the basis for substituting equal ratios in each territory in lieu of the more comprehensive and reliable experience reflected in the Commission's 7-day study. This is particularly true in view of the affirmative evidence of record that the large body of Official-Southern traffic here in issue runs the gamut of service in both territories and therefore encounters in equal degree all of the variables affecting box car empty return ratios.

The validity of the second step adjustment in the Official Territory box car empty return ratio, sought to be justified by Southern lines as compensating for an alleged imbalance in Official-Canadian traffic, has already been alluded to briefly in describing the three cumulative stages whereby Southern lines undertook to reduce the ratio North from 39% to 30%. It has been seen that this particular theory was made the basis for "adjusting" the Official Territory ratio by 2.13%, i.e., from 34.66% to 32.53%. The rationale of this adjustment, as explained by Southern lines Witness Cole, was "to exclude the 1,275,000 miles of empty movement that can be attributed solely to directional flow of this Canadian traffic" (V.S. 39, p. 32). Here again all other variable influences were arbitrarily rejected on the theory that differences, if any, are "solely" attributable to the selected variable, not-

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withstanding the witnesses' recognition of the existence of such other factors (R. 1665). Witness Cole further acknowledged that he would expect a box car empty return ratio of about 25% on all traffic, including Official-Canadian, as a consequence of other factors, irrespective of directional flow or imbalance between loaded and empty cars (R. 1664-65). This would confirm the obvious fact that directional flow, like other variable influences sought to be isolated by Southern lines, cannot be separately assessed but rather must be treated as an integral part of the sum total of the several variable factors affecting empty mileage.

Thus, clearly, while the hypothetical 19% empty return ratio computed by the examiners for Official-Canadian traffic (Sheet 43) theoretically could occur, it is most improper to add that ratio to the territorial average ratio for general purpose box cars, which is apparently what Southern lines now suggest (pp. 53-54). Furthermore, even if it could be determined with any degree of reliability that the factor of directional imbalance "solely" produces

a 19% empty return ratio on Official-Canadian traffic it would be manifestly improper to adjust the territorial ratio for Northern lines to reflect this assumed influence without at the same time independently appraising the separate effect of each of the other variables upon this traffic to determine whether the result is cumulative, as suggested by Southern lines, or offsetting as the Examiners undoubtedly concluded in finding that "the figures given as to the unbalance in traffic flow do not appear to indicate that Canadian traffic has a greater empty return ratio than other traffic" (Sheet 43).

It should again be emphasized in concluding the discussion of box car empty return ratios that Southern lines' Exceptions completely fail to reflect the totality of the arguments previously advanced in justification of the proposed adjustment in the Official Territory box car empty return ratio from 39 percent to 30 percent, whereas they discuss at some length the asserted impact upon this ratio of auto parts traffic and imbalance in Canadian traffic, the entire adjustment was a *three*-step computation, as previously noted. It follows that even if the Commission were to accept Southern lines' contentions respecting

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the influence of auto parts and Canadian traffic upon the box car empty return ratio for Official territory, and were further to assume the validity of Southern lines' efforts to measure such influences, these two steps would justify an adjustment only to 32.53 percent rather than to the 30 percent figure which Southern lines substituted in their cost presentation. The deficiencies in the first two steps have already been fully disclosed. The fact that Southern lines elected to entirely ignore the third step in this adjustment upon Exceptions should itself be convincing proof of the invalidity of this computation. As previously indicated, the final step adjustment from 32.53 percent to 30 percent designed to make the ratio North conform to that

in the South, as adjusted, was based upon the admittedly uncorroborated and, indeed, untested assumption by Southern lines' Witness Cole that there are more box cars in Official territory in assigned service, other than for the movement of auto parts, than in the South because the former is more industrialized. Even if the assumption were a valid one, the record fails to disclose the method whereby Southern lines assessed the degree of this purported influence at precisely 2.53 percent.

The foregoing discussion of box car empty return ratios fully demonstrates the inadequacy of Southern lines' evidence on this subject and the shocking extent to which their contentions rest upon both unwarranted generalizations of fact and a series of untested assumptions, each of which ignores the existence of other variable factors influencing empty return. The Commission should properly find, therefore, as did the Examiners, that the Commission's 7-day study provides the most accurate and reliable measure of empty return ratios on box cars for the respective territories.

(b) Refrigerator Car Empty Return Ratios.

The rationale of Southern lines' adjustment in empty return ratios for refrigerator cars in the two territories is similar in substantial part to that previously discussed for box cars. Thus, whereas the allegedly influential commodity affecting box car ratios was said to

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be auto parts, a similar role is claimed for fresh meats in the refrigerator car adjustment. The stated purpose of the adjustment as explained by Witness Cole was:

> "to apply separately the empty return ratios of 100% for such special movements as fresh meats [215] and bananas originating at New Orleans on the Illinois Central, and to develop an appropriate empty return ratio for the general movement of refrigerator car

traffic which are not influenced in different degrees in the respective territories by the empty return ratios for specialized commodities." (V.S. 39, p. 35)

In lieu of the empty return ratios of 90 percent for Eastern District and 86 percent for Pocahontas Region, Southern lines substituted a 75 percent ratio for Official territory based upon a fragmentary study of Fruit Growers Express Company cars to be further discussed below. At the same time that the refrigerator car ratio for Northern lines was *reduced*, Southern lines *increased* their own ratio from 76 to 84 percent. The ratios first recited above were developed by the Commission's 7-day study. This study is now said to be unreliable for failure to reflect the "highly seasonal characteristics of the traffic moving in refrigerator cars" (p. 54). But, as the Commission is well aware, the separate 7-day studies are customarily spaced at intervals throughout the calendar year in order to reflect the very seasonal characteristics to which Southern lines refer. The fact that both in-season and out-of-season experience was included in the 7-day refrigerator car study is shown by the range in results for individual days from 96 to 66 percent in Southern Region as shown in the Report at Sheet 43. Clearly, if seasonality affects the ratios, the foregoing wide range demonstrates that this has been duly reflected in the 7-day refrigerator car study.

It is interesting to note that Southern lines now urge upon Exceptions that the Examiners should have rejected the Commissioner's 7-day study in favor of the 87 percent and the 84 percent ratios, North and South, reported by the A.A.R. on Form CS-57-A. But, as the Examiners correctly state (Sheet 44) the Southern lines them-

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selves were "unwilling to accept the empty return ratios for refrigerator cars in Official territory developed in either the 7-day study or the CS-57-A reports". Rather they

urged for Official Territory a reduced refrigerator car empty return ratio of 75 percent based upon reported experience for FGE cars. The impropriety of this "refinement" is readily discerned from the facts, duly noted by the Examiners, that Fruit Growers Express handles only 43.3 percent of the North-South refrigerator car traffic and that no corresponding data was developed for the companies handling the remaining 56.7 percent of the traffic.

Moreover, the recited FGE experience did not provide the refrigerator car ratio between loaded and empty miles for carriers in the two territories here involved but rather reflected all miles and all traffic moving in FGE cars. Included, therefore, in the miles shown for the Official Territory carriers are those incurred by FGE refrigerator cars moving between Official Territory and the West and Southwest. It logically follows that, whereas the study might be of assistance in determining a refrigerator car empty ratio for all cars of FGE ownership, such a ratio would be of no assistance in resolving the issues in this proceeding. The study made by Southern lines of Fruit Growers Express Company cars provides neither a refrigerated car ratio for all Official Territory traffic nor an accurate indication of such miles North and South, on the involved Official-Southern traffic. Clearly, therefore, the FGE study fell far short of its stated objective of providing "a closer representation of the empty to loaded ratio for refrigerator cars in the North on North-South traffic than a system average refrigerator car empty ratio based on the Commission's 7-day study" (V.S. 39, p. 38).

Again, as invariably true of most of the cost adjustments here urged by Southern lines, that developed for refrigerator car empty return ratios does not rest upon comparable data and methods for each territory. Unlike the study underlying the Official Territory adjustment, that providing the asserted basis for increasing the Southern Region ratio from 76 to 84 percent was not confined to FGE equipment,

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but included loaded and empty miles made on Southern lines by refrigerator car equipment of all other ownerships. The source of the data in this instance was a questionnaire survey of Southern carriers. However, in this case, too, the empty and loaded miles reported represented the aggregate for all traffic and do not purport to reflect the particular characteristics of Official-Southern traffic.

Southern lines' Exceptions do not dispute the accuracy of the Examiners' statement that the refrigerator car adjustments are "not on a comparable basis in both territories" (Sheet 44). Compelled to acknowledge the demonstrated lack of comparability, they again seek to excuse the deficiency in the evidence relied upon to sustain their adjustments by assailing Northern lines' refusal to develop data respecting the movement of refrigerator cars of other than FGE ownership within Official territory. In view of the lack of specificity in the data secured, however, it is clear that, even had the requested information been provided, it would have shown only the aggregate experience of all refrigerator cars for all traffic, and would be thus duplicative of the Commission's 7-Day study. Clearly, neither Southern lines' special studies nor the data requested of Northern lines have any demonstrated relationship to Official-Southern traffic, notwithstanding the purported effort of Southern lines to develop the specific costs of providing service on the involved traffic.

The Commission should find:

1. That Southern lines' three-stage adjustment of the box car empty return ratio for Official Territory relies upon unproved assumptions and fails to reliably measure the several variable influences sought to be isolated; that the further failure to make comparable adjustments in the ratios for both territories distorts the relative cost showing urged by Southern lines; that the burden of justifying the proposed empty return

adjustments rests upon proponent Southern lines and is not excused by Northern lines' failure to make similar invalid special studies upon request; that

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Southern lines' arbitrarily equalizing adjustments in the territorial box car empty return ratios from 39% North and 33% South to 30% for both territories cannot be sustained; and that the box car empty return ratios developed by the Commission's 7-day study constitute valid and reliable estimates for use in developing relative costs in this proceeding.

2. That Southern lines' adjustments in territorial refrigerator car empty return ratios, which seek to reduce the ratio North while concurrently increasing that for Southern Region, do not rest upon a comparable basis since that for Official Territory was confined to the experience of but one car company, Fruit Growers' Express; that such adjustments for both territories reflect all traffic rather than the specific Official-Southern traffic they purport to measure; and that, as in the case of the box car ratios, Southern lines have failed to sustain the burden of justifying the substitution of the revised ratios for the more reliable estimate of refrigerator car empty return experience provided by the Commission's 7-day study.

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Reply to Exception No. 1, B-3 Relating to Switching Costs.

(a) The Examiners' Rejection of Southern Lines' Adjustment of Their Switching Minutes Was Proper.

In order that Southern lines' exceptions with respect to switching costs may be placed in their proper perspective, it should be re-emphasized that Northern lines have consistently urged the fairness of territorial Form A costs as a measure of the relative burdens experienced in handling

the involved Official-Southern traffic. In this they are supported by the Commission's reliance upon Form A group cost comparisons in No. 28300, *Class Rate Investigation, 1939*, 262 I.C.C. 447, 693, where, as here, there was involved the question of "relative costs for transporting all traffic, or important and well-defined segments of traffic, by territorial groups of carriers."

The propriety of a similar conclusion here is also confirmed by the Commission's recent conclusion in the *Transcontinental Divisions* Case, No. 31503 et al. (decided March 21, 1963), where at Sheet 45 of its mimeographed report the Commission, referring to a comparison of adjusted and "straight Rail Form A" costs, stated:

> "One substantiates the other, and supports the view that, for a large and varied body of traffic as here at issue, territorial average costs will be the substantial equivalent of specific costs."

Reliance upon such unadjusted territorial Form A costs effectively guarantees the comparability in method and result essential to the development of relative costs which the Examiners properly found to be lacking in the adjustments of switching costs advocated by Southern lines. But when, under the guise of seeking more refined costs, the proponent thereof departs from territorial Form A results by making adjustments relating to particular items of cost, the consequence may well be to distort the basic balance and comparability of the remaining items.

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Southern lines, apparently to give their radical upward adjustment of their own territorial switching costs an aura of assumed comparability, made a token upward adjustment of Northern lines' switching costs related to the so-called "Pocahontas adjustment" employed by the Commission's Cost Section in its so-called "burden studies". Having failed to support the propriety of their adjustment of their

own switching costs, they now criticize the Examiners' report for not having also disallowed their own slight upward adjustment of the northern switching costs.

But Southern lines are in no position to urge such a change in the Examiners' restated costs, on the ground of comparability, since the whole effect of their own various adjustments is to *destroy* the basic comparability of the territorial Form A costs.

If, in a case having the broad territorial scope of the instant one, the Commission is to countenance, or rely upon, *any* detailed adjustments of territorial Form A costs—whether relating to switching minutes or other items—the Examiners' retention of the Pocahontas adjustment for Northern lines would appear to be justified. But the Commission would be on sounder ground to find here, as it did in No. 28300, *Class Rate Investigation, 1939,* 262 I.C.C. 447, 693, that Form A studies of territorial costs "possess sufficent attributes of accuracy to enable us to rely upon them in reaching our conclusions". This is particularly so in view of action of the Supreme Court in sustaining its order therein (*New York v. United States,* 331 U.S. 284), and its own subsequent conclusion in No. 31503, the *Transcontinental Divisions* Case, (March 21, 1963), wherein such detailed costing of Transcontinental traffic as could be justified was found to yield ultimate group cost relationships substantially identical to those produced by the territorial Form A costs.

Inasmuch as it is Southern lines that have disputed the appropriateness of such territorial Form A cost comparisons and urged the substitution of the adjusted switching costs here considered, clearly the burden of demonstrating the soundness and validity of

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the adjustment rests squarely upon them. But as will appear from the following analysis their adjustment of their switching costs, viewed from any angle, is completely indefensible.

The Examiners properly found that because of "weaknesses" in the studies and the "major defect" of lack of comparability, Southern lines had failed to sustain this burden (Sheet 52). The claimed rationale of Southern lines' adjustments was accurately summarized by the Examiners in the headnote to the discussion of this subject as follows (Sheet 47):

"Adjustment of switching costs to eliminate the effect of volume switching at origin and destination." Thus, it was contended that the adjustment was required because so-called "volume commodities" not here involved exert a depressive effect upon the per car switching services of Southern lines. But even assuming this to be true, obviously it could have no effect upon the *relative* costs of the two adversary railroad groups unless it also could be established that the same depressive effect from the volume switching of non-involved traffic was not likewise generally reflected in the switching costs of Northern lines. This is a burden which Southern lines failed to meet. Indeed, the affirmative evidence of record fully sustains the Examiners' finding that "The depressing effect, if any, of volume switching commodities on the average would affect both territories and, for purposes of comparison, be largely offsetting" (Sheet 52). Although for ease of comprehension, Northern lines propose to reply in further detail to each of the asserted "four separate features of the switching cost problem" to which Southern lines refer (p. 62) it must already be abundantly clear from the foregoing that there is no confusion whatsoever in the Examiners' discussion of the switching adjustments here again urged upon Exception. The alleged "four separate features" are mutually interdependent and related, while the "switching cost problem" is one of Southern lines' own creation, occasioned by their espousal of unreliable and uncomparable adjustments undertaken in a futile effort to "adjust" to their own advantage the territorial average characteristics of the "large and varied body of traffic" which the Examiners recognized is here involved (Sheet 52).

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(b) Discussion of Individual Adjustments.

i. The Effect of Volume Commodities on Southern Region Average Switching Costs.

As previously indicated, consideration of the "effect of volume commodities" (more appropriately characterized as volume-switched commodities or multiple-car movements) on the average switching costs for Southern Region is a meaningless exercise in futility absent a showing by Southern lines *both* that (1) such commodities *and all others* moving elsewhere than to or from Official Territory require significantly less than territorial average switching service on Southern lines and (2) the average switching costs of Northern lines are *not* similarly depressed by non-involved traffic. The only logical comparison then, and again necessarily on a comparable basis, for each territory, must be between Official-Southern traffic service units, on the one hand, and the switching service rendered on all other traffic, so-called volume commodities included, on the other. Southern lines have not undertaken such comparisons. Rather they have confined their inquiry into the service characteristics of non Official-Southern traffic to a few commodities, such as pulpwood and phosphate rock, said to move within Southern Territory in multiple car volume.

Moreover, even assuming the claimed depressive influence upon the switching minutes per car on Southern lines as a consequence of handling such volume commodities, there is no evidence to demonstrate that non-involved single car traffic does not exert a contrary and offsetting effect upon the Rail Form A territorial average switching cost for Southern Region. If, as Southern lines reiterate at pages 60 and 81 of their Exceptions, the subject Official-Southern traffic represents only 8.93 percent of cars originated and terminated by Southern Region carriers, while volume commodities (said to be virtually all other than Official-Southern) constitute 45.86 percent of the total, then

by a simple process of elimination there remains 45.21 percent of Southern lines traffic which allegedly is neither Official-Southern nor volume commodities. Clearly, the influence of this 45 percent of non-involved

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traffic upon the territorial average switching cost in the South is just as great as that claimed for the 45 percent said to be volume commodities, but the nature of that influence is in no way disclosed by Southern lines' several studies of this element of cost.

The foregoing analysis is obviously oversimplified, but it serves to demonstrate that even if Southern lines' evidence respecting the effect of "volume commodities" on switching costs in the South is viewed most charitably, it falls far short of refuting the Examiners' very sound conclusion that Southern lines failed to sustain the burden of providing a "better measure of relative switching costs on each side of the border" than the territorial average switching costs developed by Rail Form A. The oversimplification rests, obviously, in the unsupported assumption that every carload of the so-called volume commodities, such as pulpwood and phosphate rock, included in the indicated 45.86 percent of Southern lines' total traffic in fact receives only multiple car handling and is never required to be switched in single car service in the South. This, of course, even Southern lines do not suggest.

Inasmuch as the depressive effect claimed by Southern lines for volume commodities admittedly should vary directly with volume or number of cars of such commodities handled in a single switching operation (R. 1849), it is significant to note that Southern lines failed to develop any real facts concerning the average number of cars in volume movement. Certainly, while a block of two cars would fit within the multiple-car definition, no great economies over single-car handling can be expected. A showing of isolated

examples of movements of larger blocks of 20, 50 or even 80 cars do not alter the fact that on pulpwood, the volume commodity most emphasized by Southern lines, the typical multiple car block, when this commodity moves in this fashion, would appear to be no more than 4-8 cars (V.S. 72, pp. 23-24, 27, 40). Obviously a wide variety of commodities moves in small blocks of this number in all territories.

In an early landmark case involving multiple car rates, *Molasses From New Orleans, La. to Peoria and Pekin, Ill.*, 235 I.C.C. 485, the

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minimum weight was equivalent to 38½ tank car loads. In *Eastern Coal to Chicago*, 306 I.C.C. 195, the multiple car rates there approved applied to average shipments of approximately 30 cars. On rock salt, rates applying on multiple car movements of at least 7 and 10 cars were approved in *Rock Salt—N.Y. to Del., Md., N.J. N.Y. and Pa.*, 313 I.C.C. 197. A multiple car rate on paper from a Southern Region origin to an Official Territory destination on shipments of at least 11 cars was likewise approved in *Paper From St. Francisville, La. to Chicago, Ill.*, 306 I.C.C. 703, demonstrating that Southern intraterritorial pulpwood and phosphate rock is not the only traffic handled in this manner.

Operating witnesses for Southern lines merely recited a self-evident axiom of railroad operations in pointing out that "a lesser amount of service per car is required to handle volume commodities than to handle non-volume commodities on a single car basis (V.S. 28, p. 24). The distinction sought to be made more precisely lies, however, not in the characteristics of the commodity but in the nature of the switching service, i.e., multiple car vs. single car handling. Pulpwood and phosphate rock were singled out as commodities which tend, on the average, to receive multiple car service in the South more than other commodities. But clearly the term "volume commodity" when applied to

pulpwood or phosphate rock—or to any other commodity—is misleading if construed to give the impression, as Southern lines do upon Exceptions, that the amount of multiple car handling in either territory can be determined simply by adding up the shipments of selected commodities.

It is true, as stated upon Exceptions that Southern lines' operating witnesses identified commodities said to be "regularly switched in multiple-car blocks in the South" (p. 63). Undeniably, there may be more multiple car handling of pulpwood and phosphate rock than most other commodities. But Northern lines' witnesses similarly identified corresponding commodities and the Examiners properly enumerated a number of commodities in both territories, notably coal and iron ore in the North, some of which they said "frequently move in multiple-car blocks at origin and/or destination with a con-

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sequently lower switching cost than for commodities usually handled one car at a time" (Sheet 47).

But not only are the variations in the volume of shipments of all commodities of consequence but, in addition, obviously there are a number of other factors which exert a comparable influence upon switching costs. The Examiners recited some of these variables in the statement at Sheet 36 quoted upon exceptions by Southern lines (p. 63). The Examiners there referred to "the physical layout of the tracks, volume handled, and other causes" as accounting for the "great variation from one point to another" in switching service. The significance of this statement lies in the Examiners' recognition of the switching variations existing *within* each territory, all of which are entirely unaffected by the identification of the car switched as Official-Southern or other traffic. For example, where the physical layout of the tracks is such as to require greater-than-average switching service, that influence will be felt on all

cars, whether Official-Southern or intraterritorial, multiple or single car. The important consideration is that a body of traffic as "large and varied" as that here in issue runs the gamut of all variations in switching service, of whatever cause or effect, encountered by each group of carriers and is, hence, properly measured by territorial average switching costs.

The table entitled "Switching Studies on Intra-South Volume Commodities" reproduced at Page 64 of Southern lines' Exceptions itself demonstrates the influence upon switching services of operating variations other than volume or multiple-car handling. Ignoring for the moment the manner in which the thirteen volume commodity study points were selected, it should be noted that the switching minutes per car shown in the table range from a low of 2.75 minutes for wet phosphate rock at Achan, Fla. to a high of 13.03 minutes for pulpwood at Georgetown, S.C. This range of 10.28 minutes per car, which is significantly greater than the adjustments of 8.23 minutes for box cars and 6.23 minutes for other cars, said by Southern lines to offset the effect of volume switching, typifies the wide variations in switching

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service attributable to factors other than volume or multiple car handling since by definition and selection all are volume switching points. Clearly there is no more justification for Southern lines' generalizations regarding switching service on so-called volume commodities than exists for the inverse generalization that Official-Southern traffic requires greater than average switching service in the South.

Illustrative of the latter fact is the comparison by the Examiners of the switching minutes shown by Southern lines for the only two points for which they presented both a volume commodity switching study and a study of such service on an Official-Southern "sample" car. At both of

these points, as Southern lines themselves note upon exceptions (pp. 64-65) the inbound commodity was pulpwood and the outbound load was paper. At Georgetown, S.C., the car of paper is shown as requiring 4.43 minutes more than that of pulpwood inbound, but at Panama City, Fla., the difference is barely measurable, 11.72 vs. 11.55 minutes, or a difference of 0.17 minutes per car. While obviously no valid conclusions can be drawn from this fragmentary data, certainly these comparisons, which are the only ones of record which permit the Commission to test the soundness of Southern lines' switching theory, utterly fail to sustain the claimed asserted broad assumption that volume switching exerts a significant depressive influence upon territorial average costs. Moreover, even conceding the probability of a tendency in this direction, clearly the major adjustments made by Southern lines, amounting to 8.23 and 6.23 minutes per car for box cars and other cars, respectively, are not suported by the negligible differences shown for switching at the two points common to their separate volume and Official-Southern switching studies. It necessarily follows that, contrary to the assertion of Southern lines upon Exceptions (p. 65), the criticism by the Examiners, based upon these two common points, of the volume commodity argument is not only "rational" but, indeed, compelling.

Equally valid, and of even greater significance, is the Examiners' recognition that the thirteen points in the volume commodity study reproduced at Page 64 of Southern lines' Exceptions were "hand picked." Although Southern lines dispute this charge it is note-

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worthy that there is no suggestion that even the pretense of a sampling process was employed in the selection of these thirteen study points. To the contrary, Witness Seigler,

who made the switching studies at these points, freely conceded that known heavy volume points were expressly selected—"hand picked" as he stated—with a view toward illustrating the effect of multiple-car handling upon switching service (R. 1853-54). Under the circumstances it was to have been expected as this witness recognized, that the 13 carefully selected study points would develop lower than average switching minutes (R. 1855). Certainly, even a more comprehensive and accurate study of intentionally selected points could hardly be made the basis for the general conclusion applicable to all traffic which Southern lines here urge upon the Commission.

The further argument that the Examiners erred in failing to consider more recent switching studies on pulpwood introduced in Docket 30958, *Reduced Rates on Pulpwood in Southern Territory,* entirely overlooks the fact that it is of no real consequence to the disposition of the issues in this proceeding to determine in absolute terms the average time required to switch pulpwood cars in the South. Even if this commodity in fact requires less-than-average switching service, there are innumerable other commodities which, of necessity, must entail offsetting greater than average service. The latter higher-than-average commodities also move other than interterritorially to and from Official Territory. Assuming that accurate switching minutes could be developed for each and every commodity, "it is requisite that any special studies be made on a comparable basis in each territory" (*Transcontinental Divisions* case, *supra,* sheet 27). Moreover, inasmuch as traffic in each territory runs the gamut of all service variables, of which multiple-car switching is but one, the end result must inevitably confirm the validity of applying territorial average switching costs to the involved Official-Southern traffic.

It must be reiterated that Southern lines' volume commodity switching studies were offered only to justify undertaking special studies of

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switching service in the South rendered on the interterritorial traffic here in issue. The several adjustments of Rail Form A switching costs here urged by Southern lines do not rest upon the foregoing inconclusive evidence respecting multiple-car handling of selected volume switched commodities, but rather upon the Seigler switching studies in the South and the clearly distinguishable Remington adjustment of Northern lines' costs to be discussed hereinafter.

ii. The Switching Services Per Car Performed by the Southern Lines in Originating and Terminating Official-Southern Traffic.

The adjustment in the switching costs for Southern lines here again urged upon Exceptions is premised entirely upon a 41-car switching study conducted under the supervision of Witness Seigler (V.S. 42). The method employed to adjust such switching costs in the South is in marked contradistinction to that used by Southern lines' Witness Remington in computing the suggested adjustment of switching costs in the North. Turning first to the Seigler switching studies underlying the adjustment in Southern lines' costs, the record abundantly confirms the Examiners' general conclusion that such studies are unreliable on two counts, selection of the sample and execution of the studies.

The essence of Southern lines' Exceptions on this score appears to be a plaintive plea that the Examiners failed to provide the guidance of a detailed blueprint for the development of switching studies which would not possess the defects disclosed on the present record. Obviously, no such burden can fairly be imposed upon either the Examiners or this Commission. The Examiners' function and responsibility was to impartially and intelligently appraise and evaluate the evidence presented by the parties. The comprehensive discussion of this subject in the Report provides ample evidence that they have discharged that responsibility in this case. The Examiners' references to "cities, com-

modities, directional flow and proportion of yard and train switching" cannot properly be construed as a requirement that cars be arbitrarily added to an already inadequate and defective sample. Rather, the

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Examiners have demonstrated by these several yardsticks of representativeness that Southern lines' 41-car switching sample reflects characteristics so inconsistent with the much larger 967,554-car estimate of total Official-Southern traffic as to preclude according any probative value to the former.

Southern lines here seek to cast both Northern lines and the Examiners in the role of unenlightened opponents of scientific sampling. Nothing could be further from the truth. The rejection of the 41-car switching sample which Southern lines claim to be representative of the switching services provided in that territory on 967,554 cars of Official-Southern traffic is far from a reversion to the Dark Ages preceding the development of modern sampling techniques. To the contrary, it rests upon the facts that the switching sample was improperly selected and far too inadequate for the purposes for which it was sought to be used, as demonstrated, among other things, by the marked variations from the more valid and more comprehensive sampling techniques used by the lines in both territories to develop the volume and nature of the involved traffic. Furthermore, the inadequacy of the sample is not to be justified by the effort involved in making switching studies, bemoaned by Southern lines upon Exceptions (pp. 73-74).

Significantly, Southern lines do not dispute the accuracy of the Examiners' description of the method whereby the 41-car sample was selected (Sheet 48). As there stated the switching study sample represents the culmination of a diminishing series of samples and sub-samples. The first step was the selection of a "preliminary sample" of 497 cars from the traffic study. It is noteworthy, as the Examiners pointed out, that this "prelim-

inary sample'' was selected in eight batches and not in ten subsamples as claimed. In the remaining steps, the 497-car sample was further reduced, first, to 83 cars, and ultimately to the 41 cars actually selected for study. Southern lines now place great emphasis upon the fact that the foregoing procedure was conducted under the supervision of Dr. Deming, an acknowledged expert in sampling. It should be highly persuasive, therefore, that this sampling expert made none of the grandiose claims respecting the sanctity of the switching sample advanced by less knowledgeable wit-

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nesses for Southern lines and again by those carriers upon Exceptions. Thus, whereas Witness Seigler, who made the switching studies, loosely described the study cars as ''average'' and the sample as ''representative,'' Dr. Deming, on cross-examination, expressly declined to so characterize the sample and would do no more than simply state that the standard error of the sample can be interpreted for certain purposes (R. 1580).

The concept of standard error as it relates to the reliability of a sample is one that is often misconstrued. Southern lines now dwell at some length upon the standard error computed* for the 41-car switching sample, obviously in an effort to lend to that sample an aura of scientific accuracy that the sample does not in fact possess. Again, both of the sampling experts, Drs. Deming and Van Voorhis, were much more precise on this subject. Each of these witnesses, in the very testimony quoted by Southern lines at pages 72 and 73 of their Exceptions, pointed out in unequivocal terms that standard error is a computation obtained from the sample itself. Hence, the computation of its standard error cannot improve or cure a defective sample.

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* It might be observed that in view of the emphasis on the role of Dr. Deming in the sampling process, this computation was in fact made by Mr. Seigler.

In simple terms, the standard error formula measures the variations between each of the individual subsamples and the total estimate derived from such subsamples.

Moreover, even if the standard error here computed by Witness Seigler were to be taken at face value as urged by Southern lines upon Exceptions, it indicates that the average switching time in the South could very well be 19.4 minutes, which is considerably closer to the 19.8 minutes shown by the Examiners after other adjustments (Sheet 47) than it is to the 26.03 minutes used by Southern lines as a basis for adjusting the average switching costs in that territory.

At page 73 of their exceptions the Southern lines state:

> "The reliability of the sample result in measuring the average of the whole body of traffic is measured by mathematical principles

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> in terms of the 'standard error,' as Dr. Deming testified . . ."

Dr. Van Voorhis similarly testified (V.S. 2, pp. 5 and 8):

> "The reliability of an estimate made from a sample is measured by its standard error and is obtained from the sample itself from the laws of probability."

> "The standard error of an estimate makes it possible to make statements in the language of probability about the reliability of an estimate obtained."

Standard error does not measure the usefulness of the estimate.

The standard error of 2.2 switching minutes per car does not measure the validity of the estimated 26.03 switching minutes per car for costing purposes.

Dr. Deming has written:*

> "Limitations of the standard error. *The standard error of a result does not measure the usefulness thereof.* The standard error, however helpful in the use of data from samples, *only gives us a measure of the variations between repeated samples.*" (Emphasis supplied.)

This means that if many more 41-car samples are drawn from the frame used, and using the same sampling plan, 99 percent of the estimates from these 41-car samples will fall between the estimate of 26.03 switching minutes per car plus and minus 3 times the 2.2 standard error (between 19.43 and 32.63 switching minutes per car). One percent of the estimates will exceed or be below these limits.

It is the use that will be made of the estimate that determines what standard error is acceptable. And based on the use made of the estimate by the Southern lines, it must be concluded, as did the Examiners, that the 41-car switching sample is useless. In fact, results of all the 41-car samples that could be drawn, using the same frame and sampling plan, would be useless as a factor to develop switching costs.

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Southern lines' 41-car switching sample is not acceptable using Southern lines' own acceptance criterion.

Below we show a comparison between the estimates produced and the standard errors for many of the pertinent characteristics of the North-South traffic as developed from the Southern lines' traffic sample:

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* Page 24, Sample Design in Business Research, W. Edwards Deming, John Wiley & Sons, Inc., N.Y., 1960. (Referred to by Dr. Deming at page 2 of his V.S. No. 12.)

	Estimate	Standard Error	Percent Std. Error is of Estimate
	(1)	(2)	(3)
As settled revenue—North	$221,430,341	$ 905,130	0.41%
As settled revenue—South	$274,656,425	$1,129,473	0.41
Total Revenue	$496,086,766	$1,908,186	0.38
% of Total Revenue—North ..	44.64	.07	0.16
% of Total Revenue—South ..	55.36	.07	0.13
South of Gateway:			
Total Cars	967,554	1,845	0.19
Route of movement car miles ..	548,453,029	1,669,885	0.30
Short Line car miles	504,760,386	1,449,732	0.29
Tons	28,055,720.7	114,673.2	0.41
Route of movement ton miles ..	15,625,355,583	84,740,989	0.54
Short Line ton miles	14,332,240,646	74,337,437	0.52
North of Gateway:			
Route of movement car miles ..	406,394,680	1,808,660	0.45
Short Line car miles	359,780,391	1,587,252	0.44
Route of movement ton miles ..	11,501,773,060	65,716,506	0.57
Short Line ton miles	10,125,161,202	55,424,370	0.55
Costs—North:			
Terminal	$ 33,564,609	$ 76,809	0.23
Line Haul	$136,052,934	$ 599,653	0.44
Total	$169,617,543	$ 646,988	0.38
Costs—South:			
Terminal	$ 21,520,444	$ 49,322	0.23
Line Haul	$172,785,865	$ 664,546	0.38
Total	$194,306,309	$ 686,696	0.35
Total Cost	$363,923,852	$1,191,489	0.33
% of Total—North	46.61	.08	0.17
% of Total—South	53.39	.08	0.15

Source: V.S. 40, Exhibit A, pages 1-3, Exhibit B, page 3.

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To establish what the Southern lines considered to be acceptable precision with regard to the estimates for the important statistics, one need look only at column 3 above. For the relevant factors listed above, the percent that the standard error is of the estimate is less than one percent in every

instance. Out of the 24 estimates listed, the percent standard error is of the estimate is below one-half of one percent in 20 of the items.

The standard error produced by the 41-car switching sample was 2.2 minutes per car. The estimate of switching minutes per car was 26.03. The standard error is *8.45 percent of the estimate.* As can be seen, this percent, for this extremely important element, falls far short of the standard of precision generally accepted by the Southern lines.

In Appendix A hereto there are set forth the computations of standard error for cars, for constant cost per car, and for total origin or destination switching costs in the South. As indicated by the tabulations in said Appendix, the Southern lines used the 26.03 switching minutes per car as a constant. Also the standard error of a constant is zero. Therefore, the only acceptable standard error, based on the use made of the estimated 26.03 minutes per car and mathematical principles dealing with the standard error of a constant, is one which has a value of zero or a value so close to zero that it can be assumed to be zero. But, the standard error of switching minutes per car based on Southern lines' sampling procedures is 2.2. It is clear that the standard error is too large for the use made of the estimate, and the only method of reducing the 2.2 standard error is by increasing the sample size.

Southern lines ignored completely the variance in the switching sample in producing cost per car and origin and destination costs.

Southern lines produced $12.824 switching cost per car by multiplying the estimated 26.03 switching minutes per car by $.49266 switching cost per minute. The variance of the estimated 26.03 minutes per car was completely ignored in computing the switching cost per car. Actually this cost, even though treated as a constant by the Southern lines, would also vary.

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The standard error of this cost per car would be the standard error of the switching minutes per car (2.2) times the constant cost per minute ($.49266), producing $1.084. The 3-standard error band is $12.824 plus and minus 3 times the standard error of $1.084, or $9.572 to $16.076.

Ignoring the foregoing error range, based on mathematical principles, also affects the total origin and destination costs reflected in Southern lines' cost study. Thus, using the extreme 3-standard error values of Southern lines' estimated cars and switching minutes per car one can make the following comparisons:

99 Percent Probability Range of Costs
As Used by Southern Lines

	Switch. Min/Car	Cost/ Car*	Cars	Total Origin and Destination Cost
Upper limit	26.03	$12.824	973,089	$12,478,893
Lower limit	26.03	$12.824	962,019	$12,336,932

99 Percent Probability Range of Costs
As Ignored by Southern Lines

	Switch. Min/Car	Cost/ Car**	Cars	Total Origin and Destination Cost
Upper limit	32.63	$16.076	973,089	$15,643,379
Lower limit	19.43	$ 9.572	962,019	$ 9,208,446

As shown above, the variance of total origin and destination costs was reduced merely by ignoring the variance in switching minutes per car; merely by using 26.03 switching minutes per car as a constant factor, when, in fact, it is an estimate of a random variable with a standard error of 2.2 minutes per car. Therefore, the variance of switching minutes per car is not reflected in the Southern lines' cost application and all standard error of cost totals which include the effect of the 26.03 estimate as a factor, are incorrectly computed.

* Developed by applying cost per minute $.49266 to 26.03 minutes per car.

** Developed by applying cost per minute $.49266 to 32.63 and 19.43 minutes per car.

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The unacceptability of the 2.2 standard error as validating Southern lines' adjustment of their switching costs is manifest from the fact that the range of error is so relatively vast that the difference between the upper and lower limits of Southern lines' total origin and destination switching costs is $6,434,933, which is *more than half* the total switching costs of $12,407,912 used in Southern lines' cost study.

Southern lines' 83-car sample has same defects as the 41-car sample and must be rejected also.

The Southern lines state at page 74 of their exceptions:

"The Examiners do not mention at all a most persuasive confirmation of the results produced by the 41 car sample. When it became apparent that counsel for the Northern lines were making an attack on the size of the sample, the Southern lines completed a study of the switching services performed on additional movements comprising a related sample which was twice as large (83 cars) (Ex. R-15). The switching minutes per car for this larger sample were found to be 25.0 minutes with a standard error of 1.7 minutes (Tr. R. 1569). The standard error for the enlarged sample was lower than the standard error for the 41 car sample (2.2 minutes), as would be expected (Tr. R 1589-90), and the result of the larger sample was relatively close to the result produced by the 41 car sample (26.0 minutes per car). As Dr. Deming testified, the result produced by the enlarged sample vindicated the integrity of the smaller sample (Tr. R 1602). This vindication of the reliability of the 41 car sample after it had been attacked on Cross-examination by counsel for the Northern lines is most significant in considering the "common sense" of the situation, . . ."

But even the 83-car sample with its standard error of 1.7 produces variations so great, when considered in relation to

the total switching costs used by Southern lines, as to make it wholly unacceptable and unworthy of any reliance by the Commission. Thus, employing computations similar to those set forth above for the 41-

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car sample, it develops that the standard error of 1.7 would represent a range of switching costs from $14,909,407 to $9,431,567, a difference of $5,477,840, or *46 percent* of the total switching costs of $11,916,879 which would have been used by Southern lines in their cost study had they employed the results of the 83-car sample. Such results would still have been intolerable and useless for the purpose of producing reliable switching costs.

By way of further comment upon standard error it should again be emphasized that this formula computation is limited to measuring variations in data *included* within the sample. Dr. Deming frankly agreed that a standard error could be impressively low even though relevant data had been erroneously *excluded* from the sample (R. 1595). Thus, he acknowledged that the standard error would probably be even less than the 2.2 minutes claimed for the 41-car sample, if the only cars included were those receiving yard switching service—a definite sampling bias which would obviously subvert Southern lines' stated effort to measure both yard and train switching in the proportions actually provided on the involved traffic (R. 1597).

Recognizing that the average yard engine minutes developed by the Seigler studies were almost twice those shown for cars receiving train engine service (30.75 minutes versus 17.84 minutes), which in this instance appears to be consistent with general experience, the failure to include a representative number of cars in the latter category within the sample necessarily *overstated* the average switching minutes here claimed for terminal service in the South. Where, as here, the original 967,554-car sample disclosed a 60-40 rela-

tionship between yard and train switched cars, a 41-car sample reflecting 63.4 percent yard engine switching and only 36.6 percent train engine switching substantially distorts the result perhaps by as much as five minutes per car because of the exaggerated effect of a few cars in a small sample.

Similar comparisons between the 41-car switching sample and the Southern lines' traffic study from which it was selected, in terms of direction, important cities, commodities, and other characteristics

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equally demonstrate that this infinitesmal sample cannot be accepted as representative of Official-Southern traffic. Manifestly, under the circumstances, the Examiners were fully justified in concluding, as they did, that "the switching studies in the South have weaknesses, both in the sample and in the studies themselves" (Sheet 52).

The Examiners' conclusions respecting the nature of the switching studies conducted by Southern lines on the 41 cars in the sample are fully as consistent with the evidence as those previously referred to relating to the selection of the sample itself.

The "single car basis" of the switching studies referred to by the Examiners points up the fact that, in imputing 1960 switching factors to 1958-59 sample movements, Southern lines failed to determine whether or not multiple car handling, upon which they otherwise place such great emphasis, was an attribute of the study car. Southern lines' contention (p. 70) that the lower switching minutes shown for the "A" car confirms the validity of the study entirely misses the point of this criticism. The critical fact is that while purporting to develop actual switching experience, Southern lines were unable to state whether this car, or any of the other 40 cars in the sample in fact moved in a multiple car block or not. Thus, Witness Seigler acknowledged with respect to the car from the "A" abstract to which the Examiners referred

(Sheet 50), that he had made no investigation to determine whether or not the 82 cars listed thereon had moved in a multiple car block or blocks. Upon inquiry as to the reason such an investigation was omitted, the witness himself acknowledged the invalidity of using as a divisor in the switching studies the number of cars moved in the week of such studies rather than the earlier period when the sample car, in fact, moved (R. 1880 and 1954). Moreover, it is easy to visualize the impact upon the result had just one more Multiple "A" car been included in the fragmentary switching sample.

Southern lines' criticism (pp. 70-71) of the Examiners' statement that a comparison of operations in 1960 with those when the sample car moved might have been appropriate, is most unwarranted. There

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is no suggestion implicit in the Examiners' finding that historical fact is to be developed for its sake alone, while at the same time ignoring the necessity for determining present and future operations. The very aim of the switching cost adjustment here urged by Southern lines is to have the Commission find, as representative of the present and future, services which allegedly have been rendered in the past. It necessarily follows that Southern lines' determination of those past services must be demonstrated to be accurate and reliable. Certainly, no such reliance can be placed upon the Seigler switching studies. This witness, himself, acknowledged that underlying the studies is the assumption that the 1958-59 sample car moved under conditions identical with those encountered during the 1960 study week; that he made no investigation to determine the validity of this assumption; and that, in some instances, where he did not find a service in 1960 of the same character as that presumably rendered on the study car, he "took the next best thing" (R. 1881, 1839, 1938, 1945). Under the circumstances it can fairly be said that even for the 41 car splinter sample, Southern lines failed to

show actual switching minutes incurred but relied entirely upon imputed service units. Clearly, in view of the foregoing manifestations of unreliability disclosed on the record, the Examiners' indictment of Southern lines' switching studies for failure to demonstrate a sufficient similarity between 1960 switching minute factors and 1958-59 services to warrant imputing factors developed for the former to the latter, is fully justified.

One final comment with respect to Southern lines' suggested adjustment of switching costs within that territory is so obvious as to almost escape attention; that is, the substitution of a conglomerate 26.03 minute factor for all car types in lieu of the switching minutes developed in Rail Form A separately for box cars and other cars for which the former is to be substituted. If, as Southern lines emphasize upon Exceptions (p. 76), it is significant to reflect the relative proportions of box cars and other cars used in the Official-Southern movement, then, clearly, any adjustment purporting to particularize the characteristics of that traffic should have been developed separately by the same two equipment groups. This was not attempted

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by Southern lines for switching services rendered in their territory, although for Northern lines they undertook to retain the distinction between box cars and other cars in adjusting the average switching minutes in Official Territory.

iii. The Absence of Any Showing of a Need for Upward Adjustment in the Average Switching Minutes Per Car for the Northern Lines.

The fundamental fallacy in Southern lines' comments respecting their proposed adjustments in the switching minutes of Northern lines is quickly revealed in the first sentence of the exception under this subject. It is there stated that:

"The Northern lines relied upon territorial average costs and they presented no proof that would justify any upward adjustment in their territorial average switching minutes per car for application to the origination or termination of Official-Southern traffic in the North." (p. 80)

The patent inconsistency in this criticism should be readily perceived. It is for the very reason that Northern lines do indeed rely upon territorial Form A costs as appropriate for the involved traffic, and properly so, that they did not undertake to inflate those costs by making an "upward adjustment" in their switching minutes of the type indulged by Southern lines. It is Southern lines which, in seeking to circumvent the obvious conclusion to be drawn from a comparison of relative costs in this proceeding, advanced the theory that switching minutes on the involved traffic should be inflated to compensate for a claimed disproportionate movement of volume commodities in multiple-car movements elsewhere. Having themselves advanced this thesis, unproven on this record, Southern lines now seek upon Exceptions to indict Northern lines for failing to endorse it by undertaking special studies, presumably of the caliber of those in the South previously discussed.

Once it is understood that the depressive effect claimed for volume commodities in the South rests entirely upon the operating

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efficiencies occasioned by the one unmeasured variable of multiple-car, as contrasted to single car, handling, it is incredible that Southern lines can now dispute the finding of the Examiners that "if volume commodities exert a depressing effect upon system average switching minutes in the Southern region, the presence of volume traffic in the North produces at the very least a corresponding influence on the

eastern lines" (Sheet 48). Southern lines themselves recognize the presence, if not the extent, of this counterbalancing influence on Official Territory costs by the inadequate adjustments in Northern lines switching minutes developed by Witness Remington and fairly summarized by the Examiners in the Table at sheet 47. Overlooking for the moment the minimal degree of such revised switching factors, this witness stated that such adjustments were "made to eliminate the effect of volume commodities upon the switching minutes per car at origin or destination" in Official Territory, thus clearly recognizing the existence of such effect (V.S. 40-A, p. 5).

The computations made by the Examiner to determine the nature of the offsetting effect North, now assailed by Southern lines, rest upon the indisputable premise that whatever depressive effect upon switching costs may be credited to multiple-car handling in one territory can be expected in the other. This most obvious conclusion was not disputed by Southern lines' operating witnesses. For example, Witness Andrews agreed that he would expect multiple-car movements to assert the same influence upon system average statistics of Northern lines as that claimed for the handling of volume commodities within the South (R. 1130-31). Witness Clark, for Northern lines, demonstrated that "Southern lines have no monopoly upon this operating principle" referring to multiple-car handling (V.S. 70, pp. 22-33).

Certainly, the Commission will not be led astray by the tongue-in-cheek argument of Southern lines that no witness for the Northern lines testified that the commodities identified by Southern lines' operating witnesses as moving primarily in multiple-car blocks in the South,

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pulpwood and phosphate rock, are handled in multiple car blocks in the North (p. 82). No such claim was ever made. But while there may be no pulpwood and phosphate rock movement of any significance in the North, Witness Gill enu-

merated those other commodities which do move in multiple-car lots in the North to a greater than average degree (V.S. No. 71, Ex. 12). The principal such commodities are those shown by the Examiners for Official Territory in the Table at Sheet 47 of the Report. It must be emphasized that this Table does not exhaust the list of those commodities handled in multiple-car blocks. For example, the traffic involved in Rock Salt—*N.Y. to Del., Md., N.J., N.Y. and Pa., supra,* moves within Official Territory in multiple-car blocks of at least 7-10 cars and clearly falls within the definition of multiple-car handling used by Southern lines' operating witnesses in identifying so-called volume commodities.

In the light of the foregoing compelling evidence of record, it is clear that the conclusion of the Examiners as to the counter-balancing effect of volume commodities in the two territories does not, as now asserted, rest "solely" upon the computations made at Sheet 51 of the Report for the obvious purpose of testing the validity of the grossly disparate adjustments in switching minutes within the two territories urged by Southern lines. But certainly these computations constitute a meaningful test of such adjustments and clearly corroborate the conclusion of the Examiners that Rail Form A territorial average switching minutes are a "better measure of the relative switching costs on each side of the border." The Examiners' computations made clearly-identified alternative assumptions for the purpose of evaluating Southern lines' claim that involved Official-Southern traffic requires switching service in the South 50 percent and 35 percent greater than average on box cars and other cars, respectively, while at the same time urging that corresponding increases for Northern lines should not exceed 6.5 percent and 6.6 percent respectively. In each case, the operating practice of multiple-car switching underlying the several upward adjustments is not shown to be any more prevalent in the South than it is in the North. The manifest disparity between the adjustments urged by Southern lines is sufficiently shocking on its face

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to justify the conclusion, confirmed by the Examiners' computations, that the increase shown for Northern lines "is inadequate by from four to seven minutes in comparison with the adjusment they made for their own region" (Sheet 52).

Southern lines' attack (p. 81) upon the Examiners' computations as allegedly asuming that "Official-Southern and other non-volume commodity traffic" possess similar switching characteristics is obviously nothing more than a desperate effort to overcome the inevitable conclusion drawn by the Examiners from Southern lines' inability to establish the validity of the suggested adjustments. In this instance, they undertake to assail the Examiners' assumptions, made only for testing purposes, by impeaching their own theory for disputing Rail Form A average switching costs. Having divided their total traffic into two categories insofar as switching service is concerned, multiple-car volume commodities and all others, as a pretext for substituting their own upward adjustments in lieu of Rail Form A switching costs, they now inject a new variable by arguing that Official-Southern allegedly non-volume traffic and all other non-volume traffic do not necessarily possess the same switching characteristics. Southern lines fail to indicate, however, what factors would influence the average single car moving to or from Official territory that would not similarly affect a single car moving intra-territorially or otherwise. Eliminating all consideration of volume commodities, if, as now suggested, the remaining 54.14 percent of Southern lines' total traffic is not average, it is certainly difficult to visualize how it could be very far removed from average. Moreover, inasmuch as the involved Official-Southern traffic has never previously been stated to be distinguishable from the majority of Southern lines' cars, and indeed, has been affirmatively demonstrated to run the gamut of all variables affecting switching service, average switching costs are equally appropriate for application to Official-Southern cars, as the Examiners

properly concluded after a comprehensive appraisal of the record on this subject.

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iv. The Northern Lines' Failure to Develop Any Facts as to the Switching Services Which They Perform in Handling Official-Southern Traffic.

Reduced to its essentials, the substance of Southern lines' argument respecting switching services in the North is that, notwithstanding Northern lines' showing of the reliability of territorial Rail Form A as a fair measure of the involved Official-Southern traffic, Northern lines in addition should have made several inconclusive switching studies—presumably Southern style—in order to corroborate this conclusion as to switching minutes. This contention is but another example of the repeated efforts upon Exceptions to shift the burden of proof to Northern lines in every instance where they did not see fit to make their evidence correspond to that presented by Southern lines, and where the latter's advocated adjustments are so flagrantly lacking in comparability.

Northern lines both asserted and proved the appropriateness of territorial costs as a fair and reliable measure of the relative burdens of providing rail service on the involved traffic. It is Southern lines, disputing the validity of such Rail Form A costs, that endeavored to refute this showing by embarking upon the unrepresentative and inconclusive switching studies previously discussed. In so doing, Southern lines were fully aware of the obligation upon them of developing comparable data for both territories which would not distort the relative cost evidence so significant to the disposiion of this proceeding. As the Commission observed at Sheet 27 of its recent report in the *Transcontinental Divisions* case,

> "In this case, where the relationship of one territory to another is of critical importance it is requisite that any special studies be made on a comparable basis in each territory." (Sheet 27)

Certainly it was not incumbent upon Northern lines to pursue every avenue of inquiry, however irrelevant or ill-advised, suggested by Southern lines at the risk of otherwise forfeiting their just claim to equitable divisions. Such, however, would be the result of the finding here urged by Southern lines upon Exceptions. Any such

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holding would confer upon parties to litigation the absolute power to dictate the evidence to be presented by adversary parties. Northern lines are confident that the Commission will not now declare this to be the rule of procedure. Rather, it is presumed that the Commission will adhere to established practice and permit each party to develop and offer into evidence (at its own risk) those facts which it considers to be persuasive, leaving it to the Examiners and the Commission to attach such weight and draw such conclusions from the evidence as may be appropriate.

The refusal of Northern lines to make special switching studies similar to those underlying the considered adjustment in Southern Region switching costs has been entirely vindicated by the Examiners' conclusion that such studies "have weaknesses, both in the sample and in the studies themselves" (Sheet 52). Since it is clear that the foregoing finding is fully supported and, indeed, compelled by the record, and requirement that Northern lines undertake the burden of developing similar unreliable data could only compel a meaningless and wasteful act. It is submitted that this argument by Southern lines should be summarily rejected by the Commission.

It is only by closing their eyes to most substantial evidence of record that Southern lines could assert, as they do upon Exceptions, that "Northern lines failed to present any substantial evidence supporting the application of even their territorial average costs, much less any higher costs, to the traffic at issue in this case" (p. 86). Operating evidence was

introduced to demonstrate that Official-Southern traffic encounters the same operating conditions as traffic generally. Included among such operating conditions, of course, is terminal switching service. The train utilization study, presented by Witness Nancarrow (V.S. 8, Exhibit A) is a representative cross-section of Official Territory operations which shows the "extent to which the total train service of Eastern Railroads participates in the movement of Southern interterritorial traffic (V.S. 8, p. 6). This witness also presented illustrative diagrammatic tracings of 14 Pennsylvania Railroad trains moving to and from the principal southern gateways of Cincinnati and Potomac Yard which followed the progress of every study car.

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The widespread dispersion of Official-Southern cars throughout the former territory disclosed by these studies demonstrates that the great variation in switching services pointed out by Southern lines as between particular points is equally true of the involved traffic and renders appropriate the use of territorial average switching factors. This is necessarily so because such variations are an attribute of physical handling and location entirely unrelated to the incidental determinations of origin and destination territory. If anything, it can fairly be concluded that the switching services of Northern lines, performed to a greater degree in congested metropolitan areas, exceeds that provided by Southern lines on this same traffic.

It is highly significant that Southern lines do not even attempt to dispute the Examiners' finding that "the adjustment in the North was not made on a basis comparable to that in the South." Nor can they take issue with the consequent conclusion that "in this case where the relationship of North and South is of primary importance, this is a major defect" (Sheet 52). It is submitted that these undisputed findings must be found to be determinative of the switching issue.

The Commission should find:

That Southern lines' adjustment of Southern Region switching costs rests upon an inadequate and unreliable 41-car sample that cannot logically be deemed to be representative of the involved Official-Southern traffic; that the special switching studies conducted on such cars are defective and fail to sustain the underlying assumption as to the asserted influence of multiple-car volume commodities in the South; that, to the extent such volume commodities affect switching minutes, there is a corresponding and offsetting influence upon the switching costs of Northern lines; that the record fails to justify the grossly disproportionate adjustments in the switching minutes, North and South, urged by Southern lines; and that, even if the special studies of switching in the South were assumed to be representative, Southern lines, as the proponents of the advocated departures from Rail Form A, have failed to overcome the "major defect" of lack of comparability in the relative cost adjustments which they urge with respect to switching.

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Reply to Exception No. 1, B-4, Re Count of Cars.

This exception relates to Southern lines' contention that cars of lake cargo and tidewater coal and ex-lake iron ore should have been regarded as cars originated and terminated, rather than cars interchanged, in allocating total switching costs as between terminal and interchange. It is submitted that the exception is not well taken.

Under the heading "Consistent Count of Cars Originated and Terminated", Southern lines' Witness Remington, in Exhibit C of his Verified Statement No. 40, makes certain adjustments in the count of cars developed from the Freight Commodity Statistics, which are used in computing

costs under Rail Form A. These adjustments add a portion of the cars therein reported as interchanged to the number of cars reported as receiving terminal handling. The effect of thus increasing the number of cars counted as terminated and decreasing the number counted as interchanged under Rail Form A, is to assign less switching expense to interchange service, which is a line-haul item, and thereby to reduce line-haul costs. The transfer of switching expense to terminal service, however, does not significantly affect the terminal unit cost per car, because of the accompanying increase in the count of cars given terminal service (V.S. 80, Sec. A, p. 1).

Witness Remington's Exhibit G, corrected p. 9, shows the effect of this adjustment to be an increase of 0.23 percent in the Southern lines' share of the total cost of the North-South traffic. The result of an increase of 0.23 percent would be to increase Southern lines' share of the cost by almost $1,250,000.

This adjustment, as stated, relates principally to lake cargo coal, tidewater coal and ex-lake ore. It is based upon the theory that, "For cost purposes, a car is originated when lading is placed in a car for outbound movement, and car terminated is a car in which lading is removed and the car is made empty" (Ex. C, p. 5 to V.S. 40). Thus, his sole test as to whether a shipment is interchanged or is originated

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or terminated is whether the lading was put into or taken from a car. All other characteristics of the operation would be disregarded. Such a test obviously has no relation to cost. It has no relation to whether a given operation is more like an interchange from the standpoint of the service performed and, hence, of the costs incurred, or whether its transportation characteristics are more nearly those of terminal service.

Northern lines' Witness Heywood testified (V.S. 80, Section A, p. 2):

> "That the service at tidewater ports on coal, and at the lake ports on coal and ore, is interchange rather than

terminal is apparent from the facts with respect to these services. Taking lake cargo coal as an example, the coal trains go to the railroads' lake front yards at the ports. Unlike cars which are to be terminated, the lake cargo coal cars are not then moved to various industries in transfer runs and then switched to effect delivery at the consignee's plant. Rather, they are moved to a dumping machine at the railroads' water front yards and there dumped into the lake vessel. It is obvious that this service is much more akin to a movement to an interchange track than to a transfer and switching movement to effect delivery to a consignee. The fact that the car is not given over to the boat line along with the lading cannot, in itself, mean that the shipment is not interchanged. The interchange of an l.c.l. shipment between railroads is not accompanied by a delivery of the car which carried the shipment; but, nevertheless, it is an interchange. Also, the fact that the interchange is with a boat rather than with a railroad—that the movement is to a dumping machine rather than to an interchange track with another railroad—cannot detract from the essentials of the operation and their significance from a cost standpoint."

Mr. Heywood also pointed out that in Lake Cargo Coal Rates, 1925, 126 I.C.C. 309, 313, the Commission stated, with respect to lake cargo coal rates:

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"The rates thereon apply from the mines to the raised or hump tracks beyond the classification yards at the Lake Erie ports. From these tracks the loaded cars are dropped by gravity to dumping machines at the docks. A separate tariff charge for transferring the coal from cars to vessels is not in issue. *The rates on lake-cargo coal are treated as in the nature of proportional rates to the ports for part of a through movement to cross-lake destinations. They include no termi-*

nal delivery to consignees at the ports. The local rates on so-called commercial coal to the port cities cover such delivery. For this and other reasons as, for example, concentrated movement at times when commercial coal is not moving heavily, rates on lake-cargo coal always have been lower than the local rates on commercial coal." (italics supplied.)

Thus even the rates on lake cargo coal indicate interchange rather than delivery service. They are either (1) proportional rates (differing from the rates to the port cities for local deliveries) the application of which is conditiond upon further movement from the port by water; (2) lower proportionals than those just mentioned, if the shipment is to have a further movement at the termination of the water haul; or (of more recent origin) (3) joint rail-water, or rail-water and rail rates (V.S. 80, Sec. A, p. 3).

The facts with respect to lake cargo coal as set forth above are true also in their essentials as to iron ore (which moves in the reverse direction of lake cargo coal) and tidewater coal (V.S. 80, Section A, p. 3).[2]

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2. The Commission's conclusion in *Institute of Scrap Iron & Steel, Inc., et al. v. Akron, Canton & Youngstown Railroad Company, et al.*, ICC Docket No. 33535 (April 2, 1962) that scrap iron rates may not be based upon iron ore rates in Official Territory is corroborative of the classification of ex-lake iron ore as interchange rather than originated traffic. In reaching its conclusion, the Commission found, at Sheet 12, that: "The movement of iron ore is highly concentrated. Ninety percent of the total traffic moves from seven Lake ports and three north Atlantic ports, and is delivered to the railroads by vessels in quantities averaging over 12,000 gross tons at the lake ports and 23,000 gross tons at the Atlantic ports", that the entire traffic of over 60 million net tons is delivered at approximately 90 destinations, that the origin and destination points for iron ore are "constant from year to year" that it moves "largely over single-line direct routes" and that "Because iron ore is frequently delivered to the railroads in quantities in excess of trainloads, it does not require the very expensive terminal services involved in waytrain and classification-yard services which are characteristic of the movement of any commodity such as scrap, where the typical movement is a single carload.

Witness Remington stated (V.S. 40, Ex. C, p. 5) that in many instances, cars which are originated or terminated "in every sense of the word so far as rail services are concerned" are nevertheless counted as cars interchanged in the freight Commodity Statistics. In this connection, he was referring to lake cargo and tidewater coal and ex-lake iron ore. He did not, however, give any facts to support this statement. It is clear, from the foregoing, that his statement is not in accordance with the facts.

In their exceptions, Southern lines state that the Examiners erroneously accepted the foregoing contention of Northern lines that the switching characteristics of the traffic involved are more akin to interchange than to terminal service. They state that the Examiners quoted Mr. Heywood's testimony on this point and that he was not qualified with respect to it because he "spent his entire career in the 'Accounting Department of the Pennsylvania Railroad' " (Southern lines' Exceptions, p. 90). Even if this were true, the witness testified that he has been engaged in the analysis and preparation of cost studies since 1930. It is obvious that in this capacity and over that long span of years, the witness would, of necessity, come into close contact with operating matters. The facts concerning which he testified —and which the Commission has corroborated by formal decision—are, moreover, not of the kind which only an expert is competent to know. The Southern lines say that they find it strange that an accounting man and not an operating witness testified on this subject. The fact is that the Southern lines attacked the classification given to the items in question in the Freight Commodity Statistics. Mr. Heywood's duties "include direct supervision over the compilation of statistics" (V.S. 3, p. 1). It was natural that the subject (with which Northern lines dealt on rebuttal) should be assigned to this witness, whose testimony was required on other subjects also.

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On p. 90 of their Exceptions, Southern lines say that Mr. Heywood revealed a "lack of familiarity with the oper-

ation of port facilities of the Northern lines on cross-examination, while admitting that the count of cars in the Freight Commodity Statistics differed for cars which received identical services". The comparison put to the witness in this cross-examination was as between switching on export coal and switching on coal transshipped to a domestic destination. The witness did *not* admit that the two classes of traffic received "identical services" as alleged by Southern lines. He said that he did not know as to this (Tr. 2579-80). It should be noted that this question and all of the testimony of Mr. Heywood quoted on p. 91 of Southern lines' Exceptions did not relate to the point made by the witness that the coal cars classified as interchanged had service more akin to an interchange than to an origination or termination. On the contrary, it went to a comparison of the switching service rendered on European as compared with domestic coal transshipped at Eastern ports.

On pages 92 to 93, Southern lines quote the testimony of Mr. Clark, a witness for Northern lines, describing certain operations at the South Amboy Coal Pier of the P.R.R. The witness's conclusion was that the operations are "complex and costly". But interchange service can be "costly and complex". The witness did not compare those services which have been classified as interchange services at the port with an origination or delivery to an industry in Northern New Jersey or around New York Harbor, or elsewhere. Southern lines conclude from the testimony quoted that a minimum of four classifications and three transfer movements is required to place cars of coal for dumping and to remove the empty cars, as contrasted with a single classification and one-way transfer of interchange traffic to rail connections. In making this comparison, Southern lines simply assume that there is no switching in connection with an interchange to a rail connection except a "single classification and one-way transfer". But this is not supported by evidence. Why not assume, for example, that some cars of coal destined to a locality on the New Haven or Long Island were in the train with the tidewater coal which was consigned to South

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Amboy, that after the train arrived at Brown Yard, the coal for the New Haven and Long Island was classified, then moved to Waverly Yard in a train with coal for deliveries in the Newark area, was further classified there for movement to the Long Island and New Haven, transferred to Greenville Pier, then put over a float bridge onto a car float for delivery to the New Haven and another car float for delivery to the Long Island, then taken by water to Bay Ridge and there put into the New Haven and Long Island trains. Such an assumption would be at least as good as the assumption made by Southern lines.

It is said on p. 93 of the Southern Exceptions that the Examiners disregarded the testimony of the P.R.R. operating witness bearing on the "operations here in question". The "operations here in question" are those of originating or terminating the traffic involved (coal and ore) as against interchanging them. The testimony of the P.R.R. operating witness referred to (from another case) was in no way related to that question.

Southern lines next say that the Examiners disregarded testimony from another case "which shows that the switching service required to handle coal at ports far exceeds the interchange services accorded average traffic and is the substantial equivalent of that required to originate or terminate average traffic" (Southern lines' Exceptions, p. 93). In support of this contention Southern lines state that the average switching time per car originated or terminated in Official Territory is 28.2 minutes, average switching time per car interchanged is 13.6 minutes, and that a Reading Company witness testified in a former case that it requires approximately 21 minutes per car to switch coal traffic from the Storage yard to the dumping facilities (Southern lines' Exceptions, p. 93). It is interesting that Southern lines refer to this 21 minute figure, but not to the 13.69 minute figure relating to the Jersey Central Pier and appearing in testimony included in the same exhibit as the 21 minute

figure. In its decision in the case from which both sets of testimony were taken, the Commission characterized the 21 minute figure as an estimate and the 13.69 minutes as actual.

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It said (*Eastern Bituminous Coal Assn. v. Baltimore & O. R. Co.*, 299 I.C.C. 691, at p. 718):

> "In pricing traffic terminated at the tidewater ports, the factor of 13.69 minutes per car was used as the switching time for that service. The figure was based upon the records of the Central New Jersey for switching at pier 18 at the Jersey City terminal. A witness for the Reading Company estimated the time as 21 minutes per car on that railroad, while the Central of New Jersey maintains a current record of the time required to switch its pier."

The 13.69 minutes is obviously very close to the 13.6 minutes which is the average time for cars interchanged in Official Territory (Southern lines' Exceptions, p. 93).

At pages 93 and 94 of their Exceptions, Southern lines infer that the 21 minutes at the Reading Pier relate only to switching from the hold yard to the dumper and that the complete service from the road train to the dumping facilities and return requires substantially more switching service than the system average time for interchange when a reasonable allowance for classification and transfer services are "added to the 21 minutes per car required to switch the coal cars from the storage tracks to the dumping facilities" (p. 94, Southern Exceptions). Here again Southern lines' point is based upon pure assumption. Actually the testimony in connection with the 21 minutes per car does not indicate the place at which the time was started. In addition, it is obvious that track delivery coal would also have to go first into the yard where the train was broken up, then taken to yard tracks for classification, then (with possibly additional intervening steps) taken in a transfer run

to a point that might be miles away, then taken out of the transfer train and switched to a private siding. All of this is ignored in the comparison and conclusion urged by Southern lines in the first paragraph on p. 94 of their exceptions.

On page 94, the Southern lines state also that there is no basis for the Examiners' assumption that switching coal at a port facility "lends

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itself to multiple-block switching". In V.S. 80, Section M, p. 1, Witness Heywood referred to lake cargo and tidewater coal as especially heavy movements, permitting of the greatest economy "both in switching and line-haul transportation". In stating that the testimony of Northern lines' operating officers in previous cases shows that the cars are "individually" classified, the word "individually" was added by Southern lines. For example, the testimony concerning the Jersey Central's pier was that the shipper "may order 5 or more cars each of several classifications, or certain cars by number to obtain the tonnage required. In other cases it is ordered according to day of arrival with some old coal being ordered, also some newly arrived coal being ordered" (V.S. 37, App. D, Sec. K, p. 3). The fact that the shippers order the coal dumped by classifications or by day of arrival does not mean that the traffic does not lend itself to "multiple car block switching". Obviously cars of the same classification or which arrived on the same day and which are together on the hold track can be switched in multiple-car blocks to the dumper. Moreover, that is simply the final switching movement. Preceding switching movements would obviously be in multiple-car blocks.

On pages 89 and 90 Southern lines first quote from testimony given by the Commission's then Chief Cost Analyst in I.C.C. Docket No. 28300, to the effect that the traffic here in dispute is correctly reported "for statistical purposes in determining the national production" but that from the

standpoint of cost the count is incorrect as the rail terminal service at point of interchange with water lines is a complete origin or destination operation and should be counted as such. No facts whatever are given to establish that what the witness himself refers to as the operations "at point of interchange" are in fact not similar to interchange but to complete origin or destination operations. It is stated that the Cost Section "cured this error" and that the Chief Cost Analyst "corrected the costs", citing *Class Rate Investigation, 1939,* 262 I.C.C. 447, 576 (1945). The citation referred to establishes simply that the figures quoted thereinafter in that report are based on cost scales introduced by the Commission's Head Cost Analyst "but

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adjusted to reflect the corrections of record made by him in response to criticisms of the study, and corrected to reflect the revised assignment of commodities to classes of equipment." This is just a general statement and whether or not the data here involved was "corrected" cannot be known from the citation.

Then, on p. 90, Southern lines state that the Examiners err in omitting any reference to the "prior acceptance by the Commission and its Cost Section of the validity of the criticism . . ." It is not shown that the Commission has accepted the criticism as valid. And neither has the Cost Section. The Cost Section, in applying its Form A to produce the cost scales which are used week in and week out by the Commission and parties before it, uses the freight Commodity Statistics and their classification for the car counts, just as the Northern lines did in this case (V.S. 80, Sec. A, p. 7). And in *Class Rates, Mountain-Pacific Territory,* 296 I.C.C. 555, 604 (1955), where this specific criticism was offered and the matter put in issue, the Commission refused to make the adjustment sought. Southern lines endeavor to distinguish that case in a footnote on pages 89 and 90 of their Exceptions. They say that whereas the effect

on costs was small in the Mountain-Pacific case, it is important here, and that whereas the Commission stated in the Mountain-Pacific case that the subject requires further study as to the relative switching service performed for the coal and iron ore traffic as compared with other carload traffic, Southern lines say that the burden of proof is on the Northern lines to justify the use of an "admittedly" inconsistent count of cars. Northern lines make no such admission. Moreover, the burden of proof to change this practice is not on Northern lines but on Southern, and they have introduced no evidence whatever as to the "relative switching service performed for the coal and iron ore traffic as compared with other carload traffic". The statement in their footnote on p. 90 that the present record shows that the cost of handling coal at dumping facilities requires at least as much switching per car as is required to originate or terminate average traffic is without any support in the record.

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On p. 95 of the exceptions, Southern lines complain of the Examiners having stated that Rail Form A equating factors reflect the relative amount of switching "based on careful studies". It is stated that the Examiners have either assumed something without support or had been given this impression by someone in the Cost Finding Section. Rail Form A is the formula upon which the Southern lines rely. It is the basis of their cost study. Hundreds of origins and interchanges which take place in the South use the equating factors of which the Examiners speak. Are Southern lines now indicating that the switching studies upon which these factors are based were not carefully made? If figures from Rail Form A are presented and relied upon and no exception is taken by the parties so relying (and none has been taken with respect to the equating factors), it is certainly unreasonable to take the kind of exception that is taken here. There having been no objection to the equating factors, however, the phrase which offends Southern

lines ("which reflects the relative amount of switching based on careful studies") is unnecessary and can as well be eliminated.

In the next paragraph on p. 95 of its Exceptions, Southern lines state that even if the equating factors are perfect ". . . that still leaves open the only issue here, that is the justification, if any for counting identical services as interchange services if the contents of cars are loaded into a boat destined to a North Atlantic port but as terminal services if the contents of the cars are unloaded at the same dumping facility into the next boat bound to Europe." As to this, Northern lines reply (1) that, as shown above, Southern lines have not shown that the two services are, in fact, "identical services", and (2) the "only issue" as stated by Southern lines is not the issue here. The only issue is whether what is now classified as interchange is, from the standpoint of its operating incidents as affecting costs, more like terminal than like interchange service. Certainly Southern lines fall far short of establishing that the Commission's practice of many years of classifying the involved traffic as interchange should be changed.

Next, the Southern lines state that the remaining question relates to the reliability of data used by the Southern lines in making

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the "necessary correction". They refer to the Examiners' statement that how much of the data behind Southern lines' "correction" was estimated, or how reliable the estimate is unknown. Southern lines say that "substantially all" the necessary data was available from the One Percent Waybill Statistics to which they refer, and that this data provides "adequate detail for the adjustment reflected in Southern lines' cost study" (Southern Exceptions, p. 96). This conclusion has no support in the evidence.

Continuing, on p. 97, Southern lines state that "Only with respect to a very limited category of traffic (received

at a port and delivered to a connecting carrier) was any estimate required, and that estimate was based upon the data filed by the carriers with the Commission (V.S. 40, Ex. C, p. 11)." Actually, Southern lines' witness did not reveal that there was any estimate, let alone indicate what data it was based upon. There is nothing whatever in V.S. 40, Ex. C, p. 11 to support the statement for which that reference is cited. The fact that an estimate was made was first revealed in the rebuttal testimony of Mr. Heywood (V.S. 80, Sec. A, p. 6).

It is stated on p. 98 of Southern lines' Exceptions that the "reasonable method of making this estimate was set out in the working papers and was not challenged as to method or specific result by the Northern lines." The record does not show that the "reasonable" method indicated was set out in the working papers, and Mr. Heywood stated that the estimate "cannot be considered as of any value for the purpose" (V.S. 80, Sec. A, p. 6). In the first paragraph of p. 99 of their exceptions, Southern lines purport to give the percentage of the data involved in the estimate. This is beyond the record. Even if it were in the record, it would show that a substantial portion of the data was estimated.

Next, Southern lines endeavor to put the burden of proof on this point over to the Northern lines. We have replied to this approach above in discussing burden of proof (pp. 28-29).

With respect to the alleged inconsistency between classifying the Northern traffic involved as interchange and certain Southern traffic

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(phosphate rock) as terminated, it is sufficient to answer that Southern lines made no attempt whatever to establish by evidence that the two services are comparable from the

standpoint of the operations involved. The Commission should find with respect to this point that:

1. For many years the Commission's regulations have specifically required that the traffic involved in this adjustment for which Southern lines contend, be classified as cars delivered to connections or received from connections, i.e., as interchange traffic.

2. The Commission has treated the service at the lake ports as delivered to connections in prescribing the lake cargo coal rates.

3. The treatment of the traffic as received from or delivered to connections rather than as originated or terminated is consistent also with the rates which are applied thereto, these being proportional rates different than rates applied for local delivery or local origin service at the ports.

4. The present evidence confirms the propriety of the classification of the disputed traffic as traffic delivered to or received from connections.

5. The Southern lines have offered no evidence comparing the services involved in handling the disputed traffic with typical or average service in connection with originating or terminating freight in the Eastern district.

6. Southern lines have not proved comparability of service as between the disputed traffic and traffic delivered to boat lines on Southern lines, such as phosphate rock.

7. The evidence does not establish that the classification deliberately given to the disputed traffic by the Commission should be changed for the purposes of costing in this case, or otherwise.

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Reply to Exception No. 1, B-5—Proposed Equalization of Gateway Interchange Costs.

At pages 99-105 of their Exceptions the Southern lines criticise the Report for its disallowance of their proposal to equalize gateway interchange costs. But an analysis of the situation fully sustains such disallowance for the reasons to be stated.

NEITHER EQUALITY OF ENGINE-HOURS NOR OF CERTAIN OUT-OF-POCKET COSTS CONNOTES EQUALITY OF FULL COSTS OF INTERCHANGE AT THE GATEWAYS.

For the cars involved in their traffic study (967,554) less those interchanged with Northern lines at interior Illinois and Indiana junction (86,843), the Southern lines, for the purpose of this adjustment use—in lieu of the territorial Form A interchange costs of $4.95 in the North and $3.14 in the South—an average of those figures. Accordingly, they would decrease the Northern costs by $797,043 and increase the Southern costs by a like amount.

To support this adjustment Southern lines refer to certain equalizations of *engine time*, where practiced, is attended by precise lines in accomplishing interchange at certain gateways and (b) of *charges* made by a common agent covering interchanges at certain other gateways.

But there is nothing of record to warrant the assumption that equalizations of *engine time*, where practiced, is attended by precise or even substantial equality of ultimate full cost. Of necessity there are variations in costs North and South due to differences in wages, taxes and other types of costs such as maintenance. In such instances, as well as where similar charges are made for the interchange services rendered by a common agent, there are differences in other elements of costs, including overhead and constant costs, which would serve to make different the full costs

of interchange service by the carriers of the respective groups.

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THE ADJUSTMENT, IF MADE, WOULD BE INCOMPLETE.

Another substantial objection to the suggested adjustment is that it would be incomplete. If Southern lines are assumed to have incurred interchange costs at the gateways at the rate of $4.045 per interchange as compared with their 1956 Form A average of $3.14, that would necessarily mean that their costs for other interchanges would be reduced by $797,043. Conversely, the corresponding adjustment of Northern gateway interchange costs would require an *increase* of the same sum in the costs of other interchanges in Official Territory. But in proposing the making of such adjustment in respect of this item the Southern lines did not attempt to show to what extent their costs of the other interchanges on the traffic involved would be *decreased* or to what extent the Northern costs of other interchanges would be *increased*. Further, they presented no such data as would permit the completion of such an adjustment. Undoubtedly it was for this reason that they did not include this item with their major adjustments, but left it with other general considerations of a catch-all character.

Hence, the adjustment suggested by Southern lines in respect of this item cannot be allowed, because obviously it is incorrect even on their own theory.

This illustrates a basic difficulty attendant upon adjustments of Rail Form A territorial costs which frequently produce unreliable results. When for particular items of service greater or lesser costs are assigned than under the formula, lesser or greater costs of corresponding amounts must be assigned to the remaining units of service. Otherwise the essential wholeness and accuracy of the cost study is destroyed.

THE ADJUSTMENT RESTS ON AN UNSOUND ASSUMPTION.

An additional objection which applies to this adjustment in common with others is that it necessarily assumes that the interterriorial traffic

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is to be costed for its handling by Eastern (or Northern) lines on a preferentially low basis which will enable it to escape its full ratable proportion of all Eastern territorial costs and thereby to excuse it from making its full proportionate contribution to the revenue requirements of Eastern railroads. Such an assumption is contrary not only to sound transportation economics but also to the policy of the Congress as manifested in the Transportation Act of 1920 which conferred upon the Commission its present division-making power.

Accordingly, the Commission should find that the Examiners correctly disallowed Southern lines' contention in respect of equalization of gateway interchange costs.

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Reply to Exception No. 1, B-7 Concerning the Allocation of Constant Costs to Pulpwood and Wet Phosphate Rock.

Southern lines contended that there should be added to the costs south of the gateway an amount sufficient to make up the difference between their rates on pulpwood and wet phosphate rock and the fully distributed costs thereon. The movements of these commodities are wholly within the South. Southern lines' pretext for seeking this addition to their costs is that a "tacit" transit arrangement exists under which the outbound movement of paper products and dry phosphate rock depends upon the inbound movement of woodpulp and wet phosphate rock, respec-

tively. The Examiners rightfully recommend against this addition to Southern lines' costs.

This matter is fully discussed in Eastern lines' brief at pages 176 to 187. The following points, among others, are made in that discussion:

1. The reason for the adjustment, as stated by Southern lines, arises from the Northern lines' having shown relative costs on a fully distributed basis. This is a thesis that is no longer mentioned, at the exceptions stage of the proceeding, but was the primary reason advanced by Southern lines' Witness Burroughs in support of making the adjustment (Eastern lines' brief, pp. 177, 178). Probably the reason for abandoning this theory of support for the adjustment lies in the realization that Northern lines can make their case as well, or even better, on the basis of out-of-pocket costs than on the basis of fully-distributed costs (Recommended Report, Sheet 55).

2. Northern lines are not parties to the rates on wet phosphate rock or pulpwood. They have no control over them, no voice as to their level. Indeed, at least one object —if not the sole object—of Southern lines in making these rates as low as they are was to induce paper companies to move from other locations—obviously on Northern lines—to locations on Southern lines. Thus, Mr. Marks, of the Southern Railway, testified in *Reduced Rates on Pulpwood in Southern Territory,* I.C.C. Docket No. 30958:

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> "The pulpwood rates in the South, from the very inception of the production of paper in the South, have been made with the definite object in mind of developing the industry. We realized that with the vast reservoir of pulpwood in the South, there was a golden opportunity to encourage the industry to locate in the South." (V.S. 80, G-12, pp. 17, 18.)

And, on p. 18, of the same statement, Mr. Marks said:

> "That our theory of rate making is correct is evidenced by the enormous growth of the pulp and paper industry in the South, and we feel very keenly that it is an obligation of the railroads to make freight rates that will foster the continued growth of the pulp and paper industry in the South.
>
> "It is our position that the Interstate Commerce Commission should not fix freight rates that will hamper the railroads in their endeavor to assure the continued growth of this industry, but the railroads should be permitted to exercise their managerial discretion in making rates for the future that will assure the continued growth of this important industry in the South."

The situation, therefore, is that these rates on pulpwood, as to which Northern lines have no control, were made on a low basis to attract plants from the North, and now the Southern lines want the Commission to require Northern lines to help make up the deficit under constant costs which they incur. The injustice of sanctioning any such adjustment as that here proposed is manifest.

3. Even if this proposed addition to the cost of Southern lines were otherwise valid—and obviously it is not—it could not be applied in favor of Southern lines without a like addition being made to the costs of Northern carriers. If Southern lines were entitled, for example, to the addition with respect to pulpwood, Northern lines would likewise be entitled to it with respect to such raw materials as iron ore, coal and fluxing stone which go into the manufacture of iron and steel which moves, among other places, from the North to the South. Southern lines' excuse for confining the adjustment to their own traffic is that

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is a "tacit" transit privilege on such traffic. There is nothing to this point, as was shown in our brief (pp. 183-

187), and even if there were, no such distinction could be allowed to govern. Otherwise, form would be substituted for substance.

4. Southern lines' theory involves the assumption that a railroad is entitled to get from every ton of traffic its fully-distributed cost, that the two raw materials involved cannot (under the premise that low rates are deliberately made on the inbound commodity to induce outbound movement) recover fully-distributed costs and that the deficit under a full allocation of costs with respect to the movements of raw materials must be recouped from the outbound movements of paper products and dry phosphate rock. As the Examiners pointed out, this involves a misunderstanding of the "nature, significance and use of constant costs" (Report, Sheet 56).

Southern lines' theory on this point is indicated by Mr. Burroughs' typical statement that:

> "The critical fact here is that the ton and ton-mile allocation of constant costs assigns to pulpwood a cost that the Southern lines must recover from their share of the revenue on the essentially transit movement of paper." (V.S. 41, p. 8.)

If pulpwood and wet rock fail to provide their pro rata share of revenues necessary to offset overhead costs, the asserted deficit, if it were properly and necessarily incurred, would be a burden of Southern lines' traffic generally rather than of any particular segment of that traffic whatever its physical relationship to the so-called deficit commodities. Constant cost, created as a burden of all traffic, must be shared by all traffic jointly in proportion only to the revenue-producing abilities of each segment. In placing the entire alleged pulpwood deficit on paper, for example, Mr. Burroughs himself made an allocation of constant cost, in this case to the paper traffic, which he would give precedence over the ton and ton-mile basis he here assailed.

Northern lines challenge the merits of the allocation urged by the witness which, in effect, represents a pyramiding and, hence

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duplication, so far as paper and dry phosphate here in issue are concerned, of raw materials deficits added to fully distributed costs for the former already computed on the customary basis. It is submitted that cost is an independent determination capable of computation quite apart from ability to pay or revenues received. The costs incurred in handling pulpwood and wet phosphate rock do not become the costs of handling paper or dry rock or some other commodity, of whatever nature or physical relationship, simply because revenues may be inadequate on the former. A necessity to resort to general funds developed from traffic in the aggregate for general overhead expenses cannot possibly justify the arbitary assignment of pulpwood costs to the paper traffic, or wet phosphate rock costs to the subsequent movement of the dry commodity.

5. Southern lines characterize the described pulpwood and wet phosphate rock traffic as involving "an essentially transit" relationship (V.S. 40-A, p. 8). *But a transit relationship is one that is readily identifiable from the tariff and either exists or doesn't exist. If an actual transit relationship exists, then the through rates from the initial origin of the raw material via the transit point to the ultimate destination of the finished product would have been established with the concurrence of Northern lines and would here be in issue if that movement were between the territories involved.* In that situation the through cost would likewise appropriately be considered in fixing divisions. But here no transit is in fact provided by the appropriate tariffs.

The only joint interterritorial rates here before the Commission are those applying on paper and paper products and on dry phosphate rock. The so-called "tacit transit arrange-

ment" is at best an express recognition of the obvious physical fact that the production of finished and semi-finished products necessitates an inbound flow of basic materials. Pulpwood, for example, is no more essential to the production of paper than are the myriad raw materials which enter into the production of other commodities moving freely in commerce between the two territories here involved as well as elsewhere throughout the United States. As Mr. Marks stated in the *Pulpwood* case cited above: "Pulpwood is the very heart of the paper industry to

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the same extent that iron ore is the very heart of the steel industry." (V.S. 80, G-12, p. 18.)

6. There is a contribution of almost $5 million annually toward constant costs from the pulpwood traffic (V.S. 41, p. 6).

7. An analysis of the evidence with respect to the so-called "tacit transit arrangement" in relation to pulpwood and phosphate rock appears at pages 183 to 187 of our brief. It is there demonstrated that there is not even the tacit arrangement for which Southern lines contend. There is no real transit arrangement and there is no other kind of transit arrangement.

Witness Burroughs himself demonstrated conclusively that the transportation of pulpwood is not a necessary precedent to the routing via Southern lines of the paper produced from that pulpwood.

At page 3 of his Verified Statement No. 41, Witness Burroughs showed that Southern roads hauled 23,068,500 tons of pulpwood and originated 8,506,900 tons of paper and products. Thus, notwithstanding the claimed strict adherence to the inbound-outbound ratio, those railroads were required to originate and terminate only 2.71 tons of pulpwood for each ton of paper and products outbound rather than 5.5 tons as alleged. In effect then, the "burden" of handling pulp-

wood, said to be a prerequisite to securing paper traffic, was only half as great as asserted.

If, as stated, 5.5 tons of pulpwood are required to produce one ton of paper, it can be determined that the pulpwood handled by Southern lines produced only 4,194,272 tons of the total of 8,506,900 tons of paper and products originated by those lines. The remaining 4,312,628 tons, or over half of the total, constituted "free tonnage" secured by Southern lines without the necessity of any "burdensome" pulpwood haul. Using the same ratio of 5.5 to 1, this "free tonnage" obviously required the movement of 23,719,450 tons of pulpwood by carriers, presumably by water and highway, other than Southern railroads. Thus, in supplying the raw materials for this "free tonnage", truck and barge lines handled more pulpwood than all Southern railroads and did so

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without receiving a single pound of outbound paper and products. This comparison makes it apparent, first, that pulpwood traffic is desirable, certainly, at least, to competing modes of transportation, for the revenues from that traffic alone and, secondly, and fortunately for Southern railroads, that there is clearly considerably less than strict adherence to the claimed practice of awarding the higher-rated paper traffic to the carrier hauling the inbound pulpwood.

Moreover, by this analysis, Mr. Burroughs' admitted speculation (p. 9) that the pulpwood rates might be increased and the paper rates reduced without injury to Southern lines but with serious impact upon Northern lines, is shown to be utterly removed from reality. Since there are water and motor carriers actively participating in the pulpwood traffic, for the sake of that traffic alone, rates on pulpwood are subject to competition; and, moreover, increased rail rates would run counter to Southern lines' policy to attract the paper industry to the South and to encourage its growth there. And so far as rate reductions on paper and paper products are concerned, Southern lines would hardly reduce

rates which are already sufficiently competitive to attract more uncommitted "free tonnage" for which truck lines are already competing than tonnage allegedly earned by handling pulpwood under the so-called tacit arrangement.

Inasmuch as it is the position of Southern lines that the principles asserted with respect to pulpwood and paper apply as well to the wet phosphate rock and dry phosphate rock (V.S. 41, p. 9), the foregoing comments are pertinent as well to the latter. While reference is made to certain transit tariffs, there is no rate adjustment to the shipper and no claim that the rate here being divided is that on the entire wet rock-dry rock movement (R. 1767). It follows that this is no more a true transit arrangement than was the case with pulpwood.

In their exceptions, Southern lines state that the sole issue is whether, in fact, transit relationships exist and it is said that the "uncontroverted fact" is that the Southern lines maintain rates on the

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two raw materials which are conditioned upon outbound movement by rail of the dry phosphate rock and paper products. Again, it is stated that "The issue here is not whether such conditions upon the inbound rates exist, but whether such conditions create transit relationships" (Southern lines' Exceptions, p. 109).

How Southern lines can justify such statements in the light of the above facts is difficult to see. Southern lines' own evidence, as set forth above, disproves the relationship for which they contend. The statement that Southern lines sacrifice revenue on short-haul movements of the inbound commodities in order to get the outbound overlooks not only the existence of competition for the inbound commodities (Eastern lines' brief, p. 185) but, as well, the device of using the low inbound rates in order to attract the paper industry to the South.

It is stated, on p. 109 of Southern lines' exceptions that since Northern lines participate in the outbound movement

"made possible by the transit arrangements" Southern lines' divisions should "in all fairness" reflect the services performed as an integral part of the joint enterprise. Northern lines, having no control over these rates which were established, in part, to draw the paper industry to the South, have no objection whatever to Southern lines increasing them.

On p. 110 of Southern lines' exceptions, it is stated that the restated costs in the Recommended Report "unfairly assign to the movement of pulpwood or wet phosphate rock into the transit points the full pro rata constant costs per ton and per ton-mile, the bulk of which must, in reality, be borne by the outbound finished product." This is not correct. The restated costs make no assignment of constant costs to the movement of pulpwood or wet phosphate rock. The restated costs do not deal with those movements. Moreover, as the Examiners pointed out, this concept is an erroneous concept of the use of constant costs.

On page 111 of their exceptions, Southern lines endeavor to gain factual support for their theory about the relationship between inbound pulpwood and outbound paper by quotation from *Reduced*

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Rates on Pulpwood in Southern Territory, 297 I.C.C. 735, 738 (1956). As indicated above, the facts now shown are quite contrary to those sought to be supported by quotation from the cited case. See Eastern lines' brief at p. 185.

It is stated on p. 112 of their exceptions that the Examiners do not directly challenge the "foregoing facts" set forth in Southern lines' exceptions. This is incorrect (Sheets 55 and 56 of the Recommended Report). Southern lines' attempt to avoid the force of the Examiners' conclusions concerning the nature of fully-distributed costs (an attempt which simply reiterates the theory that the commodities in question "are essentially and realistically related to the movement of paper and dry phosphate rock", p. 113, Southern lines' exceptions) has been sufficiently answered above.

Contrary to Southern lines' contention that the Examiners' "premise" that the movements involved are "intraterritorial traffic" and that that premise has "no reality", the record shows that the traffic is indeed intraterritorial traffic, that the rates applied thereto are wholly intraterritorial, that Northern lines have no participation whatever therein,, no voice in fixing them and, if they did, would unquestionably find it to their interest to increase the rates, at least on pulpwood.

The Commission should find that the Examiners were correct in rejecting the proposal to add to Southern lines' costs the so-called deficit on woodpulp and wet phosphate rock and, in so doing, find that the Northern lines are not parties to the rates on pulpwood or on wet phosphate rock, that they have no control whatever as to their level, that an important consideration in making the rates on pulpwood was to attract paper manufacturing plants to the South, that the rates are not transit rates, either alone or in conjunction with outbound rates, that, as a matter of substance, any such adjustment as that proposed by Southern lines would require like adjustments on raw materials moved wholly within Official Territory and followed by movements of finished products from Official Territory to the South, and that proposal misconceives the nature of constant costs.

Reply to Exception No. 1, B-8 Relating to the Exclusion of Suburban Service Deficits.

The eagerness of Southern lines to seek out ways to adjust Eastern lines' costs downward is well illustrated by their exclusion of suburban service deficits (V.S. 40, pp. 21, 22; V.S. 40-A, p. 10). Although both Northern and Southern lines have large passenger deficits, in ascertaining the relative transportation costs of Northern and Southern lines under the rates here involved, Southern lines urge the exclusion of only a part of the deficit, the part, of course, that is

more weighty in the North than in the South, that incurred in suburban service. By this adjustment, the Southern lines hope to reduce Eastern lines' relative share of the cost on this traffic by over $2½ million annually (Compare Tables 10 and 12 from V.S. 40).

The theory in justification of this adjustment is set forth in Mr. De Butt's Verified Statement No. 14. He says, at pages 12 and 13:

> "It is essential to an understanding of the passenger problem that it be realized that the deficits associated with intercity passenger service must be sharply distinguished from the deficits also incurred by some roads in providing suburban service within certain metropolitan areas in the North. They are separate types of operations, both physically and in the problems which they present.
>
> "Intercity passenger service is, in large part, performed over the same tracks, bridges and other facilities as are used in freight service. As a result, an important portion of passenger costs represents the allocation of costs common to freight and passenger service.
>
> "However, elimination of all intercity passenger trains experiencing out-of-pocket losses will not eliminate the reported passenger deficit. The passenger deficit will still reflect the large portion of carrier costs which would continue in any event if all passenger service ended. Under such circumstances, the intercity passenger

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> deficit is treated as a burden to be recovered from the freight service. This becomes largely a matter of terminology, since the freight service is paying for the use of the common facilities that must be maintained for freight service in any event."

It is, if course, admitted that Southern lines have a large passenger deficit. Mr. De Butts admitted also that the railroads in the South have "local and branch line passenger trains which represent a serious drain against the railroad's other revenues" (R. 945). It would seem obvious that, from the standpoint of its relation to North-South traffic and the cost of performing it, there is no difference between that part of the passenger deficit which results from suburban operations and that part of the passenger deficit which result from the operation of through or local passenger trains. If the Southern lines should not properly be charged with any part of the deficit incurred in handling commuters from "A" to "B" in the East, it would seem logically to follow that the Northern lines should not be required to bear any part of the Southern lines' deficit from transporting passengers from "X" to "Y" in the South.

But Mr. DeButts's attempted distinction is that the suburban service is largely a separate service, using facilities not common to freight service, while other passenger service generally uses facilities that are also used in freight service. He suggests further that if the latter type of passenger service is discontinued the passenger deficit "will still reflect a large portion of carrier cost which would continue in any event if all passenger service ended", and that "Under such circumstances, the intercity passenger deficit is treated as a burden to be recovered from the freight service. This becomes largely a matter of terminology . . ." (V.S. 14, p. 13).

Southern lines' exceptions to the refusal of the Examiners to allow this arbitrary adjustment continues this theme (p. 115): "The basic reason justifying the inclusion of intercity passenger deficits as a part of the cost of providing freight services is that such passenger deficits are almost entirely attributable to the apportioned costs of common facilities *which must be incurred in any event to provide freight service.*" (Italics supplied.)

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There is no proof whatever to establish as a fact that intercity passenger deficits "are almost entirely attributable to the apportioned costs of common facilities which must be incurred in any event to provide freight service." The summary assertion of this conclusion by a witness without data to support it certainly does not establish it as a fact.

The complex matter was examined by the Commission in *Railroad Passenger Train Deficit*, 306 I.C.C. 417 (1959), from which decision the Southern lines, at p. 115 of their exceptions, quoted a "criticism" of the rules for the separation of passenger and freight expenses, but not the result of the Commission's examination of that criticism. In that case, the Commission pointed out, at p. 423, that some parties took the position that "because of the nature of the separation rules, the soundest criterion of the profitability of railroad passenger service is solely related passenger operating expense plus an additional amount to reflect taxes, rents, interest on depreciated investment, and certain other items."

Among the studies introduced to show the *avoidable costs* of passenger train service was one that was "introduced in evidence at our [the Commission's] request . . ." (p. 424). The conclusion of that study, as quoted by the Commission on p. 425 of its report was that:

> ". . . 'the total passenger operating deficit as estimated by a statistical approach would amount to $708 million' in 1955, 'somewhat higher than the I.C.C. estimate for 1955 of $476 million."

Then, at p. 426:

> "The conclusion from the study that its 'statistical estimates of avoidable costs more often exceed than fall short' of the showing in our statistical reports bearing on the passenger deficit is of major significance and *serves as a warning that common costs cannot be lightly dismissed.*" (Italics supplied).

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This obviously puts to rest the entire basis for Southern lines' attempted distinction between suburban service deficits and deficits from other kinds of passenger operations, their assertion that common costs would go on even without intercity passenger service and that they are "largely a matter of terminology."

It may be noted, also, that the passenger service deficit that is determined by comparing passenger revenue with common and solely related expenses gives no consideration to "an additional amount to reflect taxes, rents, interest on depreciated investment, and certain other items." (306 I.C.C. at 423). These, obviously, are very large amounts.

In their analysis of the contention that the passenger deficit on other than suburban service is fictional, Northern lines pointed out that Southern lines had a deficit simply on the basis of matching passenger revenue with solely related passenger expenses. At p. 118 of their exceptions, Southern lines attribute to Northern lines a theory that it is no more inappropriate to assign suburban service deficits as part of the cost of Official-Southern traffic than it is to assign deficits representing a deficiency in all passenger revenues as compared to *solely related passenger expenses.* Northern lines advanced no such theory. If the language referred to in the Examiners' report at Sheet 53 is susceptible of a construction that they did make such a contention, it should be made clear that they did not and that they presented the solely related costs simply to show in one conclusive manner the error of Mr. De Butt's contention that the passenger deficit on intercity service is largely fictional (Eastern lines' brief, p. 176). This, however, in no way implied that the common expenses apportioned to that service should be disregarded (Eastern lines' brief, p. 176). It is disregarded in the calculation offered at p. 119 of Southern lines' exceptions wherein they purport to adjust Southern lines' passenger deficit as allocated to the North-South

traffic by confining the deficit to the difference between revenues and apportioned common expenses. This maneuver must fail in the light of the total absence of any evidence

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to support Southern lines' assertion that the apportioned common cost "must be incurred in any event to provide freight service" (p. 115, Southern Exceptions), a contention which is contrary to the Commission's conclusion in *Railroad Passenger Train Deficit, supra.*

It should be noted also that the evidence adduced by Southern lines with respect to the nature of the suburban deficit does not indicate that *all* of the expenses of providing such service are exclusive to the lines and operations used in providing it. The evidence quoted on pages 116 and 117 of their Exceptions related primarily to "roadway facilities". The Examiners referred to this evidence and pointed out that while certain track expenses could be saved by abandoning the suburban service referred to in the evidence, "other costs related to the roadway would continue, such items as land taxes, grading, ditching, culverts, bridges, and signaling systems" (Sheet 54). Southern lines complain that these conclusions of the Examiners are contrary to the record made by the Northern lines before Congress. As shown in Southern lines' Exceptions at pp. 116-117, this is not so.

It is implied, on p. 116 of Southern lines' exceptions, that there was no proof to support the finding that without suburban service the expenses for such items as land taxes, grading, ditching, culverts, bridges, and signalling systems would continue. It is manifest from the fact of the presence of a railroad that such items of expense as those mentioned by the Examiners must be incurred in some degree.

For the above reasons, the Examiners were obviously correct in rejecting this proposed adjustment of Southern lines. And Northern lines wish to bring to the attention of the Commission one additional fact which, if it stood alone,

would completely dispose of the point. The Northern lines which perform the suburban service are, of course, the lines of the *Eastern District*. Exhibit B to V.S. 3 shows, at p. 15, the unit costs for Eastern District lines excluding passenger and l.c.l. deficits. At the average haul, and using the 1956 costs, this showed

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Eastern lines as incurring 50.5 percent of the total costs. Using the I.C.C. basis, which includes passenger and l.c.l. deficits, Eastern lines incurred 50.7 percent of the total costs. Again, comparing the I.C.C. out-of-pocket basis with the I.C.C. fully-distributed basis, using 1956 costs at average haul, Eastern District lines have 51.7 percent of the box car out-of-pocket costs, which do not include the passenger and l.c.l. deficits, and 50.7 percent of the fully-distributed box car costs. The figures for refrigerator cars are 35.7 percent and 35.6 percent, respectively. (V.S. 3, Ex. B, p. 14). Thus, from the standpoint of relative costs, Eastern lines have demonstrated their entitlement to increased divisions even if no consideration were to be given passenger deficits by the Commission. This deficit must be viewed as an entirety, however. Obviously, it would be unfair to pick and choose a part of the passenger deficit to be excluded, selecting in such manner as to distort cost relationships to the advantage of Southern lines. Either the passenger deficit should be excluded from the cost figures in its entirety or it should be included in its entirety. On either basis, the higher costs in the North are manifest.

The Commission should find that:

There is no valid basis in the evidence for distinguishing between suburban passenger deficits and other passenger deficits, that Southern lines' assertion that the expenses related to so-called intercity passenger service would largely continue if such service were abandoned and that they are, therefore, largely fictional

is not convincing, that although Southern lines have not asked that their own passenger deficits be excluded in calculating their service costs to be applied to the North-South traffic involved in this case, if it were proper to exclude deficits resulting from any passenger service, the entire passenger deficits of both Southern and Northern lines should be excluded, and that if the total passenger deficits were excluded the Northern lines' share of the costs of performing the freight service here involved would be higher than with the deficits included. Southern lines' proposed cost adjustment relating to the suburban service deficits is rejected.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

(Title omitted in printing.)

REPLY OF EASTERN RAILROADS TO THE EXCEPTIONS OF SOUTHERN GOVERNORS' CONFERENCE ET AL. TO EXAMINERS' RECOMMENDED REPORT

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[1]

Come now Eastern railroads respondents in No. 29885 and complainants in No. 29799, herein termed northern lines; and make this their reply to the exceptions jointly filed by Southern Governors' Conference and Southeastern Association of Railroad & Utilities Commissioners, interveners, to the recommended report and order of the

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Examiners, and to the separate concurring exceptions of intervener North Carolina Utilities Commission. For brevity interveners will here collectively be termed "Southern Interveners"

Introduction

To an important extent the exceptions of the Southern interveners deal with contentions raised and chiefly urged in the exceptions of Southern Territory Railroads. Accordingly, what is said in reply thereto should be understood as also applying to the similar points presented by the Southern Interveners. But the exceptions of the latter raise some additional points that warrant discussion here.

A. The Importance to the Public of the Transportation Services of the Carriers Is Not a Sectional Concept.

Running throughout the exceptions of the Southern Interveners is the assumption that the statutory item of "the importance to the public of the transportation services of such carriers"—to which the Commission is required to give due consideration—is a purely sectional or regional concept.

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But this assumption is contrary to the statute itself and to the policy of the Congress.

By reference to the preceding language of Section 15(6) the expression "such carriers" will be found to refer to "the several carriers" and "the carriers concerned" in the transportation under the rates to be divided. Such carriers are *all* carriers, or in a case such as the instant one where primary divisions are being fixed between two groups of carriers, *both* carriers groups. Thus, what is required of the Commission in its consideration of this item is a *balancing* of the situation of the carrier groups concerned. Only so can the Commission's determination subserve the Congressional policy which is of *national*, rather than of purely sectional, scope.

There can be no doubt as to the nature and scope of the policy of the Congress in this respect. Thus, in construing the scope of the Commission's authority under Section 15(6) the Supreme Court, in *New England Divisions Case*, 261 U.S. 184, pages 189-190, held in part:

> "The Transportation Act, 1920, introduced into the federal legislation a new railroad policy. • • • The 1920 Act sought to ensure, also, adequate transportation service.
>
> • • •

To preserve for the *nation* substantially the *whole transportation system* was deemed important. By many railroads funds were needed, not only for improvement and expansion of facilities, but for adequate maintenance. On some continued operation would be impossible, unless additional revenues were procured. A general rate

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increase alone would not meet the situation. There was a limit to what the traffic would bear. * * * It was necessary to avoid unduly burdensome rate increases and yet secure revenues adequate to satisfy the needs of the weak carriers. To accomplish this two new devices were adopted: the group system of rate making and the division of joint rates in the public interest * * *. This, it was hoped, would enable the *whole transportation system* to be maintained, without raising unduly any rate on any line." (Emphasis supplied).

Where the Commission, as in *New England Divisions*, 62 I.C.C. 513, and 66 I.C.C. 196, or as in the *Citrus Divisions case*,* gives weight in fixing divisions to the importance to the public of the transportation services of particular carrier groups, it does so not on the basis of sectional considerations, but in the light of the Congressional policy to maintain an adequate *national* system of transportation.

The same purpose for the Nation as a whole was expressed in the National Transportation Policy declared by the Congress in the Interstate Commerce Act as amended in 1940, wherein its objective was stated as follows:

"—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to

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* *Atlantic Coast Line R. Co. v. Arcade & A. R. Corp.*, 194 I.C.C. 729, 760-762, *Baltimore & O. R. Co. v. United States*, 298 U.S. 349, 361.

meet the needs of *the commerce of the United States, of the Postal Service, and of the national defense.*" (Emphasis supplied.)

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The same ultimate objective was also declared by the Congress in enacting the provisions for Loan Guaranties in the Transportation Act of 1958. Thus, in Sec. 501 (49 U.S.C. §1231) the Congress declared:

> "It is the purpose of this part to provide for assistance to common carriers by railroad subject to this Act to aid them in acquiring, constructing, or maintaining facilities or equipment for such purposes, and in such manner, as to encourage the employment of labor and to foster the preservation and development of a *national transportation system* adequate to meet the needs of the *commerce of the United States*, of the *postal service*, and of the *national defense.*" (Emphasis supplied).

In the light of the definite policy of the law in this respect, the exceptions of the Southern Interveners, insofar as they criticize the Examiners' report for not giving 100 percent effect to their evidence on the subject of the importance of the Southern carriers' service to the economy of the South, are without justification. Clearly, the Examiners fully understood the national scope of the policy of the law and measured the evidence of the Southern Interveners in the light thereof. While such evidence, when produced, will have the Commission's consideration, the Commission is not relieved from the statutory requirement of giving due consideration to this element by the absence of other than carrier evidence on the subject. The division of rates is not a mere partition of private property (*New England Divisions Case*, 261 U.S. 184, 195), but is a proceeding which may well affect the national public interest as well as that of the carriers immediately concerned.

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Accordingly, in considering evidence addressed to this issue —or even without other than carrier evidence addressed to this issue—the Commission must necessarily act in the light of its previous holdings relating to the same general subject matter. An illustration of this would be the predominant extent to which its approvals of loan guaranties have involved applications from Eastern District railroads.*

The Examiners' full understanding of the Commission's duty to consider in cases such as the instant one the importance to the public of the transportation services of the several carriers—quite regardless of the presentation of the evidence on that subject by members of the public in the territories concerned—is shown by their statement at Sheet 59 that—

> "In prior territorial-wide divisions cases the public generally has not concerned itself with such issues which primarily are viewed only as a struggle between the railroads."

Thus, whether with public participation or not, the Commission is obliged to consider facts bearing on this issue, although from a national rather than from a sectional standpoint.

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The implicit argument of Interveners, that the element of public importance as an item for consideration in divisions cases is a purely sectional concept, is inconsistent in principle with the contention of the complainants in *State of Alabama v. New York Central R. Co.*, 235 I.C.C. 255, the so-called *Southern Governors' case,* wherein they were seeking reduction of certain northbound interterritorial commodity rates. Thus, at page 308 the Commission, in setting

* See 74th Annual Report of the Commission, page 70; 75th Annual Report, page 81; and 76th Annual Report, pages 83-84.

forth the positions of the parties, described complainants' position in part as follows:

"Positions of the Parties

Complainants take the position that the present interterritorial rate structure prevents that freedom of movement of articles produced in the South which is contemplated by the act. They point to the vast natural resources of the South as evidence, in itself, of a need and demand for rates which will permit products manufactured therefrom freely to move to the great consuming centers of the North. In their view section 15a(2) of the act—since the amendment thereof by the Emergency Railroad Transportation Act, 1933, which eliminated therefrom the words 'rate groups or territories'—places emphases on the freedom of movement of traffic and on the public interest. *They urge that the public interest referred to is not that of the public in a particular rate group or territory but is the national public interest.*" (Emphasis supplied).

B. The Southern Public Alone Does Not Bear the Burden of Interterritorial Rates.

The exceptions of the Southern Interveners to an important extent proceed upon the implied assumption that the Southern public—and the Southern public alone—bears the burden of interterritorial rates. This is manifest from their

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contentions that seek to retain uniform interterritorial divisions as long as uniform class rates remain in effect. Thus, their argument assumes that interterritorial rates and the divisions thereof should be viewed wholly from a sectional standpoint in which the interterritorial rates are properly to be regarded as the concern only of the Southern public in competing with shippers in other territories.

This concept is much too narrow. For every shipper there is a receiver; for every transaction a buyer and a seller. Similarly, for every producer there is a consumer. Subject to temporary maladjustments, it is the consumer who ultimately pays and bears the transportation burden. Thus, it is not true that the Southern producer of northbound commodities is more affected than the receiver or consumer. Nor is it true that the Southern receiver or consumer of southbound commodities is more affected than the Northern shipper or producer. Thus, there is no sound ground for the view that the Southern public is more affected than that in the North by reasonable and nonprejudicial rate adjustments.

C. No Injury Would Result to the Southern Economy From Fair Divisions of Interterritorial Rates.

Exception No. 3 of the Southern Interveners contains a most remarkable contention—remarkable in its extremeness and obvious inconsistency. Thus, at page 30 their

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exceptions state in effect that a proper recognition of the Southern public interest requires the maintenance of the present equal-factor divisions *even if the costs and revenue needs of the Northern railroads were shown to be higher* with respect to the interterritorial traffic than those of the Southern roads. In other words, the contention is that higher costs in the North under equally efficient management and greater revenue needs of Northern railroads, although established, should here be disregarded in the light of the Southern Interveners' showing of the Southern public interest.

1. The Contention of the Southern Interveners on This Subject Is Unsound.

The foregoing contention not only places the public interest of a section of the country above that of the na-

tional public, but inconsistently assumes that sectional public interest could outweigh the national interest in satisfying demonstrated revenue needs of an essential carrier group. But this would be directly contrary to the policy of the law, as above explained, which views such matters in the light of the *national* interest.

2. The Earnings of the Southern Group Would Not Be Unduly Depressed by the Establishment of Fair Interterritorial Divisions.

At page 12 of their Exceptions the Southern Interveners state that—

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> "The Northern railroads are here seeking to deprive the Southern railroads of more than $25,000,000 annually of their present revenues. Although the divisions recommended by the Examiners probably do not accede to the full extent of this outrageous demand, they certainly go a long way in that direction."

Misunderstanding this assertion, the exceptions of North Carolina Utilities Commission, at pages 1-2, state that the Examiners' report and order *would* transfer from the Southern to the Northern railroads $25,000,000 in revenue.

As indicated at page 22 of Eastern Lines' Exceptions, the Examiners' report would afford Official territory lines an increase of approximately $11,000,000 on the basis of Southern lines' traffic study. This result would distribute total revenues in substantially the same total proportions as would *1956* group costs as restated. Relative costs as of 1959, without reference to the greater revenue needs of the Northern carriers, would justify an annual increase in their divisions of about twice that amount.

But if, based on their higher costs and greater revenue needs, the Northern lines were accorded divisions which

would accord them an increase of $25,000,000 annually, that result would not unduly or improperly reduce the earnings of the Southern carrier group. This is shown by the following statement, in which the rates of return for the Southern Region and the Eastern District plus Pocahontas Region are shown as set forth at page 10 of Exhibit No. 1 to V.S. No. 36, and as

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adjusted to reflect an assumed divisional transfer of $25,000,000 annually subject to payment of Federal income tax.* However, as to such of the Eastern lines as paid no Federal income taxes in the years indicated, the increased divisions would represent 100-cent dollars.

	Rates of Return			
	Actual		Assumed $25 Million Transfer	
	South	North	South	North
1956	5.02	4.05	4.69	4.15
1957	4.14	3.29	3.82	3.40
1958	3.68	2.00	3.37	2.10
1959	3.63	2.27	3.32	2.38

3. If Divisions Are Basically Fair, Their Revenue Result Is Not Controlling.

As long as the divisions prescribed by the Commission do not differ from what "justice merely as between the parties would suggest",** the revenue results to the participating carriers do not affect the lawfulness of the Commission's order. The fact that such divisions may apply to rates of high or low level, with resulting surplus or deficiency of revenues to the carriers above or below their relative costs, is not important. Under normal conditions relative costs of service furnish the real measure of what "justice merely as between the par-

* With a 52% Federal corporate income tax this computation assumes a net reduction South and a net increase North of $12,000 annually.

** Baltimore & Ohio R. Co. v. United States, 298 U.S. 349, 370.

[12]

ties would suggest."

4. Fair Interterritorial Divisions Would Not Force Increases in Southern Intraterritorial Rates.

At pages 13-15 of their Exceptions the Southern Interveners suggest in effect that if the prescription of fair divisions of the interterritorial rates should serve to reduce Southern lines' revenues, such reductions would have to be made up, in part at least, from an increase in their intrastate rates. This is a highly speculative point. There is a singular omission, moreover, in Interveners' failure to show that any such increases resulted from the Commission's 1953 order herein. No consideration is given, either, to the fact that whatever risk southern intraterritorial shippers may be exposed to in this regard, it would be no different in kind from that which has confronted other intraterritorial shippers whenever the Commission by rate or divisions orders has heretofore decreased the revenues of a carrier group, and that here it would be a risk of substantially less degree in the light of the presently greater competition from motor trucks, barges, mine-mouth generation of power, and other such factors.

D. Uniform Class Rates Do Not Require Uniform Divisions.

1. The Contention of Southern Interveners to the Contrary Is in Error.

The Exceptions of the Southern Interveners in effect contend that, regardless of the higher costs and greater revenue needs of Northern lines, the interterritorial divisions

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should remain on an equal-factor basis as long as class rate uniformity is maintained. This contention is completely in

error. It is quite plain from the foregoing quotation from the *New England Divisions Case, supra,** that a primary purpose of Congress in giving the Commission the authority conferred in Section 15(6) was to enable it to make disparate divisions of uniform rates where to do so would serve the declared Congressional policy.

The suggestion of the Southern Interveners—that the prescription of higher divisions for Northern than for Southern lines, even though justified by relative costs and greater revenue needs, would require Southern lines to "subsidize" the Northern carrier group—involves a basic misunderstanding of the situation. The point is well expressed in the concurring opinion of Commissioner Potter in the Commission's report on reargument in *New England Divisions,* 66 I.C.C. 196, at page 207. There Commissioner Potter stated in part:

> "The majority report now filed requires no taking from the respondents of anything that belongs to them. It proposes only to insure a disposition of joint earnings necessary to promote the purpose for which, under the transportation act, the earnings were authorized to be collected from shippers."

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2. The Decision in Docket No. 24160 Does Not Assist Interveners' Contentions.

In their Exception No. 4 the Southern Interveners appear to rely upon the decision in Docket No. 24160, *Divisions of Rates, Official and Southern Territories,* 234 I.C.C. 175, to support their contention that the Commission need give no weight to relative service costs, but may appropriately rely on relative rate levels as a basis for fixing interterritorial divisions. Such reliance is not well placed.

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* *V. supra,* pp. 3-4.

As is evident from the tabulation at page 187 of that decision, the average costs North and South, for the several ton-mile and car-mile units therein set forth, were for the 10-year and 5-year periods ending with 1936. The decision itself is dated July 25, 1939. This was prior to the development of the Rail Form A formula designed by the Commission's Cost Section. That the Commission did not then have any reliable basis for comparing the costs of the Northern and Southern groups on the interterritorial traffic is manifest. Thus, at page 189 of its decision, in concluding its discussion of such relative cost data as were of record, it stated:

> "These differences make it hazardous to express a definite opinion as to relative costs of transportation in the two territories. Perhaps the most significant figures bearing on the problem are those submitted by the northern lines, before referred to, show-

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> ing that the southern lines' average cost per revenue ton-mile in the period from 1927 to 1936 was 11 percent greater than that of the northern lines and in the period from 1932 to 1936 was 16 percent greater. This comparison takes no account of the fact that the average haul in the South is apparently somewhat greater than that in the North and that the average carload weight is less in the former territory, these two factors tending to offset each other. The statistical evidence, unsatisfactory as it is, leads to the conclusion that transportation costs on the traffic here considered may properly be considered to be higher in the South, and that, although the exact degree of difference is indeterminable, it is not negligible, as the northern lines argue."

That the assumption that higher costs then obtained in the South was definitely a contributing reason for the Commission's prescription of higher divisions for Southern lines

than for Northern lines in No. 24160 is confirmed by Chairman Eastman's dissenting opinion in *State of Alabama v. New York Central R.R. Co.*, 235 I.C.C. 255 (1939) (the so-called *Southern Governors' case*), wherein at page 343 he stated in part:

> "Complainants contend that cost of service is, on the average, at least no higher in the South than in the North, and they maintain that it is somewhat lower. From their findings I infer that the majority agree that the cost is not higher. The southern carriers, however, emphatically repudiate this conclusion. They insist, as they always have insisted, that their average cost is materially higher. *For this reason they have demanded, and have received, relatively greater divisions of the interterritorial rates than are accorded the northern carriers.* We have quite recently passed upon the divisions of all these rates, except those on coal, coke, and lumber. Under the normal basis which we fixed, the southern lines receive divisions which are relatively higher by 25 percent than the divisions of the northern lines. The bases which they were accorded on fruits
>
> [16]
>
> and vegetables, including citrus fruit, from Florida are still more favorable, and by a wide margin. Only where the interterritorial rates are on, or approximate, the northern level did we make the divisions proportionately equal." (Emphasis supplied).

Thereafter the Commission in *Class Rate Investigation, 1939*, 262 I.C.C. 447, herein termed No. 28300, had before it the results of the studies made by its new Cost Finding Section. The territorial cost studies there before it were computed under the Rail Form A Formula by the Commission's Cost Section for the *year 1939* and were approximately equal for the Northern and Southern groups (262 I.C.C. 557). As the Commission found at page 693 thereof,

such costs were deemed by it to be reliable as "relative costs for transporting all traffic, or important or well-defined segments of traffic, by territorial groups of carriers". It is costs of this character that Northern carriers here presented for Commission consideration.

3. Relative Levels of Territorial Costs Have Changed Substantially Since 1939.

Interveners' contention that the present uniformity of interterritorial divisions should be maintained while class rate uniformity exists is unsound. The uniform class rates prescribed in No. 28300 were essentially based on territorial cost relationships *as of 1939*. Since that time there have been substantial changes in the cost relationships of the Northern and Southern groups.

In the original proceedings herein Eastern lines

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presented evidence of relative territorial costs under the Rail Form A formula as of *1948*. These disclosed that freight service costs for a 26-ton load in box cars at 350 miles was 10 percent higher for the Eastern District including Pocahontas Region than costs within the South. Eastern District costs were 16 percent higher. In its original decision herein, however, the Commission concluded that such higher costs were of transitory character and that the costs for the future would be approximately equal. Thus, at page 526 of its original report herein (287 I.C.C. 497) the Commission stated:

> "If we were to give controlling weight to the cost studies of the northern lines for 1946 and 1948 in this record, the differentially higher basis of divisional factors sought by those lines would be justified. We do not accept that showing at face value because, admit-

tedly, there were certain important items of expense in those years which may reasonably be regarded as transient, particularly in the northern lines' accounts for maintenance of way and structures and equipment. This was particularly true of the Pennsylvania, which in 1948 and the two following years had high freight-car repair costs apparently cyclic in nature. We consider it to be the safest assumption for the future upon the facts before us that neither contesting group will have an appreciably lower basis of operating costs than the other, and that there are no other relevant circumstances which are of sufficient importance to justify higher divisional factors for one group than the other."

However, the instant record demonstrates that the Commission's expectation was not realized, but that on the contrary the costs in the North continued generally to rise in relation to those in the South (Exhibit B to V.S. No. 3).

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But, for the reasons already explained, a change in divisions is not dependent on a change in rate levels. Indeed, the expanded power given the Commission over divisions by the Transportation Act of 1920 was in part based upon the propriety, upon a proper showing, of fixing *disproportionate* divisions of a uniform structure of rates.

E. Interveners' Contentions Concerning Relative Costs Are Unsound.

To the extent that Interveners in their exceptions raise questions concerning relative costs which are treated in the separate reply of Eastern lines to similar contentions of the Southern carriers, reference is here respectfully asked to such treatment. Some additional comments on Interveners' contentions in this respect, however, are here warranted.

1. There Is No Burden on Northern Lines to Justify the Form A Territorial Cost Relationships.

Interveners in effect contend that Northern lines are in no position to take advantage of the Form A territorial cost relationships without undertaking by detailed operating and statistical evidence to explain the reasons for the differences in the Form A results north and south. This is not only erroneous, but completely disregards the experience of the Commission and the carriers in the earlier cases before Form A territorial costs were available.

Formerly, when reliable cost data were not

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to be had, the usual carrier approach to a problem basically involving rail costs was to adduce large quantities of detailed operating testimony. This was upon the theory that the more work and difficulties involved in the performance of transportation service, the greater the consequent cost. Necessarily, this was a most inexact method of proof. This was clearly recognized in *Rates on Petroleum Products*, 167 I.C.C. at pages 139-140. The Commission, speaking through Commissioner Eastman, dealt with this subject as follows:

> "Evidence in regard to difficult operating conditions is unsatisfactory unless accompanied by evidence showing the effect upon operating expense. Proof that a railroad has severe grades and curves may justify a conclusion that its operating costs, unless there are offsetting advantages, are relatively greater than those of railroads which encounter lesser difficulties; but it throws no light upon the degree of excess cost. If physical difficulties enhance operating cost, the results must, of course, in some way reflect themselves in the accounts."

To similar effect was the decision in *Divisions of Freight Rates*, 203 I.C.C. 299. The Commission on this subject stated at page 312:

"*Operating Conditions.* The transcontinental group submitted a great mass of evidence purporting to show that transportation costs are relatively higher west of the gateways, but of such a nature that it throws no light whatever on the amount and extent of the excess, if there be any when all factors are considered."

But with the advent of reliable territorial costs as developed under the Form A formula of the Commission's Cost Section, the need for extensive operating and statistical evi-

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dence as a means of explaining the reasons for such relative costs was diminished or largely eliminated. Whatever refinement of Form A costs may be necessary or appropriate in considering the reasonableness of rates for transporting a particular commodity over a single railroad or group of railroads, the Commission's decision in *Class Rate Investigation,* 1939, 262 I.C.C. 447, establishes that Form A territorial costs may safely be relied upon by it when considering "relative costs for transporting all traffic, or important or well-defined segments of traffic, by territorial groups of carriers". In sustaining the Commission's order in this case the Supreme Court gave specific consideration to the Commission's findings concerning relative costs of service. *New York v. United States,* 331 U.S. 284, 315 *ff.* (1947).

Accordingly, there was no occasion for Eastern lines in making their prima facie case in respect of relative service costs to burden the record—either in explanation of why the costs are different or for any other purpose—with an extensive description of operating testimony, statistical data, and detailed analyses of accounts, since all those elements, insofar as they had cost consequences, were distilled into the Form A group costs.

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2. The Record Nevertheless Indicates the Basic Reasons for Eastern Lines' Higher Territorial Costs.

Interveners in their Exceptions argue in effect that higher group costs in the North are not of significance in the fixation of group divisions unless shown to flow from "natural disadvantages". For the reasons just stated this contention is clearly unsound. Nevertheless, it may be noted that the record in the instant investigation contains ample evidence of the differences in conditions north and south which reflect themselves in cost consequences. Thus, Eastern lines operate in a more populous territory, where they have shorter hauls and a greater proportion of terminal to line-haul service. As shown in V.S. 69, at pages 5-8, railroad terminal expenses tend to rise much faster than line-haul costs. Further, wage rates and taxes are higher in the North than in the South. As demonstrated in V.S. 80, Section F, had the Northern lines in 1956 had the benefit of Southern lines' wage and tax bases they would have realized savings of $135,208,800 for the railroads of the Eastern District alone, and of $168,598,737 for the lines of the Eastern District including Pocahontas Region.

3. Interveners Introduced No Cost Evidence.

To the extent that Interveners discuss the issue of relative costs they rely wholly upon the evidence adduced by the Southern respondents. Those lines undertook to "adjust"

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the Form A results to meet certain of their theories. Northern lines' answers thereto have had the consideration of the Examiners, which are sound apart from items specified in exceptions of Eastern lines.*

* See, in this connection, Eastern Exceptions, pages 52-55, dealing with the Examiners' elimination of Platform costs.

4. Interveners' Contention Concerning Suburban Deficits Is Unsound.

For their principal reply to Interveners' contentions that deficits from suburban passenger service should be eliminated, the Northern lines rely upon what is said in their separate reply to Southern lines' contentions on the same subject. The following points, however, may here be noted:

(a) The Suburban Deficits Are an Unavoidable Incident of Northern Lines' Service.

It is the greater population of Official territory that makes the great Eastern markets so important to Southern producers and which is responsible for the manufacture of much of the goods consumed by the South and which it does not produce for itself. This population must be served to some extent by passenger service as well as by freight service. Insofar as the expense of the suburban passenger service is not met by fares the public will pay or by public assistance, such deficits become a part of the necessary costs of operation of the Eastern railroads. In principle there is no difference

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between this situation and that in respect of Platform costs concerning which the Commission in *Class Rates Mountain-Pacific Territory*, 296 I.C.C. 555, at page 604, stated:

> "The effect of excluding the costs of platform handling of carload freight, * * * and the incidental revenues from these services, from a territorial cost study would result in a portion of the expenses not being considered. If the revenues from these services do not equal the costs associated therewith, the difference in costs must be covered by the line-haul rate as the only remaining source of revenues. In a territorial study of relative cost levels, all items of expense should be given consideration."

The Examiners' conclusion on the subject of suburban deficits at Sheet 54 of their report is in harmony with this principle.*

The basic principle which calls for consideration *of all passenger deficits, including those from suburban service,* was well expressed in the dissenting opinion of Commissioner Potter in *New England Divisions,* 62 I.C.C. 513, at pages 577-578. Since the views of the minority in this decision became those of the majority in the Commission's report on reargument, 66 I.C.C. 196, its decision in which was upheld by the Supreme Court,** this opinion is entitled to greater weight than the ordinary dissent. At

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this point Mr. Commissioner Potter stated:

> "A too-narrow meaning has been given to 'service' as the term is used in the transportation act in connection with the division of through rates. Everything which the carrier provides and does makes up the service rendered and which is to be considered in determining divisions. In carrying its many burdens, whatever they may be, in operating its transportation machine under the conditions which surround it, the carrier is rendering service must be considered. In this case these burdens are the short hauls, the light train load, the complicated and expensive terminal arrangements, disadvantageous position respecting car hire, disproportionate burden of transportation of company fuel, and all factors of burden and expense which the carriers bear in order to furnish transportation. It is no answer to say that the conditions under which the New England lines operate are responsible for their

* Quite inconsistently, however, as pointed out in Eastern lines' Exceptions at pages 52-55, the Examiners' report fails to include the net costs of Platform service in restating Southern lines' adjustment of Form A cost results.

** 261 U. S. 184.

poor showing. These are the very conditions which these lines are entitled to have allowance made for in determining what is a fair division of the compensation which the shipper pays for all that goes to make up the service rendered to him. These are the conditions which the transportation act says, in a way that is new, must be taken into consideration. As the burdens change, divisions should in common fairness change, and this is both the letter and spirit of the transportation act."

(b) If Any Passenger Deficits Are to Be Included, All Such Deficits Should Be Taken Into Account.

The Southern lines propose that the Commission include passenger deficits except to the extent that they include those from operating suburban service. This represents an arbitrary and illogical approach. If any passenger deficits are to be included, all should be taken into account. There is no difference in principle involved.

But it is to be noted that when all passenger deficits as well as less carload deficits are taken into account,

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their inclusion is of advantage to the South to the extent there is a difference in cost results. This is shown in Exhibit B of V.S. No. 3 by comparing pages 7 and 8 and pages 7a and 8a.

5. Northern Lines' Relatively Higher Costs Are Not the Result of Over-capacity of Plant.

At page 21 *ff* of their Exceptions the Southern Interveners criticize the Examiners' report for "failure to recognize inefficiency and over-capacity as the real causes for whatever problems the Northern railroads might have". The suggestion of inefficiency will be dealt with hereinafter,

but in view of Interveners' implied suggestion that over-capacity is the explanation for Northern lines' relatively higher costs, the following points may be noted:

The argument of the Interveners on this subject appears to suggest that prior to the establishment of uniform class rates as a result of the Commission's orders in No. 28300, Northern lines enjoyed an "artificially high level of economic activity", and that their present difficulties stem in part from over-capacity.

This contention confuses the possibility of savings as a result of mergers with the question of relative service costs. While it is not yet clear what mergers will be approved and what and when resulting savings therefrom will be obtained, it cannot be doubted that such savings will affect all carrier groups.

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If in the absence of mergers there were deemed to be any over-capacity in any carrier group, it would have to be in plant. Certainly in view of the present demand for cars no such contention could relate to over-capacity in equipment. But if such over-capacity were assumed to exist in railroad property, the effect thereof, for the purpose of determining relative territorial costs, could be eliminated by making comparisons on an *out-of-pocket* cost basis, which eliminates *50 percent of the return on road property* as well as *20 percent of all expenses* (including those of *maintenance*), *taxes, and rents.*

But when comparison is made of Northern and Southern territorial costs on an out-of-pocket basis the Northern proportion of total costs is *larger* than when using fully distributed costs. See in this connection page 14 of Exhibit B to V.S. No. 3.

This comparison indicates that as a practical matter there is no over-capacity as between the two groups which affects their relative cost relationships.

6. The Higher Costs in the North Are Not a Transitory Condition.

In every interterritorial divisions case involving Northern lines in which relative cost has been given serious consideration they have met the contention that their higher relative costs represented a merely transitory condition and that the future would show a return to costs substantially equal.

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Such a contention was made by Southern lines in the original phase of this case and by Southwestern lines in *Official-Southwestern Divisions,* 287 I.C.C. 553. On the facts before it the Commission accepted this view, and the equal-factor divisions prescribed in 1953 were the result thereof. But, as shown in the instant record, the results of time have proved the contention and estimate erroneous.

Throughout the whole period Northern lines have been controlling their costs and improving their operations to the full extent their finances permitted. The fact that the higher costs in the North have persisted, and have tended to increase relatively over those in the South, furnishes cogent evidence that there are solid reasons for such relatively higher costs which should no longer be disregarded if this important item is to be given the due consideration contemplated by the statute.

F. Interveners' Suggestions of Inefficiency Are Unsupported and Insupportable.

Without tendering or pointing to any proof thereof, the Southern Interveners have no hesitancy in reiterating their assertions and suggestions that Northern lines' relatively higher costs stem from inefficiency. Yet even Southern lines made no such charge. Indeed their studied efforts to prove such an assertion in the initial phase of this case failed completely. *Official-Southern Divisions,* 287 I.C.C. 497, 510-519.

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As stated in the Examiners' report herein (Sheet 17): "In this reopened phase Southern lines do not question the relative operating efficiency of the opponents."

What Interveners have to say on the subject of "self help" by Northern lines relates to the subject of revenue needs,* which will next be noted. But as concerns any issue of efficiency no such issue has herein been raised or tried, and Interveners' suggestions in that respect are not here pertinent.

G. Interveners' Contentions on the Subject of Revenue Needs Are Without Foundation.

To the extent that the contentions of Southern Interveners concerning the item of general revenue needs parallel those of the Southern railroads, such contentions are met and answered in the separate reply thereto by Eastern Railroads. But since Interveners' exceptions erroneously assume that the Examiners' recommendation is founded on the greater revenue needs of the Northern lines, brief mention of this subject is here necessary.

As already noted, the divisional basis recommended by the Examiners would accord Official lines a proportion of revenues roughly corresponding to their proportion of the total service costs as found by the Examiners based on *1956 cost relationships*. This would represent roughly $11,000,000 annually

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on the basis of Southern lines' traffic study. Had *1959 cost relationships* been observed (see General Exception II of Eastern lines' exceptions) the Examiners would have been justified in recommending for Northern lines an increase *twice as great* and this would accord the Northern respondents *nothing* for their greater revenue needs.

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* Cf. Examiners' Report, Sheet 18.

H. The Financial Health of the Northern Railroads Is Important to the Interests of the Nation, Including the South.

Because of the large population in Official territory the Northern markets are important to Southern producers, not only of raw materials, but of finished products. On the other hand, there are many products originated in the North which are also important to receivers and consumers in the South, as well as throughout the nation.

Excluding citrus fruit and fresh or green vegetables, over 58 percent of the northbound cars of traffic involved is classified as "Manufactures and Miscellaneous", and of the southbound cars 84 percent falls in this general category. Nearly 63 percent of the total revenue on northbound shipments is obtained from "Manufactures and Miscellaneous" traffic, and over 87 percent of the total revenue on southbound traffic is in the same general commodity group. (V.S. No. 1, Exhibit A, Sec. 2, page 2).

These figures also indicate, quite apart from the

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tonnages of Products of Mines and of Forests northbound, as there also shown, that the ability of Northern as well as Southern lines to provide adequate transportation is in the common interest of the producers and consumers in both the South and the North. As integral parts of a single national transportation system by rail, the Northern and Southern carriers are alike essential to meet the needs of the commerce of the United States, the Postal Service, and of the national defense. To assure and maintain this adequacy the financial health of all is essential.

The Southern Interveners seek to minimize the importance of the traffic involved to the Northern roads. But their argument in this respect, if valid, would apply to *all* interterritorial traffic of Official territory lines. Yet that

traffic as a whole is of great importance to them, not only because of its relative volume (see V.S. No. 75, Appendix A), but because the interterritorial traffic is on the whole better able to contribute ratably to meeting their revenue needs than their local traffic.

Conclusion

For the reasons set forth above, and for those detailed in the separate reply of Eastern Railroads to the Exceptions of the Southern carriers covering subjects discussed in the Exceptions of Southern Interveners, the Eastern Railroads

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respectfully submit that the exceptions of said Interveners are without merit and should be disallowed by the Commission.

Respectfully submitted,

(Subscription and Certificate of Service omitted in printing.)

• • •

ORAL ARGUMENT BY SOUTHERN LINES' COUNSEL

(February 18, 1964):

[R-2764]

(By Mr. Trienens) Now, in this case before the Commission today, the Northern Lines made no effort to meet any of those standards which were held controlling by the court. The Northern Lines' evidence contained no evidence relating to particular divisions, rates, services on this Official-Southern traffic, or the effect on individual railroads. It is all grouped, one big happy group with the Norfolk & Western and the New Haven in there all mixed together.

I might say we have in this case an issue which was not referred to by Mr. Kaier and which we discuss in our exceptions, as to the construction of the scale. We say the terminal allowance is too big, it isn't supported by any findings, it isn't supported by any evidence, particularly of terminal costs. Because the North has a shorter average haul, they benefit from this.

The Denver court emphasized that the construction of a scale must be supported by findings and evidence. *You just can't come out of thin air with a scale.*

I might note that the Denver court case is now on appeal and might well reach the Supreme Court this spring.

• • •

ORAL ARGUMENT BY NORTHERN LINES' COUNSEL

(February 18, 1964):

[R-2869]

Commr. Walrath: Mr. Kaier, you have touched on a point that interests me a little bit just in passing.

Doesn't your argument about the per diem impact lead you to a conclusion that a deficit road, a deficit owning road would be at a real advantage in a divisions case?

Mr. Kaier: Oh, I don't think so, sir. If you had a deficit owning road aligned against another road, and you

were dealing with those two roads, you would have to take a look at the situation and decide what you are going to do. I don't know what it would be. But here you have got a deficit road, the Clinchfield was pointed to as being a road that wouldn't have any car cost. You can pick out roads like that in the North. I am sure the P&LE would be in the same situation. But if you have the group of car costs for the South and the group of car costs for the North, you are going to come out with a fair result in a case like this.

• • •

[R-2877]

In the course of his argument this morning, Mr. Trienens adverted very, very briefly to the decision of the court in Denver which set aside the Commission's order in the Western Trunk Line case.

I do not know if Mr. Trienens is raising the point in this case that there is any failure to satisfy the so-called typical evidence rule. But the way he spoke in that brief reference to the subject this morning leads me to believe that possibly he is making that contention, and if he is, he is making it now for the first time.

Mr. Chairman, I don't think we should be left in the dark on the question, and I would ask you, sir, if you would address a question to Mr. Trienens as to whether or not he is now asserting that the evidence in this case fails to satisfy the typical evidence rule.

Mr. Trienens: I don't have any hesitation to answer that. The answer is we think it does. Their whole case is based on these conglomerate averages, and we think that is the wrong way to try divisions case; and this is an inadequate record besides. We clearly do.

Chairman Goff: Very well.

Mr. Kaier: Mr. Chairman, I should like to make a brief argument on that point.

Chairman Goff: You have time.

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No. [redacted] 13

IN THE

Supreme Court of the United States

October Term, 1968

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,

Appellants

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees

On Appeal From The United States District Court For The Eastern District of Louisiana, New Orleans Division

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No.

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,

Appellants

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

JURISDICTIONAL STATEMENT

Appellants ("Northern lines") The Baltimore and Ohio Railroad Company et al., listed in Appendix E hereto (168a-170a),[1] appeal from the final decree of the United States District Court for the Eastern District of Louisiana, New

1. Figures with suffix "a" refer to pages of the appendices, *infra*.

Orleans Division, setting aside an order of the Interstate Commerce Commission entered upon further hearing in proceedings known as the *Official-Southern Divisions case.*

OPINIONS BELOW

The opinion of the District Court is reported in 270 F. Supp. 695 and is set forth in Appendix A hereto (1a-32a). The reports of the Interstate Commerce Commission are published at 325 I.C.C. 1 and 325 I.C.C. 449. These reports and accompanying orders are set forth in Appendix C hereto (37a-163a).

JURISDICTION

This action was begun by a complaint filed in the United States District Court for the Eastern District of Louisiana, New Orleans Divisions, under 28 U.S.C. §§ 1336, 1398, 2284, and 2321-2325 and Section 10 of the Administrative Procedure Act, 5 U.S.C. § 1009, subsequently codified as 5 U.S.C. § 706, praying that an order of the Interstate Commerce Commission be set aside. The final decree of the District Court, set forth in Appendix B hereto (33a-34a), was dated August 8, 1967, and was entered August 22, 1967. These appellants filed their notice of appeal in the District Court on October 2, 1967. The jurisdiction of this Court to hear this appeal is conferred by 28 U.S.C. § 1253. *New England Divisions Case,* 261 U.S. 184 (1923); *Baltimore & O. R. Co. v. United States,* 298 U.S. 349 (1936); *Chicago & N.W. R. Co. v. A., T.&S.F. R. Co.,* 387 U.S. 326 (1967).

STATUTES INVOLVED

Sections 1(4) and 15(6) of the Interstate Commerce Act, 49 U.S.C. §§ 1(4) and 15(6), and Sections 8(b) and 10(e) of the Administrative Procedure Act, now codified as 5 U.S.C. §§ 557(c) and 706, are set out in Appendix D hereto (165a-167a).

The provisions of Section 15(6) of the Interstate Commerce Act here most particularly involved, read:

> "Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, * * *. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge."

QUESTIONS PRESENTED

The District Court set aside orders (herein termed "order") entered by the Interstate Commerce Commission in proceedings held pursuant to Section 15(6) of the Interstate Commerce Act. The order found existing divisions of joint rates, for the carriage by rail of all freight (other than coal and coke made from coal) between Official Territory and Southern Territory, to be unjust, unreasonable, and inequitable and prescribed new divisions which the Commission found would be just, reasonable, and equitable for the future.[2] Over 200 railroads, respondents in the principal proceeding, were involved, but the case was tried by the parties and decided by the Commission as a controversy between two contending groups of rail carriers—Eastern (or Northern) railroads and Southern railroads. Having found all other elements requiring consideration to be in balance as between the two groups, the Commission prescribed the new divisions with reference to the relative costs of the services involved to the Northern and Southern lines. The District Court set aside the said order and remanded the cause to the Commission for further proceedings.

The questions presented are these:

1. Whether the District Court invaded the authority of the Commission in holding that the relative costs relied upon by the Commission, which it had found adequate, reasonably accurate, and reliable for the purpose, were insufficiently refined to support its prescription of new intergroup divisions, and that accordingly the Commission was obligated as a matter of law to develop more refined cost data described by the District Court as the "actual costs of handling the specific traffic at issue."

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2. Official Territory is comprised of the area lying generally east of the Mississippi River and north of the Ohio River, and certain points in Virginia. Southern Territory lies generally east of the Mississippi River and south of Official Territory.

2. Whether, when the Commission in the exercise of its powers under Section 15(6) of the Interstate Commerce Act makes findings of relative costs on a fully-distributed basis for the purpose of prescribing just, reasonable, and equitable divisions of joint freight rates, it is required as a matter of law in determining such relative costs to consider only passenger expenses which would remain to be borne by freight service if passenger operations were discontinued, and whether there was any error prejudicial to the southern railroads in the Commission's treatment of passenger service deficits.

3. Whether the District Court improperly equated such overhead costs as are an integral part of fully distributed costs with general revenue needs and as a consequence erred in holding that the Commission having adopted a relative cost basis for determining fair divisions, acted without findings and substantial evidence in relying upon relative costs which reflected an appropriate proportion of the deficits from all passenger operations including suburban service.

4. Whether the District Court erred in remanding the cause to the Commission without retaining jurisdiction to require equitable resettlements of revenues received by the parties from interterritorial freight rates in the event of a further order of the Commission on remand.

STATEMENT

Proceedings Before the Commission

The order under review was made by the Commission upon further hearing in an investigation instituted by it in 1947 in which it originally prescribed "equal-factor" divisions for the Northern and Southern carrier groups. *Official-Southern Divisions*, 287 I.C.C. 497 (1953). The Commission there noted that if it were to give controlling weight to the cost studies of Northern lines for 1946 and 1948, the relatively higher divisions sought by those lines would be justified. But it did not accept them at face value because of certain important items of expense in those years which might reasonably be regarded as transient. It considered it to be the safest assumption for the future that neither group would have an appreciably lower basis of operating costs than the other, and that no other relevant circumstances of importance justified higher divisional factors for one group than the other (p. 526).

Upon Northern lines' petition, alleging that their costs had not declined to the level of Southern lines' costs, but had risen in relation thereto, the Commission, on July 29, 1959, reopened the proceeding for further hearing (39a-40a; JA 22, 51-52).[3]

Lengthy hearings followed in which both groups of respondents sought to prove that the Commission should fix relatively higher divisions for themselves (78a-81a). The hearing examiners found the then existing divisions unfair to Northern lines and recommended new divisions (40a; JA 53-137). Exceptions to their report and replies to such exceptions were filed by both parties, and the Commission heard them in oral argument (40a).

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3. Figures prefaced with "JA" refer to pages of the Joint Appendix prepared at its order for the District Court, which is included with the record brought up on appeal.

The length of the hearings and size of the record reflect the substantial revenue involved and the importance of the case to the carriers. Southern lines' traffic study indicated that the annual volume of the North-South traffic involved amounts to over 967,000 carloads of freight, yielding an annual revenue of over $496,000,000 (47a).

To develop the relative service costs of the carrier groups in handling this traffic the parties basically employed the territorial Rail Form A costs for the year 1956 as prepared by the Commission's Cost Finding Section at the fully distributed level (67a).[4] Southern lines presented their cost studies in several forms, the last consisting of the territorial costs modified to include twelve adjustments they deemed necessary (65a). The Commission accepted certain of these adjustments and rejected others for reasons stated (106a-148a). Restating Southern lines' costs accordingly, the Commission found (67a):

> "Apart from the adjustments rejected in appendix B, our restatement is based on the southern lines' cost computation, as applied to their traffic studies, which, we find, more reliably and accurately reflect the movement of the traffic in question." (67a)

Concerning the restated costs, the Commission found (97a):

> "Our restatement of the costs, which are reasonably accurate and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis, shows that the cost level in 1956, the year both groups used in the final cost analysis, is somewhat higher in the North than in the South for like services. A consideration of all factors indicates that this situation will most likely continue in the immediate future."

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4. "The sum of the out-of-pocket costs plus a pro rata distribution of the constant or fixed costs is referred to as fully distributed cost." *New York v. United States,* 331 U.S. 284, at 316 (FN 21).

The Commission considered all of the specified statutory factors and then determined that there were no differences between the groups of carriers with respect to those factors that indicated that either group was entitled to a share of the joint rates larger than that it would be entitled to receive on the basis of relative costs.

Southern lines asked the Commission to prescribe scales of divisional factors based upon costs, using the method adopted in *Louisville & Nashville R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639,[5] and they pointed out that, to the extent that the Examiners were found to be correct in their rejection of specific aspects of the Southern lines' cost evidence, the cost evidence as thus modified would provide the basis for constructing the divisional scales (Southern lines' exceptions to recommended report, pp. 188, 189; JA 796). The Commission agreed; after accepting several of Southern lines' proposed adjustments and rejecting others, it prescribed the new divisions on the basis of Southern lines' cost evidence as thus modified, citing *Louisville & Nashville* (67-68a, 82a, 98-99a).

The Commission's ultimate findings were that just, reasonable, and equitable divisions should be determined by the use of percentages formulated on a relative cost basis.

Proceedings in the Court Below

On March 31, 1965, the Southern lines filed suit in the United States District Court for the Eastern District of Louisiana, New Orleans Division, praying that the order of the Commission prescribing the new divisions be enjoined and set aside. Contemporaneously, plaintiffs filed application for an interlocutory injunction and, if needed, a temporary restraining order. This resulted in the granting of a temporary restraining order, but following hearing before the three judges on plaintiffs' application for inter-

5. Sustained in *Carolina & Northwestern Ry. Co. v. United States*, 234 F. Supp. 112 (W.D., N.C. 1964) (Aff'd 380 U.S. 526).

locutory injunction, the temporary restraining order was dissolved and the application for interlocutory injunction was denied subject to conditions for refunding the money involved to Southern lines in the event they should be successful in permanently setting the order aside. As a consequence the newly prescribed divisions became applicable as of April 20, 1965, the effective date of the Commission's order (150a-151a).[6]

The District Court disregarded the findings of the Commission concerning the adequacy, reasonable accuracy, and reliability of the relative costs to the two groups of handling the traffic involved, on which the Commission had relied in prescribing the new intergroup divisions, and held such costs not a costing of the particular movements but insufficiently refined to support the Commission's order, and that accordingly the Commission was obligated to develop, or to require the parties to develop, more refined cost data described by the Court below as the "actual costs of handling the specific traffic at issue." The Court thereupon set aside the Commission's order and remanded the cause to the Commission for further proceedings. *Aberdeen & Rockfish R. Co. v. United States*, 270 F. Supp. 695 (1a-32a).

In its opinion, the court below—with obvious lack of appreciation of the years of work necessary to prepare traffic and cost studies of the completeness of those here of record, to say nothing of the more refined costings envisioned by it—suggested that the Commission make a new traffic study as well as a new study of costs which would meet the views of the court as to the "actual costs" of handling the specific traffic (29a-32a).

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6. A modification sought by the Norfolk Southern, a Southern line, was granted by the Commission in its supplemental report dated May 18, 1965 (152a-163a). Except for such modification the order of May 18, 1965, merely affirmed in all respects the Commission's original order of February 3, 1965. The supplemental order requires no further discussion here.

Under the protective conditions attached to the District Court's denial of interlocutory injunction, which are carried forward by its order staying decree (32a), Northern lines would be obligated, in the event the Commission's order is permanently set aside, to resettle their accounts with Southern lines on all shipments made on and after April 20, 1965, with interest. By April 20, 1968, this would represent a principal amount of some $25,000,000 to be paid Southern lines by Northern lines.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The court below set aside the Commission's order because it disagreed with the Commission's appraisal of the voluminous evidence relating to the relative cost of service. The court held that the Commission erred in relying upon territorial costs determined in accordance with Rail Form A, which embodies formulas and directions prepared by the Commission's Cost Finding Section and normally used by the Commission in determining costs, and that the Commission could lawfully act only on the basis of what the court described as the "actual" costs of the "specific traffic" involved. In so holding the court disregarded the fact that the Commission had made detailed findings, which were supported by substantial evidence, explaining its reasons for relying upon the Rail Form A costs and rejecting certain adjustments in those costs proposed by the Southern carriers.

The court below in thus substituting its judgment for that of the Commission on matters that are peculiarly within the Commission's expert knowledge and competence has disregarded the standards for judicial review many times enunciated by this Court. Its decision if allowed to stand is likely to have consequences whose importance will transcend the particular issues here involved. Rail Form A was developed by the Cost Finding Section of the Commission for use in determining costs for a variety of purposes, and costs determined in accordance with that Form have been used by the Commission in resolving issues not only in divisions cases arising under Section 15(6) but also in rate cases arising under Sections 1, 3, 15(1) and 15(3) of Part I of the Interstate Commerce Act. Similar cost forms, i.e., Highway Form B and Barge Form C, have been developed and used by the Commission in resolving issues under comparable provisions in Parts II and III of the statute. The decision below by rejecting the

cost accounting methods and principles developed by the Commission's own experts and customarily used by the Commission in favor of an illusory and impractical concept of "actual cost" threatens to disrupt the Commission's administration of its statutory obligations.

Although the court below paid formal deference to the established standards of judicial review, its decision in fact rests on an assumption as to the function of the reviewing court which if applied generally would mean that the technical problems involved in determining transportation costs would not be determined uniformly by the expert judgment of the agency charged with the administration of the National Transportation Policy but rather by the varied views of the numerous District Courts which have jurisdiction to review Commission orders.

In addition this case is in itself sufficiently important to warrant plenary review of the District Court's departure from the accepted standards of judicial review. As previously indicated, the District Court's decision, if not reversed, would require a cash payment of some $25,000,000 by the railroads of the northeastern part of the country, which includes some of the most necessitous carriers in the nation, to the Southern lines, and an immediate reduction in the divisions of the former by $8,000,000 per year, at least until the Interstate Commerce Commission could undertake a new investigation, in a futile search for "actual costs", which would consume an additional four or five years at the least.

I.

The District Court's Condemnation of the Adequacy of the Relative Costs Relied Upon by the Commission Would Seriously Impair Its Ability to Administer the Interstate Commerce Act.

A. *The Form A Territorial Costs Used by the Commission Were Here Properly Relied Upon by the Commission.*

The proceeding before the Commission was one of great scope. At issue was the reasonableness of the divisions of the joint rates on all commodities except coal and coke between every station on all railroads of the North and every station on all railroads of the South. Although the Southern lines advocated certain adjustments therein, they, like the Northern lines, basically relied upon the territorial unit costs, as developed under the Rail Form A formula by the Commission's Cost Finding Section, for the Northern and Southern groups of railroads. The Commission acted on the basis of the Southern lines' cost evidence, as restated by it to include certain of the Southern lines' adjustments and to exclude others (65a-69a, 97a). The validity of using Form A territorial costs in a case of this scope was clearly indicated by numerous facts now to be summarized.

(1) The Commission in discussing and relying upon Form A territorial costs as first presented to it in *Class Rate Investigation, 1939,* 262 I.C.C. 447, 693 (1945) found:

> "There are different degrees of refinement in costs depending upon the purposes for which the costs are intended. The ascertainment of the costs of transporting a particular commodity over a single railroad or a group of roads, for instance, obviously requires more refinement in procedure than the calculation of

relative costs for transporting all traffic, or important and well-defined segments of traffic, by territorial groups of carriers."

This decision was upheld by this Court in *New York v. United States,* 331 U.S. 284 (1947) wherein the Court, after due regard to the data based upon Form A territorial costs and the conclusions of the Commission with respect thereto (315-332), sustained the Commission's order. The Court was well aware that while the costs on which the Commission acted were territorial unit costs, the orders involved "affect class rates and class rates alone" noting also that ". . . this proceeding pertains only to class rates, which move but a small percentage of the traffic" (331 U.S. at 330 and 343).[7]

(2) The Southern lines themselves basically used the Form A territorial unit costs. Indeed, some 89.45% of the total North-South costs attributed by those lines to the traffic involved were unadjusted Form A territorial averages, the adjustments which they advocated accounting only for 10.55% of the total.[8] The Commission acted upon the cost evidence submitted by the Southern lines, saying "Apart from the adjustments rejected in appendix B, our restatement is based on the southern lines' cost computation, as applied to their traffic studies, . . .". (67a).

(3) Northern lines' evidence showed that the North-South traffic is handled as an indiscriminate part of the whole and that territorial costs properly show the cost

7. Carload traffic moving at class rates in the United States was shown in *Class Rate Investigation, 1939,* 262 I.C.C. 447, 479, as 4.1 percent of the total carload traffic. The present record shows Northern lines' former revenues from the North-South traffic as constituting 6.0% of their total revenues and Southern lines' revenues from this traffic to have constituted 21.4% of their total revenues (19a; JA 535-536). Combining the figures the total North-South revenue on the traffic in issue represents 10% of total revenues of Northern and Southern lines (V.S. 36, Ex. 5).

8. Computed from Southern lines' Verified Statements 40 and 40-A (J.A. 594-600).

of performing the service on the North-South traffic (V.S. 8).[9]

(4) The cost evidence used in the 1953 case in which the original divisions were prescribed was based upon Form A territorial costs (287 I.C.C. 497, 507, 526).

(5) The evidence shows that Southern lines have employed Form A territorial unit costs in cases of far less scope than the present (V.S. 80, Sec. H; JA 656-660). One of the principal Southern lines employed such costs (with minor adjustments) in a current divisions case, *Illinois Central R. Co. v. Great Northern Ry. Co.*, I.C.C. No. 34699 (unreported, recommended report and order of Oct. 27, 1966 adopted, with inconsequential changes, by Division 2 of the Commission on July 31, 1967). There it was stated that the defendant criticized the Illinois Central's use of Rail Form A as not tending to disclose the cost of handling the traffic in issue because, it urged, the formula is designed to portray broad, territorial costs. The case involved but one commodity. The Illinois Central was sustained. It was stated in the report that costs determined in a similar manner have been relied upon in other divisions cases involving a single commodity, citing a case involving two other prominent Southern railroads—each of which relied upon Form A costs with certain adjustments—(*Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, sustained in *Carolina & Northwestern Ry. Co. v. United States*, 234 F. Supp. 112 (W.D., N.C. 1964), affd. per curiam, 380 U.S. 526 (1965)).

The insistence of the Court below (30a) that the Commission was required to determine the "actual costs" of

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9. Under the special rules of practice the Commission prescribed for this proceeding virtually all direct evidence was presented in verified statements with the witness being subject to cross-examination. Verified Statement No. 8, Witness Nancarrow, and two of its 16 exhibits are reproduced at JA 312-340.

"the specific traffic" involved sets up a standard that is illusory and impractical. Any given shipment or category of shipments uses terminals in common with other shipments, is handled by the same switching crews, moves over track and in trains maintained and operated for all traffic and in cars and by locomotives that are repaired in central shops. Of necessity, any shipment's cost is an apportionment of expenses incurred in providing and maintaining facilities and conducting operations.[10] Form A classifies the expenses of the railroads and reduces them to a unit basis by dividing the various classes of expenses by appropriate statistics, such as cars originated, tons, ton-miles, etc. This produces a cost per ton for some services, and costs per car-mile, per ton-mile or for other service units for other services, depending upon which unit is most appropriate. These unit costs are then applied to the units of service involved in the particular traffic, here the North-South traffic, which units are ascertained by making a traffic study. This application of the unit costs to the number of service units involved results in the apportionment of the railroads' unit costs to the exact units of traffic involved in the case at hand.

B. *The Holding of the Court Below Would Seriously Impair the Commission's Ability to Administer the Interstate Commerce Act.*

A particularly damaging aspect of the District Court's decision, obviously growing out of its unfamiliarity with matters of common carrier costs and administrative requirements, is the substantial extent to which the principle of its holding would cripple the ability of the Commission to administer the Interstate Commerce Act in proceedings in which cost data are customarily presented. The Court below has held that Form A territorial unit costs, as modified by the adoption of five adjustments advocated by

10. The practical impossibility of securing "actual" rail costs is recognized in *New York v. United States*, 331 U.S. 284, 328, 335, and note 33.

Southern lines, did not constitute substantial evidence of the cost of the service involved in this case, which deals with transportation of virtually all commodities, over all railroads, between every station in the North and every station in the South.

Aside from the substantial inaccuracy and inadequacy of the court's statement that the Form A formula was designed to measure the cost of handling all traffic and aside from the court's misapprehension of the nature, reliability, and significance of costs developed thereby for particular traffic, of which opportunity to file briefs on the merits would permit demonstration, it is here noteworthy that this holding leaves nothing to the discretion of the administrative body. The court below thus holds as a matter of law that territorial or regional unit costs applied to the specific service units of a particular traffic cannot be accepted by the Commission in arriving at its "opinion" (49 U.S.C., § 15(6)) that existing divisions are unreasonable and its prescription of fair and equitable divisions on that traffic "without further evidence". But since the instant record contains such further evidence (e.g., V.S. 8 which, with two of its 16 exhibits is reproduced in JA 312-340), which the Court below noted (19a, n. 12) but disregarded, and since it likewise disregarded the adjustments of the Form A costs which Southern lines proposed and the Commission accepted and incorporated into the unit costs it employed and relied upon, the holding becomes a virtually absolute condemnation of the use or acceptance of relative costs for particular traffic—albeit important segments of traffic by territorial groups of carriers—based laregly on the application of regional unit costs to the service units of such specific traffic. This holding is central to the court's decision.

In terms the opinion of the court below on this point refers to "a divisions case" (24a), but the principle announced is broad enough to relate to other types of issues before the Commission and to other types of carriers. Thus, the Rail Form A formula is but one of the formulas

developed by the Commission's Cost Section for the determination of costs of common carriers subject to its regulation; others including Highway Form B and Barge Form C. The Cost Section has prepared numerous studies of regional cost data for both rail and motor common carriers.[11] The wide use and acceptance of these studies is indicated by the Commission in its Annual Report to the Congress for 1961, at page 153, and in that for 1957, at page 108.

Were the decision of the court below to stand as to the legal inadequacy of rail costs ascertained by the application of territorial unit costs to the specific service units of the vast interterritorial traffic here involved, the same principle would apply with greater force where the particular traffic was of lesser volume and scope, and it would also apply to the use of regional costs developed by the Commission's Cost Section for other types of carriers in determining costs on their particular traffic. No such result or possibility of result should be permitted without plenary consideration of the nature and scope of the holding below.

C. *The Decision Below Misconstrues and Is Inconsistent With, Chicago & N.W. R. Co. v. A.T.&S.F. R. Co., 387 U.S. 326 (1967).*

That the District Court misapplied and misconstrued this Court's decision in *Chicago & N.W.R. Co. v. A.T.&S.F. R. Co.*, 387 U.S. 326 (1967) would seem beyond dispute. There, in sustaining an order by which the Commission prescribed interritorial divisions between Midwestern and Mountain-Pacific railroads, this Court considered and rejected contentions similar to those successfully advanced, through the same principal counsel, by Southern lines in the present proceeding. The District Court in the present case referred to *Chicago & N.W.R. Co.*, and stated that:

11. See, for example, I.C.C. Annual Reports: 1949, p. 76; 1950, pp. 71-72; 1955, pp. 71-72; 1957, p. 107.

"There, the Commission based its cost findings on a special cost study and analysis prepared by the Mountain-Pacific carriers and made certain adjustments which it considered more accurately reflected the true costs of the traffic involved. These adjustments (3) were derived from Rail Form A. The Supreme Court held that the attack on the legal validity of these adjustments to costs were unsubstantial. Here, of course, the entire inflation is pegged on relative costs derived from Rail Form A." (25a-26a)

Thus, the District Court construed *Chicago & N.W.R. Co.* as involving Form A costs only to the extent of three adjustments. The fact is that there, as here, the basic cost study upon which the Commission relied was predicated upon Form A territorial averages, with certain adjustments advocated by Appellees (Mountain-Pacific lines) being allowed by the Commission and others rejected. This is clear from the Commission's decision which was sustained in that case. *Akron, C. & Y. R. Co. v. Atchison, T. & S.F. R. Co.*, 321 I.C.C. 17, 29-53; 322 I.C.C. 491, 492-499. Indeed the Commission concluded in that case that ". . . for a large and varied body of traffic as here at issue, territorial average costs will be the substantial equivalent of specific costs" (p. 50).

The cost issues in *Chicago & N.W.R. Co.* and those involved here are so similar in character that the intervenors in the instant case—Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners—obtained leave to file a brief as *amici curiae* in the appeal in *Chicago & N.W.R. Co.* in order to present to this Court their contention that the cost issues in that case should not be decided by the Supreme Court, lest such a decision govern the decision of the District Court in the instant case. They stated in their *amici* brief of April 5, 1967, to this Court:

"However, the Commission's cost findings in the *Official-Southern* case reflect the very same approach that

it used in the *Transcontinental* case. There, as here, although the asserted basis of its action was 'the relative costs of the parties reflecting their respective operations as to this traffic' (325 I.C.C. at 50; see also 325 I.C.C. at 26, 56), the Commission relied almost exclusively upon the average costs of handling all traffic in these territories in reaching its conclusions. And there, as here, virtually every objection to reliance upon such territorial averages was brushed aside without either findings or evidence to support such action."

Likewise, the Mountain-Pacific lines in their memorandum of August 16, 1967, in support of a motion to the California District Court to clarify a passage in its decision (which was reversed in *C. & N.W.*) relating to the cost issues, stated, at page 14:

"The decision in the *Official-Southern Divisions* case is especially relevant here since that case, like this one, involved the use by the Commission of Rail Form A territorial averages to measure the actual costs of handling particular traffic."

It is clear, therefore, that the basic cost evidence upon which the Commission relied in *C. & N.W.*—and not just a few adjustments therein—was made up of territorial unit costs based upon Rail Form A, and that the District Court in the present case misconstrued *C. & N.W.* in its attempted distinction thereof. In contrast to the District Court's substitution of its judgment for that of the Commission on the representative nature of those costs and the need for greater refinement, the Supreme Court in *C. & N.W.* applied the usual rule of judicial review by accepting the Commission's judgment on accounting problems which the Court said "concerned matters relating entirely to the special and complex peculiarities of the railroad industry." (387 U.S. 326, 356).

II.

The Decision of the Court Below Exceeds the Bounds of Appropriate Judicial Review.

After a comprehensive review of the cost evidence (58a-69a, 106a-148a), the Commission concluded that Southern lines' territorial costs as restated by it "adequately reflect the costs attributable to the traffic at issue" (68a-69a), and "are reasonably accurate and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis, ..." (97a).

Going far beyond the limited task assigned to it, the District Court substituted its judgment for that of the Commission and declared that the costs relied upon by the Commission—which were based upon its restatement of Southern lines' adjusted territorial unit costs as applied to the service units of Southern lines' most complete traffic study—were not sufficiently refined to sustain its order prescribing divisions. It stated this conclusion in terms of lack of substantial evidence and of findings, but this asserted lack relates only to the difference between the Court's views and those of the Commission as to the adequacy of the costs used.

In so deciding, the Court below acted directly contrary to pronouncements of this Court with respect to the judicial review of cost evidence. Typical of this is *Illinois Commerce Commission v. United States*, 292 U.S. 474, 481 (1934):

> "Whether or not the cost study was representative, whether the study should have been more refined, and whether it should have been supplemented as appellants desired, are questions of fact, the determination of which is within the competence of the Commission. The Commission reached its conclusion after full hearing and thorough consideration of all questions presented. As the record affords a sufficient basis for the Commission's determination, it is not subject to review in the courts . . ."

See also *New York v. United States,* 331 U.S. 284, at 328, 331, 335, and note 33 (1947), where this Court was considering the Commission's initial reliance on Form A costs in *Class Rate Investigation, 1939,* 262 I.C.C. 447 (1945).

It would not be appropriate here to discuss each of the cost adjustments proffered by the Southern lines and rejected by the Commission, but an indication of the serious error into which the District Court fell in failing to follow such precedents as *Illinois Commerce Commission v. United States, supra,* may be gained by reference to several of those proposed adjustments which were specifically the subject of the Court's findings.[12]

The first which may be noticed is the Court's finding that the Commission's use of territorial averages for switching costs "rather than the specific costs" incurred with respect to North-South traffic, is not supported by reasoned findings or substantial evidence (31a). The adjustment of switching costs proposed by Southern lines purportedly was made to eliminate the effect of volume switching, i.e., the switching of multiple cars in a single unit, it being the Southern lines' contention that they had relatively more such cars moving within the South than the Northern lines had moving within the North, and that consequently the effect thereof should be excluded in determining the switching minutes (and, therefore, cost) applicable to the interterritorial traffic involved.

The Commission found that:

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12. The District Court stated (11a) that it is uncontroverted that most elements of costs are no higher on Northern than on Southern railroads and that (19a) seven items account for the "entire inflation" of Northern costs over those of Southern lines. In fact, these statements were controverted (Brief for Intervening Defendant Railroads, p. 50, fn. 9). They are shown to be erroneous, for example, by the evidence showing higher wages on Northern than on Southern lines. Wages constitute the largest item of railroad expense. If Northern lines had the same wage levels as Southern lines, their total wage costs in 1956 would have been almost $58,000,000 less than they actually were (V.S. 80, Sec. F) (J.A. 644-654).

"Territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic moving to and coming from terminals in all parts of both territories" (140a), that the depressing effect of the switching of volume movements would be largely offsetting as between the two territories (140a), that the Southern lines' studies of switching within the South had weaknesses, both in the sample and in the studies themselves (140a),[13] and that Southern lines' switching adjustment within the North was not made on a basis comparable to that which they used within the South (140a). For these reasons the Commission concluded that Rail Form A territorial average switching costs more accurately measure the relative switching costs of the Official-Southern traffic than the switching costs computed by the Southern lines (140a).

The presence of "reasoned findings" and of substantial evidence in support of the Commission's conclusions concerning the Southern lines' proposed switching adjustment and the use of territorial average costs is clear (132a-140a). The District Court's conclusion to the contrary is based purely upon the substitution of its judgment for that of the Commission on the question of whether the territorial switching minutes are representative for use here or whether they should be more refined (23a-25a).

The Southern lines' adjustment for empty return ratios on box cars was also specially mentioned by the District Court as illustrative of what the Court called the Commission's general approach (22a). Without examining the Commission's discussion of this complex matter or making any review of the evidence, the Court quoted from the opinion of the single dissenting Commissioner (who agreed

13. The evidence offered by the Southern lines with respect to switching within the South was based on a study of but 41 cars, out of a total North-South movement of 967,000 cars. The Southern lines' sampling expert declined to characterize the 41 car sample as representative (Tr. 1580-1582). Moreover, the sample did not consist only of North-South traffic, and there were other defects in the study (132a-140a).

that Northern lines should have an increase in divisions, but not as much as the Commission allowed), and announced, as a conclusion of law, that the use of territorial average empty return ratios rather than the "actual empty return ratios for the North-South traffic in issue" was unsupported by reasoned findings and not based upon substantial evidence (31a).

The Commission discussed the empty return ratio adjustment fully (120a-129a). The proposed adjustment with respect to box cars was made by Southern lines in three steps. The Commission found, with respect to the first step, that the adjustment was "not adequately supported" and was, at best, "merely illustrative", that the adjustment for the second step "is in error" and that the third adjustment was "purely an unsupported assumption" (127a). Its conclusion as to the empty return adjustment was that ". . . the empty return ratios for both boxcars and refrigerator cars developed by the special studies of the southern lines are not as sound an estimate of the empty return incurred by the official-southern traffic as are the 7-day study territorial empty return ratios. The latter reflect the compilation of actual data reported by the railroads on a comparable basis in each territory under an order of this Commission".

It is manifest that the Commission made reasoned findings in support of the empty return ratios which it used.

The third adjustment to which the District Court specifically adverted was that regarding deficits from commutation service. This will be discussed below. At this point it should be noted that, in essence, the District Court simply disagreed with the Commission on the question of whether the territorial unit costs, as restated by it, were representative for use as a guide for the determination of relative contributions by the two groups of carriers in the transportation of North-South traffic. The Court found that the Commission took no independent action to require "the development of more refined cost data" (11a), and it con-

cluded that the Commission has a duty to use its powers to obtain cost evidence where such evidence is necessary to assure an adequate record (30a). The Commission, to whom is committed the duty of decision on this matter, found the cost evidence upon which it acted to be adequate, reasonably accurate, and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis. This conclusion was sustained by substantial evidence; and the Commission had no duty to require the development of other evidence to supplant that which it found satisfactory. Such a duty could not be created by the lower court's substituting its judgment for that of the Commission as to the necessary degree of refinement in the cost evidence. *Illinois Commerce Commission v. United States, supra.*[14]

III.

There Was No Error in the Commission's Treatment of Passenger Service Deficits.

The Northern lines excluded the entire amount of both Northern and Southern passenger deficits in their opening cost evidence (62a). The Southern lines objected to this, saying that the Cost Finding Section's application of fully-distributed costs includes the deficits and the allowance of a 4% return on the property devoted to the serv-

14. In Finding No. 7 the Court stated that the "typical evidence rule" requires evidence typical in character and ample in quantity with respect to the divisions and services performed under the particular rate being divided, and that the Commission must consider evidence of actual services performed on particular traffic involved. By the Southern lines' own representation, which was agreed to by the Commission, there was the best evidence of actual services on the particular traffic involved of any ever submitted in a divisions case (43a-44a, 50a). The disagreement of the Court as to the representative character of the costs applied by the Commission has been shown in the discussion of this point to be erroneous and beyond the scope of judicial review. The Court cannot acquire authority to substitute its judgment for that of the Commission by invoking the phrase "typical evidence rule", and that is all it has done here.

ices. They concluded that Northern lines' study "is defective in computing constant costs without consideration of passenger deficits . . .". (So. Lines Br. before I.C.C., pp. 117-118, 120).[15]

Although the inclusion of passenger deficits was to the advantage of Southern lines (because their deficits are relatively greater than those of Northern lines) the position of Northern lines was that they would have no objection to the Commission's including the deficits or excluding them, but that they would object to the selective approach advanced by Southern lines under which Northern lines' deficits from suburban operations would be excluded, while all of the Southern passenger deficits (excepting only the suburban deficits of Illinois-Central) would be included, in ascertaining the relative cost to the two groups of carriers in performing the service involved.[16]

The Commission included a pro rata portion of the entire passenger deficit, basing its figures upon the cost evidence submitted by Southern lines before the exclusion of suburban deficits by them.

Upon oral argument in the court below, the Southern lines admitted that they did not challenge the Commission's power to include suburban deficits and that they did not attack the Commission's consideration of such deficits from the standpoint of "policy" and, indeed, they admitted that deficits from suburban service might be considered, but only, they said, to the extent that they result from the apportionment of common costs (Tr. 34, 31).

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15. The Commission recognizes that ". . . the railroads' passenger train deficit, until it can be eliminated, is in a sense a part of their overhead burden to which the freight service must make some contribution", *Railroad Passenger Train Deficit*, 306 I.C.C. 417, at p. 479 (1959).

16. The court below (20a) said that "through the use of average costs", passenger deficits were included in the cost computations. It was not through the use of average costs that such deficits were included, but through the insistence of Southern lines that they be added, along with other overheads.

The District Court found that the Commission erred in including suburban deficits because, it said, there was neither finding nor evidence to relate such deficits to the Commission's standard for decision, i.e., the relative cost of performing the North-South freight service involved (22a, 30a). The fact is, of course, that it is in the very nature of overhead, or constant costs, that they are not incurred in the performance of the service to which they are apportioned. *New York v. United States,* 331 U.S. 284, 316 (1947). But the District Court dismissed the Northern lines' point that these costs are treated as overhead, or constant costs, the allocation of which is required because of the need for revenue from the freight service to continue operations. It said that the Commission did not so treat them, it having rejected contentions of both Southern and Northern groups for divisions over and above the cost of service on the ground of revenue needs (21a).

The Court plainly erred in this holding. Each group had contended before the Commission that in fixing the divisions the Commission should include an additive—over and above divisional shares based upon fully-distributed costs—for their general revenue needs. In rejecting these contentions, the Commission made this finding, which was ignored by the District Court:

> "However, our prescription of divisions based on relative costs includes allowances for overhead and return, and in our judgment reflects a due proportion of the burden of maintaining the financial integrity and credit of the carriers involved. *Cf. New England Divisions,* 66 I.C.C. 196, 199. Accordingly, we see no justification at this time for adding any special increment favoring one group of carriers over the other." (98a)

The failure of the court to take note of that finding and to understand that by their very nature constant costs

are not directly related to particular traffic led it to decide, erroneously, that there was no finding rationalizing the conclusion that the suburban deficits reflecting some costs not common to freight service but solely related to suburban service, should be treated "as cost of North-South freight traffic" (22a).

It should also be noted that the court's holding that the Commission could consider only those expenses of performing commutation service which are common to freight and passenger has no basis in the practice of the Commission or the decisions of this Court. Contrary to the lower court's assumption, the basis for giving effect to passenger deficits in determining freight rates is that both services are important and that the freight must help to support the passenger when the revenue from the passenger service is insufficient, not any notion that the deficit results from the apportionment of common expenses which would remain if passenger service were discontinued. *King v. U.S.*, 344 U.S. 254 (1952); *Chicago, M. St. P.&P. R. Co. v. Illinois*, 355 U.S. 300, 307 (1958); *Public Service Commission of Utah v. U.S.*, 356 U.S. 421, 426 (1958); *Increased Freight Rates, 1948*, 276 I.C.C. 9, 32-39.[17]

In this connection it should be noted that the Commission found against Southern lines on a basic factual premise of their suburban deficit point. They had argued that this deficit could be eliminated by the discontinuance of commutation service, on the premise that suburban facili-

17. The lower court said that it is "generally agreed" that intercity passenger deficits should be considered as a part of the cost of providing freight service because such deficits are usually the product of costs allocated to passenger operations from common facilities which must be maintained to provide freight service (20a). That statement on this complex matter is the court's, not that of the Commission. Indeed, in *Railroad Passenger Train Deficit*, 306 I.C.C. 417 (1949), the Commission considered contentions that passenger deficit figures are fictitious because of alleged shortcomings in its accounting rules and it found that evidence indicating the contrary "is of major significance and serves as a warning that common costs cannot be lightly dismissed" (pp. 415, 426).

ties are maintained solely for such service and are not used for freight or intercity passenger service (142a). After considering this contention the Commission determined that although many individual items of suburban service can be considered solely related to that service the facilities and service as a whole cannot be considered solely related to suburban service and treated entirely apart from the freight service and intercity passenger service. It concluded, therefore, that the suburban deficits should not be excluded from the constant costs (143a). The District Court took the view that the Commission was required "to determine how much of the railroads' cost of commuter service was in fact common with the cost of freight service and how much was solely related to commuter service." (21a) But, the Commission having found that the commuter service and facilities "considered as a whole" could not be regarded as solely related to suburban service, it was reasonable for it to treat the costs as it did—i.e., in exactly the same manner as it treated the costs of all other passenger services. Clearly it was within the Commission's administrative competence to do so.

It is important to note that Northern lines' entire passenger revenues exceeded the expenses that are solely related to the performance of passenger service as a whole and that they had a deficit only when a portion of the common expenses was assigned to the passenger service, but that this was not true of Southern lines (142a). In the calculation of the cost of the North-South service, therefore, the net result of the Commission's action was to allocate to the Southern lines a pro rata share of a deficiency of solely related passenger expenses under passenger revenue as well as the additional deficit resulting from the allocation of common expenses to the passenger service, while the passenger deficit included for the Northern lines resulted from the apportionment of common expenses alone.

Overall, therefore, the lower court's view (that it was proper to apportion to the freight service only that part of

the passenger deficit which resulted from the allocation of common expenses) was actually met as to the Northern lines but not as to the Southern lines.

The District Court (22a) quoted from this Court's decision in *Chicago & N.W.R. Co. v. A.T.&S.F. R. Co., supra,* to the effect that while the Commission has sometimes offset passenger deficits in freight rate cases, the issues are different when, in a divisions case, it is argued that carriers in one part of the country should subsidize the passenger operations of carriers elsewhere, that if the Commission were to give controlling weight to passenger deficits in a divisions case, it might be appropriate to take more evidence and discuss it in greater depth than the Commission did in that case, but that in the light of the fact that there the passenger deficits were of negligible relevance to the Commission's decision, there were no errors that would justify setting aside the order there involved.

In the present case, of course, it was at the instance of Southern lines that the Commission included passenger deficits in determining the relative costs upon which it acted. If it had not considered passenger deficits, the Northern lines' share of the costs and, therefore, its prescribed divisions, would have been relatively greater than those the Commission prescribed. The inclusion of passenger deficits, therefore, may be said to have resulted in Northern lines subsidizing Southern lines.

From the foregoing, it will be seen that there clearly was no error prejudicial to the Southern lines in the Commission's consideration of passenger deficits.

IV.

Even If the Decision of the District Court Were Otherwise Correct, It Erred in Remanding the Case to the Commission Without Retaining Jurisdiction to Require Equitable Settlements in the Event of a Further Order of the Commission.

In the *C.&N.W.* case this Court referred to the fact that thirteen years had elapsed since the complaints which gave rise to that litigation were first filed and it then held that the attacks on the Commission's cost findings were so insubstantial that no useful purpose would be served by further proceedings in the District Court.

Approximately eleven years have elapsed since the Northern lines petitioned for the reopening of this proceeding on November 2, 1956. In contrast to the concern of the Supreme Court regarding the time consumed in the disposition of *C.&N.W.*, the District Court here concluded its decision not only by ordering the case back to the Commission for the development of the "actual costs of handling the specific traffic at issue" (30a) but it suggested that the evidence upon which the Commission acted had become stale and that the reception of new evidence was in order (32a).

Although no party, either before the Commission or the Court below, made any suggestion of staleness in the record, although Southern lines' brief to the Commission represented their traffic study to reflect the normal annual movement of the traffic involved (43a), and although the Commission had found that the somewhat higher cost level in the North will "most likely continue in the immediate future," (97a) the Court below is here suggesting to the Commission, in substance, that it start all over again, with new evidence and new traffic studies, the development and decision of which takes years. This, itself, would be a substantial denial of justice and would be greatly to the detriment of that portion of the national transportation system

which serves the most populous section of the country and which has already been deprived during many years by litigation before the I.C.C. of revenues which the expert body found it should have. Moreover, it would greatly enlarge the injurious effect upon Northern lines that would flow from setting aside the Commission's order.

As previously stated appellants would be obligated, in the event the plaintiffs are successful in permanently setting aside the order of the Commission, to refund to Southern lines an amount which by April 20, 1968 would represent some $25,000,000 plus interest. At the same time the old divisions would be reinstated, at an annual cost of $8,000,000 to Northern lines.

Under Section 15(6) the Commission is without authority to prescribe divisions retroactively except in circumstances not here present. *Brimstone R.R. Co. v. United States,* 276 U.S. 104, 117-123 (1928); *United States v. Baltimore & Ohio R. Co.,* 284 U.S. 195 (1931). Accordingly, such further order prescribing divisions as the Commission might enter following a remand would of itself have force only prospectively from its effective date. Thus, whether or not the Commission's new order made any change in its original prescription, it would lack power to protect these appellants for the entire period of years from April 20, 1965 to the effective date of its new order. Since there is nothing of record to suggest, and the Court below found nothing to warrant any inference, that development of the more refined costs it deemed essential would at all warrant lower divisions for Northern lines than those prescribed in the order under review, an additional loss to Northern lines, at the rate of some $8,000,000 per annum for all years prior to the effectiveness of a new Commission order, may reasonably be assumed.

In this situation if there were any justification for remand, which there is not, the rights of the parties should have been protected by a reservation of jurisdiction by the District Court to make such further orders as might be proper.

CONCLUSION.

For the foregoing reasons probable jurisdiction of this appeal should be noted and the case set down for full hearing on the merits.

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December 1967

APPENDIX A

Opinion of the District Court

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 15454

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.,

Plaintiffs

v.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION,

Defendants.

Before WISDOM, *Circuit Judge,* and HUNTER and WEST, *District Judges.*

HUNTER, *District Judge:*

This is an action to set aside and enjoin in part the order of the Interstate Commerce Commission (Commission) in Docket No. 29885,[1] *Official-Southern Divisions,* 325 I.C.C. 1 and 325 I.C.C. 449, which prescribed divisions of

1. Also embracing No. 29799, Akron, Canton & Youngstown R.R. Co., et al. v. Aberdeen & Rockfish R.R. Co., et al.

joint-rail rates on freight traffic moving between Official and Southern territories.[2]

Freight traffic between the North and the South moves on joint rates which are established when two or more carriers publish a single charge to be paid by the shipper for carriage from the originating point on one line to a destination on another. The proportion of the joint rates which each line receives as its share is called a "division" which is normally determined by agreement among the participating carriers. Prior to the orders of the Commission in this proceeding, the primary divisions accruing from Official-Southern traffic were made under an equal-factor scale prescribed by the Commission itself in its 1953 decision in Docket No. 29885 (officially reported at 287 I.C.C. 497). This decision followed the landmark decision of the Commission in *Class Rates Investigation, 1939,* 262 I.C.C. 447 (1945), wherein the Commission found that the higher rate level which was at that time applicable to the movement of rail freight in Southern territory, constituted an unlawful discrimination against the South.[3] In the *Class Rates* proceeding, the Commission ordered the discriminatory class rate structure eliminated and replaced with a uniform rate structure to be applicable throughout the United States east of the Rocky Mountains. In the *Divisions* case that immediately followed the order removing the territorial differences in class rates, the Commission ordered that, in line with the new uniform class rates, a uniform divisional scale be used by both Northern and Southern railroads in dividing revenues from North-South

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2. Official territory lies generally east of the Mississippi River and north of the Ohio River and certain points in Virginia. Southern territory lies generally east of the Mississippi River and south of Official territory.

3. The Supreme Court sustained this action in New York v. United States, 331 U.S. 284 (1947). The uniform rates prescribed by the Commission became effective in 1952. *Class Rates Investigation, 1939,* 281 I.C.C. 213 (1951).

traffic. *Official-Southern Divisions,* 287 I.C.C. 497, 523, 546-47 (1953).[4]

In 1956, the Northern railroads, dissatisfied with this equal-factor basis of dividing joint rates, called upon the Commission's statutory authority to determine that the joint rate divisions "are or will be unjust, unreasonable, inequitable or unduly preferential" and to prescribe "just, reasonable and equitable divisions" in their place (49 U.S.C.A. 15(6)).

Upon completion of the hearings, issuance of an Examiners' Report, exceptions and replies thereto, and after hearing oral argument, the Commission issued its 1965 report and order finding that the existing divisions were in violation of Section 15(6). Considering each of the Section 15(6) criteria, the Commission found that both groups of carriers were being operated efficiently and that neither group should be considered as more or less efficient than the other (325 I.C.C. at 18), that there were no dif-

4. "Divisional scales," are the form in which the Commission has consistently prescribed divisions of North-South revenues. Divisional scales are simply tools for determining percentage divisions by a most elementary use of the common fraction. The use of the uniform divisional scale prescribed by the Commission in 1953 may be illustrated for a shipment moving 200 miles in the North and 400 miles in the South. The Northern factor on such shipment under the uniform scale is 101; the Southern factor is 149. Accordingly, the Northern division would be 40.4% (101 divided by 250, or 101 plus 149); the Southern division would be 59.6% (149 divided by 250). Where the 400-mile haul is in the North and the 200-mile haul is in the South, the Northern division is 59.6% and the Southern division is 40.4%. For shipments moving equal distances in the two territories, the equal-factor scale yields equal divisions, as can be shown by an example of a shipment moving 300 miles in the North and 300 miles in the South. The factor prescribed for a 300-mile haul is the same in each territory (125) (287 I.C.C. at 552, Col. 1). As a result, the percentage division for the North is 50% (125 divided by 250) and for the South is also 50%. Thus, under the uniform scale prescribed in 1953, Northern and Southern railroads each received the same compensation from joint revenues for performing the same amount of service in carrying North-South traffic in their respective territories.

ferences in importance to the public attributable to the two railroad groups (325 I.C.C. at 28), that neither group had greater revenue needs than the other (325 I.C.C. at 49), but that there is a decisive difference in the relative costs of rendering the service as between the groups of carriers (325 I.C.C. at 50).

Finding everything else to be substantially equal and that an adjustment in the existing divisions was required to compensate the respective carriers according to their expenditures in the joint effort of handling the traffic, the Commission concluded that the relative costs of the parties can properly serve as a guide for the determination of just, reasonable, and equitable divisions for the future (325 I.C.C. at 50).

The order prescribed a new divisional formula which gives the Northern railroads 45% more than the Southern railroads for each terminal service performed and 10% more than the Southern railroads for each mile of line-haul service performed. The Commission went on to construct new scales which reflected the principles affecting long versus short hauls and then prescribed a scale of divisional factors based on fully distributed costs which divide the revenue in proportion to those costs (325 I.C.C. at 50-51). The net effect of the Commission's action was to reduce the revenue of the Southern railroads by $8,838,000.[5]

The action in this Court was originally brought by forty-two (42) railroads which together made up virtually the entire rail system in the States of Alabama, Florida,

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5. The Commission found that the net effect of the scales which it prescribed would be to reduce the revenues of the Southern railroads by $7,948,004 (325 I.C.C. at 50). The Commission's calculation was based upon "an overall estimate" and the Commission abandoned any defense of the accuracy of that calculation in its supplemental report, taking the position that it need not find the revenue effect of its action (325 I.C.C. at 453, 454).

Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. The Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners filed an intervening complaint asking that the Commission's action be set aside in part. Forty-eight (48) railroads serving primarily Northern areas intervened in defense of the Commission's order.

It should be noted that plaintiffs do not seek to set aside the order in its entirety. Their argument is that the Commission determined two precise issues which are severable, namely: (1) whether the Northern lines were entitled to an increase in their divisions because of higher costs than the Southern lines, and (2) whether the old scale of divisional factors was invalid because of an excessive terminal element of 37 integers in the initial mileage block. The effect of the Commission's action on the two subjects (as petitioners put it) would be:

(1) The reconstruction of the divisional scale benefited the Southern railroads by $7,426,000 annually.

(2) The inflations accorded the Northern railroads reduced the Southern railroads by $16,264,000 annually.

(3) The net effect of these two computations was to reduce the revenue of the Southern railroads by $8,838,000.

Plaintiffs argue that we possess the power and should set aside as unlawful only that part of the order which prescribed increased divisions for the Northern lines. They further contend that such action would leave in force the old uniform scale, minus 37 integers which resulted from the Commission's alleged "separate action correcting the excessive terminal factors in the existing uniform divisional scale." This Court, it is true, by virtue of its authority under 28 U.S.C.A. 2321, has the power to "set aside in whole or in part" an order of the Commission, and there

are situations where provisions excised from administrative orders are separable or so minor as to make remand inappropriate. This is certainly not the case here. The Commission gave weight to the plaintiffs' initial mileage block argument only "in light of our subsequent conclusion to be guided by the relative costs in our general determination * * *." It cannot be known what the Commission would have done with respect to giving weight to that argument if it were viewed independent of the other facts which induced the Commission to prescribe the divisional bases which it did prescribe.

The Commission determined only one issue in two steps, (I.E.) it determined the unlawfulness of the old divisions and prescribed new divisions for the future. If the plaintiff succeeds here in permanently setting aside the Commission's order as it prescribes the new divisional scales, there would remain no severable part of the order. This is true because there is nothing whatever in the record to even suggest that the Commission found reasonable (provisionally, contingently, or otherwise) any basis of divisions other than that which plaintiffs seek to annul in this action. Accordingly, since the Commission's order is not severable and this Court lacks jurisdiction to prescribe divisions, the the function of this Court ends if it finds the Commission's order prescribing divisions is contrary to law or unsupported by adequate findings or substantial evidence. *F.P.C. v. Idaho Power Company*, 344 U.S. 17 (1952); *Saltzberg v. United States*, 176 F. Supp. 867 (S.D. N.Y. 1959).

We proceed to a review of the Commission's findings, conclusions and the evidence. The applicable standards of judicial review are limited in scope by settled principles of Administrative law, both general[6] and statutory.[7] These standards are to be vigorously enforced.

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6. See Roadway Express, Inc. v. United States, 213 F. Supp. 868, 873 nn. 18 & 19 (D.C. Del. 1963), aff'd, 375 U.S. 12, 84 S. Ct. 53, 11 L. Ed. 2d 38 (1963).

7. 5 U.S.C.A. § 1009(e); 5 U.S.C.A. 1007(b).

In *Burlington Truck Lines v. United States*, 371 U.S. 156, 167-168 (1962), the Supreme Court stated:

> "Expert discretion is the life blood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, *expertise*, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' *New York v. United States*, 342 U.S. 882, 884 (dissenting opinion). 'Congress did not purport to transfer its legislative power to the unbounded discretion of the regulatory body.' *Federal Communications Comm'n v. RCA Communications, Inc.*, 346 U.S. 86, 90. The Commission must exercise its discretion under § 207(a) within the bounds expressed by the standard of 'public convenience and necessity.' Compare *id.*, at 91. And for the courts to determine whether the agency *has* done so, it must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it.' *Phelps Dodge Corp. v. Labor Board*, 313 U.S. 177, 197. The agency must make findings that support its decision, and those findings must be supported by substantial evidence. *Interstate Commerce Comm'n v. J-T Transport Co.*, 368 U.S. 81, 93; *United States v. Carolina Carriers Corp.*, 315 U.S. 475, 488-489; *United States v. Chicago, M., St. P. & P.R. Co.*, 294 U.S. 499, 511."

The statutory standards of judicial review are found in the administrative Procedure Act, which provides, to the extent here pertinent, that the reviewing court shall:

> "hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; * * * (5) unsupported by substantial evidence in any case * * * reviewed on the record of an agency hearing provided by statute * * *. In making

the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error." (5 U.S.C.A. 1009(e)).

* * *

"Section 8(b)—

"Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof." (5 U.S.C.A. 1007(b)).

The statutory duty of the Commission is clear. Section 15(6) of the Interstate Commerce Act, 49 U.S.C.A. 15(6), directs it to set aside inequitable divisions of joint rates and then prescribe equitable ones. The ICC is explicitly directed to consider relative efficiency, public interest, terminal costs, revenue needs, and any facts which would, without regard to the mileage haul, entitle one carrier to a greater or lesser proportion of the joint rate. Among the "other facts" which the Commission may consider is the cost of service of the participating carriers, which issue may be entirely different from the issue of revenue needs. *Baltimore and Ohio RR v. United States,*

298 U.S. at p. 360. Here, the divisions were prescribed solely on the basis of the relative costs of handling the specific freight traffic at issue. The Commission said:

> "Everything else being substantially equal, the relative costs of the parties reflecting their respective operations as to this traffic can properly serve, as here, as a guide for the determination of just, reasonable, and equitable divisions." 325 I.C.C. at p. 50.

A fundamental rule of administrative law is that a reviewing court, in dealing with a determination of an administrative agency must judge the propriety of that action solely on the basis invoked by the agency. If this basis is inadequate, the court is powerless to affirm the administrative action. *S.E.C. v. Chenery Corp.*, 332 U.S. 194 (1947).

The *Chenery* rule was expressly applied in the review of an order of the Interstate Commerce Commission under the Administrative Procedure Act in *Burlington Truck Lines v. United States*, 371 U.S. 156, 168-169 (1962). The Supreme Court reaffirmed these rulings again in *N.L.R.B. v. Metropolitan Life Ins. Co.*, 380 U.S. 438, 443-444 (1965):

> "* * * the integrity of the administrative process requires that 'courts may not accept appellate counsel's post hoc rationalizations for agency action * * *,' Burlington Truck Lines v. United States, supra, 371 U.S. at 168; see Securities & Exchange Comm'n v. Chenery Corp., 332 U.S. 194, 196. For reviewing courts to substitute counsel's rationale or their discretion for that of the Board is incompatible with the orderly function of the process of judicial review. Such action would not vindicate, but would deprecate the administrative process for it would 'propel the court into the domain which Congress has set aside exclusively for the administrative agency.' Securities & Exchange Comm'n v. Chenery Corp., supra, 332 U.S. at 196."

This brings us to what petitioners refer to as the fundamental error, which affects virtually all of the Commissions's cost determinations. They put it this way: The higher costs claimed by the Northern railroads were found to have been incurred in handling this specific traffic in issue, but when it came to determining the relative costs which were to control this divisional formula, the Commission in at least seven instances relied, not upon the actual costs incurred by the two groups of railroads on the traffic in issue, but upon the unadjusted average costs incurred by the railroads on the average of all traffic handled in their respective territories. The Commission's rebuttal to this assertion appears on Page 6 of the Commission's original brief:

> "In a comprehensive analysis rejecting seven of Southern lines' adjustments as unsound in concept or based upon unsupported inapplicable facts or assumptions, the Commission accepted the Rail Form A costs, as restated by it, as reliably and accurately reflecting the costs attributable to the handling of North-South traffic. Whether these costs were adequate and whether they should have been more refined or supplemented as plaintiffs desired, are questions of fact within the exclusive competence of the Commission to determine, which were determined here and are based upon substantial evidence of record.

The Northern lines insisted throughout the hearing that unadjusted Rail Form A[8] costs reliably and accu-

8. Rail Form A is a formula for assigning the territorial or systemwide costs of operation including rents and taxes for any given year to the service units (ton-mile, car-miles, switching time, etc.) performed by the railroads during that year. This procedure assigns the costs as between those that are incurred in the origination and termination of a shipment, which are applicable to all shipments regardless of the distance of movement (terminal expenses), and those costs which are incurred in moving a shipment between the origin and destination points (line-haul expenses). It is adaptable for use in ascertaining the service unit costs of a single railroad or a group of railroads collectively. Territorial average costs here were based on the expenses and operations for 1956.

rately reflect the costs attributable to the handling of the traffic at issue. Only a relatively few elements of the Northern railroads' average costs are higher than the Southern railroads' costs. It is uncontroverted on this record that most elements of railroad costs (such as operating trains, maintaining roadways, etc.) are no higher in Northern railroads than for the Southern railroads. The inflation in the costs is attributable to a relatively few cost items. These include the cost of commuter operations, the cost of interchanging cars, the ratio of empty to loaded cars, the cost of railroad freight cars, and a few other items. As to each of these controverted items, the Commission relied exclusively on territorial average costs (Rail Form A). This was pegged on a finding that Rail Form A costs were reliable and reflected the costs attributable to the handling of the specific traffic. The theory is that in broadly based proceedings and interterritorial division cases, the territorial costs are entitled without more to full credence and weight as the initial indication of what would be fair and equitable. The Commission concluded in each of these instances that Rail Form A provided more reliable data for application to the Official-Southern traffic than did the adjustments prepared by the Southern lines. The Commission took no independent action to require the development of more refined cost data. Typical of this approach is the conclusion made by the Commission, in disposing of petitioners' request for an adjustment of switching costs:

> "For these reasons, we conclude that the contions of the northern lines are of merit and that Rail Form A territorial average switching costs more accurately measure the relative switching costs on each side of the border of the official-southern traffic than the switching costs computed by the southern lines." 325 I.C.C. at page 77.

Plaintiffs and intervening plaintiffs urge some 31 propositions as reflected in the Pre-Trial Order, but their

briefs resolve them into 17 separate questions of which the great majority relate to the Commission's treatment of relevant service costs. These are:

1. Section 7(c) of the Administrative Procedure Act provides that "The proponent of a rule or order shall have the burden of proof" (5 U.S.C. § 1006(c)); and this provision has been held to apply to proponents of changes in existing rate divisions. The Northern railroads here failed to satisfy their burden of proof, and the Commission failed to enforce that burden and thus violated Section 7(c) when it permitted the Northern railroads to rely entirely upon territorial average evidence, without showing that such averages were applicable to North-South freight traffic.

2. The Northern railroads had a duty to come forward with relevant evidence in their sole possession necessary to resolve the issues raised when the Southern railroads challenged the application of territorial average costs of all traffic to North-South traffic. The Commission erred in failing to enforce this duty and in holding instead that the absence of adequate and comparable evidence was a ground for resolving those issues against the Southern railroads.

3. The Commission has power to require the development of adequate and comparable cost data. Section 20(1) of the Act expressly grants the Commission the power "to require the carriers to provide full, true and correct answers to all questions upon which the Commission may deem information to be necessary" (49 U.S.C. § 20(1)). The Commission has a duty to use its powers to obtain cost evidence where such evidence is necessary to assure an adequate record. That duty was violated here as the Commission failed to take affirmative action to require the development of an adequate record as to the actual costs of handling the North-South traffic at issue.

4. Section 8(b) of the Administrative Procedure Act requires the Commission to "rule upon each * * * exception presented" (5 U.S. § 1007(b)). The Commission violated its statutory duty by failing to rule upon the Southern railroads' "Exception No. 1" dealing with the burden of proof, the duty of the party in possession of relevant evidence to come forward with it and the power and duty of the Commission to require a complete record.

5. The Commission stated as its standard the costs of handling North-South freight traffic, its reliance upon territorial average costs caused it to include in the Northern costs which it found, the Northern deficits from suburban commuter passenger service operations. This action constitutes a violation of both Sections 8(b) and 10(e) of the Administrative Procedure Act when judged against the standard stated by the Commission itself as governing in this case—that is, the relative costs of handling North-South freight traffic. The Commission made no reasoned findings and had before it no substantial evidence on which such a conclusion might be based. The lack of rational basis for the Commission's conclusion is highlighted by the Commission's own inconsistent finding that "many individual items of suburban service can be considered solely related * * * to suburban service" (325 I.C.C. at 78).

6. The Commission's prescription of divisions based on costs which include a separate allowance for "border interchange service" 58% higher for the North than for the South violates the requirement that the Commission's findings and conclusions be supported by substantial evidence within the meaning of Section 10(e) of the Administrative Procedure Act.

7. The Commission's action in using 32% higher car costs for the Northern railroads than for the Southern railroads violates Sections 8(b) and 10(e) of the Administrative Procedure Act since there were no reasoned findings

to support that action, nor was there substantial evidence in the record to support such a finding.

8. Section 15(6) of the Interstate Commerce Act provides that in a divisions case the Commission is to determine the costs incurred by the respective railroads which are "applicable to the transportation of passengers or property," a determination which has nothing whatever to do with the financial results of car rentals. Since the Commission's finding of 32% higher Northern car costs is in substantial part of the product of the greater amount of car rentals received by the Southern railroads (on traffic other than North-South traffic), the Commission's action also violates Section 15(6) because it fails to differentiate the railroads' separate function as car-owning or renting agencies as compared with their function as transportation agencies.

9. The Commission's use of territorial averages in computing the "switching costs" of the Northern and Southern railroads rather than the specific costs incurred by those railroads with respect to North-South traffic is not supported by reasoned findings and not based on substantial evidence in the record and thus violates Sections 8(b) and 10(e) of the Administrative Procedure Act. In addition, the Commission's rejection of the Southern railroads' special studies of switching costs on the traffic at issue because there were no comparable studies of Northern costs constitutes a violation of Section 7(c) of the Administrative Procedure Act in that it places the burden of proof on the Southern railroads rather than the proponents of the Northern inflation who had the evidence in their sole possession.

10. The Commission's use of territorial average "empty return ratios" rather than the actual empty return ratios for the North-South traffic in issue also violates Sections 8(b) and 10(e) of the Administrative Procedure Act

because it is unsupported by reasoned findings and not based on substantial evidence in the record. This also violates Section 7(c) of the Administrative Procedure Act which puts the burden of proof on the proponent of change, and the principle that those in possession of relevant data are obliged to come forward with it.

11. The Commission's inconsistent counting of cars interchanged and terminated and its rejection of the Southern railroads' attempts to correct that inconsistency violate the burden-of-proof provisions of Section 7(c) of the Administrative Procedure Act, the principle that those in possession of relevant evidence are obliged to come forward with it, and the obligation of the Commission to assure the making of an adequate record.

12. The Commission's use of territorial averages in dealing with the constant cost of transit commodities and its rejection of Southern adjustments designed to reflect the costs associated with North-South traffic also constitute violations of the burden-of-proof provisions of Section 7(c), the principle that those in possession of relevant evidence are obliged to come forward with it, and the obligation of the Commission to assure the making of an adequate record.

13. The "typical evidence rule" requires that there must be evidence typical in character and ample in quantity with respect to the divisions and services performed under the particular rate being divided. The Commission must consider evidence of actual services performed on particular traffic involved, and not rely wholly on averages which "are apt to be misleading." *United States v. Abilene & Southern R. Co.*, 265 U.S. 274 (1924), at p. 291; *Atchison, Topeka & Santa Fe R. Co. v. United States*, 225 F. Supp. 584, 592-600 (D. Colo. 1964).

14. The Commission's departure from uniform divisions related to uniform rate levels is not supported by the

reasoned explanation required by Section 8(b) of the Administrative Procedure Act.

Other alleged errors are:

15. The Commission's Supplemental Report invoked its quasi-judicial powers to decide this case as an aid to its executive function of defending its order before the Court. This resulted in an unconstitutional denial of notice and an opportunity to be heard. *Atchison, T. & S.F. Ry. Co. v. United States,* 231 F. Supp. 422, 428 (N.D. Ill. 1964).

16. Section 7(d) of the Administrative Procedure Act (5 U.S.C. § 1006(d)) requires that: "The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision * * *." The Due Process Clause of the Federal Constitution requires also that the Commission not go outside the record in reaching its decisions. The Commission violated both of these provisions when its use of its Cost Finding Section led it to rely on data not contained in the record in three separate instances.

17. The Commission's conclusion that the North suffers from inherent disadvantages in transportation conditions was supported by neither reasoned findings in the Commission's report as required by Section 8(b) of the Administrative Procedure Act, nor by substantial evidence, as contemplated by Section 10(e) of that Act.

Propositions 15 and 16 may be readily disposed of. The Commission's use of its Cost Section to give technical aid in analysis and evaluation of the cost evidence of record was an integral part of this administrative proceeding. This infringed the rights of no one.[9] The Commission's

9. The Commission's use of its staff assistants was specifically approved in T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex., 1960), aff'd sub nom. Herrin Transp. Co. v. United States, 366 U.S. 419 (1961).

issuance of its supplemental report was lawful and proper and constituted sound administrative practice.[10] Moreover, in issuing its supplemental report the Commission did not change its outstanding order in any respect, except as to divisions of the Norfolk Southern Railway, which is not here challenged.

Proposition 17 requires amplification. The failure to draw a clear line of demarcation between findings of fact, summaries, analyses and discussion had contributed heavily to the difficulty of reviewing this case. Intervening plaintiffs insisted before the Commission that for at least 30 years prior to this case, the Commission has consistently followed the view that primary responsibilty for meeting the costs and revenue needs of any territory lies with the people and industry of that territory, and that deviation from the equal division factor now in effect can be justified under 15(6) of the Act only if the higher costs found to exist are brought about by inherent territorial disadvantages. This is so, they say, because differences in cost which cannot be related to such inherent disadvantages might well be the product of nothing more than inefficiency or overcapacity on the part of one group of railroads. Plaintiffs insist that this was the express principle enunciated by the Supreme Court in *New York v. United States,* 331 U.S. 284. The Commission was cognizant of this contention, which was the main thesis of intervening plaintiffs before the Commission, and handled it as follows:

> "Relying on *New York v. United States,* 331 U.S. 284, 315 (1947), the interveners also take the position that natural disadvantages must be found in the North before we may increase the divisions of the northern railroads. In essence, however, other factors being equal, cost differences generally are the product of,

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10. Alamo Express, Inc. v. United States, 239 F. Supp. 694, 697, 698 (W.D. Tex., 1965), aff'd 382 U.S. 19; Donaldson v. Read Magazine, 333 U.S. 178 (1948).

and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories." (Pgs. 27-28).

Plaintiffs read this language as an implicit holding by the Commission that the North suffers from inherent territorial disadvantages and a recognition of their judicial construction of Section 15(6), (i.e.) that only cost differences related to inherent disadvantages should be permitted to serve as a basis for an increase in interterritorial divisions. Defendants' answer to this is that the Commission made no finding on this question at all and "were simply commenting on Intervenors' contention." Surely, the Commission report should be so phrased that there be no room for such a dispute as this. We have read the language carefully and we have some hesitation in saying which interpretation is correct. The question of whether a showing of inherent disadvantages is prerequisite to an increase in territorial divisions is, at least in the first instance, a question for the Commission. If, as petitioners read the report, the Commission has held that such a showing is necessary, then this Court need only consider whether in view of such a test, the requirements of reasoned findings and substantial evidence of Sections 8(b) and 10(e) of the Administrative Procedure Act have been met. If, on the other hand, as defendants contend, the Commission has made no holding on the question of inherent disadvantages, the Court must consider whether the Commission's failure to resolve the material issue raised with respect to that question can be reconciled with the express requirement of Section 8(b). We are considering not a restriction upon the statutory powers of the Commission to make divisions, but whether the Commission followed requirements of the Administratve Procedure Act. The Administrative Procedure Act requires findings on material issues of law. N.L.R.B. v. Hearst Publications, 322 U.S. 111 (1944). If, as plaintiffs assert, the Commission has held that a showing

of inherent disadvantages is a pre-requisite to an increase in territorial divisions, then the Commission's conclusion (that higher Northern costs reflect inherent territorial disadvantages) is subject to attack because there are no findings as to what these inherent territorial disadvantages consisted of. Intervening plaintiffs have consistently and strenuously made the contention that as a matter of law the Northern railroads cannot have an increase in the absence of inherent territorial disadvantages. This case is to be remanded *for other reasons.* Upon remand, the Commission should decide and dispose of this contention in accordance with the Administrative Procedure Act.

The remaining exceptions to which we must address ourselves relate to cost evidence. Reduced to its simplest terms, the situation is this: All agree that the relevant costs are those of the North-South freight traffic to which the divisions apply. However, when it came to determining the relative costs which were to control this divisional formula, the Commission relied upon the actual costs incurred on the average of all traffic handled in the respective territories.[11] The Commission, as to each of seven specific items of unit cost (which account for the entire inflation) decided that the Northern lines established a prima facie case that Rail Form A costs properly measure the cost of the specific traffic.[12] In each instance the Southern lines introduced evidence and sought adjustments to reflect what they contended to be the actual cost of the specific traffic. In each instance the Commission rejected these adjustments, and employed Rail Form A territorial unit costs as accurately representing the cost of service. The Commis-

11. The North-South traffic in issue constitutes on 6.0% of the total freight revenue of the Northern railroads and constitutes 21.4% of the total freight revenue of the Southern railroads (V.S. 36, Ex. 5).

12. The Northern lines presented a train utilization study, which revealed that of the total of 13,647 loaded trains shown for five study lines for a selected week in May of 1959, 6,099 trains representing 44.7% were found to be transporting at least one loaded car moving from or destined to Southern territory.

sion did not assume any responsibility for the development of a more adequate record, and in several instances held that the absence of comparable evidence in the record itself prevented adjustments in territorial averages.[13]

Typical of the overall approach of the Commission was its inclusion of suburban passenger deficits as a part of the cost of handling North-South traffic. Through the use of average costs, deficits attributable to both inter-city passenger service and suburban commuter service were included in cost computations. It is generally agreed that the intercity passenger deficits should be considered as a part of the cost of providing freight service, because such deficits are usually the product of costs allocated to passenger operations from common facilities which must be maintained in order to provide freight service.[14] Suburban (commuter) deficits are in a different category. The railroads, which on today's market carry large numbers of people from their homes in the suburbs to their place of work in the cities, often, if not preponderantly, use separately constructed and maintained lines. These suburban commuter operations require equipment and facilities that in many instances have no other use whatsoever. The reason stated by the Commission for the inclusion of commuter deficits is that "the suburban service deficit includes common costs" which must be incurred to provide freight service (325 I.C.C. at p. 78). But the Commission also found as a fact that "many individual items of suburban

13. For instances in which evidence of the Southern railroads was rejected for lack of "comparable" data for the North, see 325 I.C.C. at 69 (refrigerator car empty return ratios); 325 I.C.C. at 76; 325 I.C.C. at 60. The same result was reached due to an absence of "adequate" data at 325 I.C.C. at 66 (box car empty return ratios).

14. The necessity for maintaining common facilities for freight service was explained by the Supreme Court in King v. United States, 344 U.S. 254, 265 (1952):

> "In Florida, moreover, the discontinuance of railroad passenger service would not permit the discontinuance of high-speed tracks and equipment because of the need for fast freight schedules to transport perishable fruits and vegetables from Florida."

service can be considered solely related * * * to suburban service." (325 I.C.C. at p. 78). This latter finding seems to be a concession that many commuter facilities are solely related to that service and have nothing whatsoever to do with the cost of handling North-South traffic or any other freight traffic. The critical issue on this cost item was to determine how much of the railroad's cost of commuter service was in fact common with the cost of freight service and how much was solely related to commuter service. But, in accordance with its general approach to these issues, the Commission, by adopting Rail Form A, inflated the Northern railroads' freight cost by the entire commuter deficit of those railroads, without regard to the plain conflict between this action and its own finding that "many individual items of suburban service can be considered solely related * * * to suburban service." Counsel for defendants, during argument, repeatedly suggested that the commuter deficits are properly chargeable to the traffic at issue as an "overhead." They argued:

> "* * * there has been a definite theory upon which the Commission has allocated these costs as a matter of policy, and that is that there is a need for that revenue to continue operations."

The complete answer to this contention is that the Commission did no such thing. The revenue need issue was hotly contested before the Commission, each group contending that its needs were greater—the Northern railroads, on the basis of lower rates of return; the Southern railroads, on the basis of their growing service responsibilities to an expanding economy. The Commission rejected both contentions, and categorically stated:

> "We find that no affirmative reasons appear in this record which would warrant any adjustment of the divisions in question over and above the relative cost of service, either on the grounds of greater revenue needs or otherwise."

There is no finding rationalizing the conclusion that suburban passenger deficits reflecting costs not common to freight service, but "solely related" to suburban passenger service, can or should be treated as cost of North-South freight traffic.

The Supreme Court, on May 29, 1967, in the cases of *C. and N.W. Ry. Co. v. A.T. and S.F.R. Co.*, and *U.S. v. A.T. and S.F.R. Co.* (Nos. 8 and 23, October Term, 1966) commented on a possible divisions case, where, as here, it is argued that carriers in one part of the country are being required to subsidize passenger operations elsewhere. There, it was said:

> "And while the Commission has sometimes acted to offset passenger deficits in freight rate cases, the issues are quite different when, in a divisions case, it is argued that carriers in one part of the country should subsidize the passenger operations of carriers elsewhere.
>
> "If the Commission were to give controlling weight to passenger deficits in a divisions case, it might be appropriate to take more evidence on the issue and discuss it in greater depth than the Commission did here. But in light of the fact that, in this case, passenger deficits were of negligible relevance to the Commission's decision to increase the Midwestern divisions, we find no errors in the Commission's findings and procedure on this point that would justify setting aside its order."

Another example of the Commission's approach is characterized by its use of a territorial average box car empty return ratios. The nature of this problem is summarized in the dissenting opinion of Commissioner Murphy (325 I.C.C. 54, 55):

> "The higher than average empty return ratios used for cars moving over the official lines is another instance where true costs have not been used. The

official lines handle approximately 800,000 carloads of automobile parts annually which originate in the Detroit, Mich., area and are destined to assembly plants in various parts of the country, including New Jersey, California and Georgia. Many of these cars are fitted with special devices to protect the automobile parts in transit. Because these cars carrying parts contain special devices and are assigned to particular plants manufacturing such parts in official territory, they normally experience an empty return movement which is, for all practical purposes, 100 percent. No adjustment is made in the cost data to cover the higher empty return costs of this type of equipment. Territorial average box car empty return ratios, as used in the report, overstate the costs of the official railroads when applied to Official-Southern traffic."

Another example of the general approach of the Commission is illustrated in its treatment of the issue of "Switching costs" (325 I.C.C. 71-78). The specific cost factor was the amount of the switching service actually performed in originating and terminating the traffic at issue. The Northern railroads placed their entire reliance upon the territorial average switching service for the average car in each territory.[15] The Southern railroads sought to develop the costs associated with the specific traffic in issue. In the face of these special studies, the Northern railroads continued to rely upon Rail Form A switching costs, which were substantially higher in the North. In its cost findings on this point, we repeat the Commission's finding at 325 I.C.C. 77:

"* * * the contentions of the Northern lines are of merit and that Rail Form A territorial average switching costs more accurately measure the relative switch-

15. The North-South traffic constitutes only 4.07% of the total cars originated and terminated in the North and 8.93% of the total cars originated and terminated in the South.

ing costs on each side of the border of the Official-Southern traffic than the switching costs computed by the Southern lines."

Although important as separate issues, the three items heretofore detailed are of greater significance as illustrations of the more pervasive error of the Commission in prescribing divisions on the basis of the average cost of all traffic for this series of important elements of cost which are higher in the North for reasons that have not been shown to have any relation to the North-South freight traffic here at issue. We are not suggesting that one might not dig out of the record argumentative support for the Commission's view, but it is not conducive to a fair administration of the Commerce Act, nor is it a proper discharge of this Court's duty, to require us to dig out indications of evidence from this massive record.

Defendants argue that the question of whether or not Rail Form A was representative, and whether it should have been supplemented are questions of fact, the determination of which is within the competence of the Commission. We start, of course, from the premise that on the subject of transport economics, the Commission's judgment is entitled to great weight. The appraisal of cost figures is itself a task for experts and, unlike a problem in mathematics, it cannot be precisely right or wrong. We know, too, that the Rail Form A cost formula was devised for the express purpose of measuring territorial average costs and has been widely used as an acceptable means of comparing relative transportation costs. It represents a comprehensive study entitled to full weight when the issue is one that it was designed to cover. However, this formula was designed to measure the cost of handling all the traffic in two or more territories, and cannot appropriately be accepted without further evidence for mechanical application to particular segments of traffic in a divisions case. The "many minute calculations" contained in

Rail Form A were used to measure the overall average costs and certainly produce a misleading appearance of exactitude when applied mechanically to measure a specific cost of a specific body of traffic such as that involved here. Evidence of overall territorial averages surely can and should be considered, but as to specific important cost items the Commission should not wholly and exclusively rely on such averages. *United States v. Abilene and Southern R.R. Co.*, 265 U.S. 274; *Atchison, Topeka and Santa Fe Ry. Co. v. United States*, 225 F. Supp. 584. The Commission stated its exclusive standard to be the relevant cost of handling the specific freight traffic to which the divisions apply. We are persuaded that the order is not based on substantial evidence nor supported by reasoned findings within the meaning of Sections 8(b) and 10(e) of the Administrative Procedure Act because the use of territorial averages accounting for the Northern inflation has not been supported with findings of evidence relating any such inflation to the North-South freight traffic.

What is appropriate in one case may be inappropriate in another. We do not hold that the Commission was required to start from scratch and construct a new divisional scale directly from cost data. We do find that, having stated its exclusive standard to be the relevant cost of handling the freight traffic to which the divisions apply, the Commission's order is not based on substantial evidence within the meaning of the Administrative Procedure Act. We note that in the Chicago and N.W. R. Co. case (supra, Supreme Court of the United States, May 29, 1967), disputes over the applicability of Rail Form A occupied a large part of the administrative proceedings. There, the Commission based its cost findings on a special cost study and analysis prepared by the Mountain-Pacific carriers, and made certain adjustments which it considered more accurately reflected the true costs of the traffic involved. These adjustments (3) were derived from Rail

Form A. The Supreme Court held that the attack on the legal validity of these adjustments to costs were unsubstantial. Here, of course, the entire inflation is pegged on relative costs derived from Rail Form A.

With the Commission's expertise in mind, it is our duty to review the record and the conclusions reached, as required by the provisions of the Administrative Procedure Act. As to the sufficiency of the evidence to support the order, it is not the proper function of this Court to substitute its judgment or to weigh evidence.[16] On the other hand, it is our duty to ascertain whether or not the findings and conclusions are supported by substantial evidence. We have endeavored to review the record without a rubber stamp approach. We repeat and reiterate that in making our decision we are not unmindful of the function that the Interstate Commerce Commission is to perform and the discretion that it has. The Commission has had a hard and difficult task here. The record reveals that this facet of this case began in 1956 and that the report and order of the Commission was not issued until February 3, 1965. This in itself certainly suggests the magnitude of the problem which faced the Commission.

"Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, *expertise*, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' "[17] In 1953, in recognition of its previous action in prescribing

16. Illinois Commerce Comm. v. United States, 292 U.S. 474, 484, 54 S. Ct. 783, 78 L. Ed. 1371 (1933); Boston and Maine R.R. v. United States, 153 F. Supp. 952 (D. C. Mass., 1957); see Nashua Motor Exp., Inc. v. United States, 230 F. Supp. 646 (D.C. N.H. 1964); J. B. Acton, Inc. v. United States, 221 F. Supp. 174 (W.D. Mo. 1963), aff'd, 376 U. S. 779, 84 S. Ct. 1133, 12 L. Ed. 2d 83 (1963).

17. Burlington Truck Lines v. United States, 371 U.S. 156, 167, 83 S. Ct. 239, 245, 9 L. Ed. 2d 207 (1962).

a uniform rate level, the Commission prescribed divisions on a uniform basis with no inflation for either Northern or Southern railroads and concluded that (287 I.C.C. at 526):

> "* * * We consider it to be the safest assumption for the future upon the facts before us that neither contesting group will have an appreciably lower basis of operating costs than the other, and that there are no other relevant circumstances which are of sufficient importance to justify higher divisional factors for one group than the other."

Furthermore, for many years prior to this case the Commission has consistently followed the view that the primary responsibility for meeting the cost and revenue needs of the railroads of any territory lies with the people and the industry of that territory. *New England Divisions,* 126 I.C.C. 579, 599 (1927); *Divisions of Rates, Official and Southern Territories,* 234 I.C.C. 175, 190 (1939); *Official-Southern Divisions,* 287 I.C.C. 497, 523 (1953); *Akron, Canton & Youngstown R. Co. v. Atchison, T. & S.F. Ry. Co.,* 321 I.C.C. 17, 51 (1963). In this very case, prior to re-opening, the Commission held that the primary division of revenues accruing from this traffic were to be made on an equal-factor scale. We recognize that the Commission is not perpetually bound by their 1953 holding, but we do believe that the Commission has special responsibilities in a case of this magnitude when it departs from its prior finding (*Sec'y of Agriculture v. United States,* 347 U.S. 645). The Commission's duty to use its powers to obtain cost evidence where such evidence is necessary to assure an adequate record was stressed in *Pacific Inland Tariff Bureau v. United States,* 129 F. Supp. 472, 486 (D.C. Ore., 1955):

> "The Commission is not a passive arbitrator of disputes between carriers. It is the instrument chosen

by Congress to regulate interstate commerce in the public interest. When carriers fail to produce satisfactory evidence, the Commission may require them to produce additional and more satisfactory evidence. It may make its own investigation. It may consult with 'other interested and presumably better informed agencies of the Government as to particular question.' *Cantlay and Tanzola, Inc. v. United States,* 115 F. Supp. 81. However, the record does not disclose that any of those courses was followed in this case. *The fate of our national transportation system should not depend upon evidence either offered or withheld by competing carriers.*" (Emphasis added.)

The same principle was reiterated recently by the Second Circuit in *Scenic Hudson Preservation Conference v. Federal Power Commission,* 354 F. 2d 608 (2nd Cir. 1965). There, the Court set aside an order of the Federal Power Commission, saying (354 F. 2d at 620):

"In this case, as in many others, the Commission has claimed to be the representative of the public interest. This role does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission.

"This court cannot and should not attempt to substitute its judgment for that of the Commission. But we must decide whether the Commission has correctly discharged its duties, including the proper fulfillment of its planning function in deciding that the 'licensing of the project would be in the overall public interest.' The Commission must see to it that the record is complete. The Commission has an affirmative duty to inquire into and consider all relevant facts. See *Michigan Consolidated Gas Co. v. Federal Power Comm'n* 283 F. 2d 204, 224, 226 (D. C. Cir.), cert.

denied, 364 U.S. 913 (1960); *Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 892 (S.D. N.Y. 1951), aff'd by an equally divided court, 342 U.S. 950 (1952); Friendly, *The Federal Administrative Agencies*, 144 (1962); Landis, *The Administrative Process*, 36-46 (1938); cf. *City of Pittsburgh v. Federal Power Comm'n*, 237 F.2d 741 (D.C. Cir., 1956)."

There is no doubt as to the Commission's statutory powers to require the development of adequate and comparable cost data. Section 12(1) of the Interstate Commerce Act authorizes the Commission to "obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of [the Act]" (49 U.S.C. § 12(1)). Section 20(1) of the Act expressly grants the Commission the power "to require * * * special reports from carriers" and to require the carriers to provide "full, true and correct answers to all questions upon which the Commission may deem information to be necessary" (49 U.S.C. § 20(1)). This power was sustained in *Baltimore & O.R. Co. v. ICC*, 221 U.S. 612, 621 (1911).

The Commission in this case never mentioned or, for all that appears, even considered the possibility of developing a record on the specific cost at issue, but merely relied upon unadjusted territorial average costs to reflect the average cost of the traffic at issue. The Commission is not expected to merely call balls and strikes. The ICC is not the prisoner of the parties' submissions. It is empowered to investigate and gather evidence beyond that presented where exercise of that power is necessary to supplement the record and is in the public interest. The record here does not show, except in nebulous fashion, that the cost figures represent anything but the overall average territorial costs and they certainly are not computations of cost figures of the particular movements here involved. The ICC has tools to assemble complete factual records, it employed virtually none of them in this extremely important pro-

ceeding. (See Justice Brennan's concurring opinion in the Railroad merger cases, 386 U.S. 372, decided March 27, 1967).

This opinion has been rather lengthy and includes findings and conclusions. By way of repetition and emphasis we add the following specific conclusions:

Conclusions of Law

1. This Court has jurisdiction, under 5 U.S.C. § 1009 and 28 U.S.C. §§ 1336, 2284, 2321-2325, to suspend, enjoin, annul and set aside the enforcement, operation and execution of orders of the Interstate Commerce Commission.

2. The venue of this action is properly laid in the Eastern District of Louisiana under 28 U.S.C. § 1398.

3. The Commission has power to require the development of adequate and comparable cost data. Section 20(1) of the Act expressly grants the Commission the power "to require the carriers to provide full, true and correct answers to all questions upon which the Commission may deem information to be necessary" (49 U.S.C. § 20(1)). The Commission has a duty to use its powers to obtain cost evidence where such evidence is necessary to assure an adequate record. That duty was violated here as the Commission failed to take affirmative action to require the development of an adequate record as to the actual costs of handling the specific traffic at issue.

4. The Commission stated as its standard the costs of handling North-South freight traffic, but reliance upon territorial average costs caused it to include in the Northern costs deficits from suburban commuter passenger service operations. This action constitutes a violation of both Sections 8(b) and 10(e) of the Administrative Procedure Act when judged against the standard stated by the Commission itself as governing in this case—that is, the relative costs of handling North-South freight traffic. The Commission had before it no substantial evidence on which

such a conclusion might be based. The lack of rational basis for the Commission's conclusion is highlighted by the Commission's own inconsistent finding that "many individual items of suburban service can be considered solely related * * * to suburban service" (325 I.C.C. at 78).

5. The Commission's use of territorial averages in computing the "switching costs" of the Northern and Southern railroads rather than the specific costs incurred by those railroads with respect to North-South traffic is not supported by reasoned findings and not based on substantial evidence in the record and thus violates Sections 8(b) and 10(e) of the Administrative Procedure Act.

6. The Commission's use of territorial average "empty return ratios" rather than the actual empty return ratios for the North-South traffic in issue also violates Section 8(b) and 10(e) of the Administrative Procedure Act because it is unsupported by reasoned findings and not based on substantial evidence in the record.

7. The "typical evidence rule" requires that there must be evidence typical in character and ample in quantity with respect to the divisions and services performed under the particular rate being divided. The Commission must consider evidence of actual services performed on particular traffic involved, and not rely wholly on averages which "are apt to be misleading." Here, the Commission relied on "unsifted averages." *United States v. Abilene & Southern Railroad Co.*, 265 U.S. 274 (1924), at p. 291; *Atchison, Topeka & Santa Fe R. Co. v. United States*, 225 F. Supp. 584, 592-600 (D. Colo. 1964).

Conclusion

We are not unmindful of the complicated nature of this problem. However, when the outcome of factual issues is bound to cut deeply into economic relations on such a scale and when the result involves a departure from an equal division formula previously adopted, it is appropriate to

remand the case to the ICC for further study, followed by an explicit development of a record to assure adequate and comparable evidence with respect to the cost of the specific traffic at issue.

With the passage of each year, the 1959 test year adopted here becomes more and more vulnerable to the charge of staleness. It therefore has less and less to recommend it as a reliable basis upon which to predicate a division order. We make this observation not to indicate that it would necessarily be an abuse of discretion for the Commission not to re-open the investigation to receive later operating figures, but as a suggestion that such a re-opening well might be warranted.

The Commission Order, in its entirety, should be set aside and the cause remanded to the Commission for further proceedings consistent with the views expressed herein.

Counsel for plaintiffs will prepare and submit an appropriate decree in conformity with this opinion.

APPENDIX B

Final Decree and Stay Order of the District Court

U. S. District Court
Eastern District of Louisiana
Aug 22 1967
FILED
A. Dallam O'Brien, Jr.
Clerk

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION
No. 15454
DIVISION "C"

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL., Plaintiffs,

VS.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

Final Decree

This action came on for trial before the Court, Honorable John Minor Wisdom, United States Circuit Judge,

Honorable Edwin F. Hunter, Jr., United States District Judge, Honorable E. Gordon West, United States District Judge, and the issues having been duly tried, heard and determined, an Opinion with the findings of fact and conclusions of law having been duly filed, Now, Therefore, in accordance with said Opinion and its findings of fact and conclusions of law,

IT IS ORDERED AND ADJUDGED that the order of the Interstate Commerce Commission dated February 3, 1965, as supplemented by the third ordering paragraph of the order of that Commission dated May 18, 1965 (each as entered by the Commission in the cause under its Docket No. 29799, *Akron Canton & Youngstown R. Co., et al. v. Aberdeen & Rockfish R. Co., et al.*, and Docket No. 29885 *Official Southern Divisions*), and each of said orders, be and the same are hereby set aside and that said cause be and the same is hereby remanded to the Commission for further proceedings consistent with the Opinion, findings of fact and conclusions of law of this Court.

JOHN MINOR WISDOM
United States Circuit Judge

EDWIN F. HUNTER
United States District Judge

E. GORDON WEST
United States District Judge

Dated: August 8, 1967.

U. S. District Court
Eastern District of Louisiana
Aug 22 1967
FILED
A. Dallam O'Brien, Jr.
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CIVIL ACTION
No. 15454

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

Order Staying Decree

IT IS HEREBY ORDERED AND ADJUDGED (1) that the effectiveness of the Decree signed, dated, and entered concurrently herein on this date is hereby stayed for the period of sixty (60) days from said date, and if a notice or notices of appeal to the Supreme Court are filed within such period, then this stay shall continue until final disposition or termination of such appeal or appeals; and (2) that during the aforesaid period or periods the protective provisions contained in Paragraph 3 of the Order of this Court of June 3, 1965, denying Application of Plaintiffs and Intervening Plaintiffs for an Interlocutory In-

junction and Dissolving the Temporary Restraining Order, shall continue in full force and effect.

Dated: August 8, 1967.

JOHN MINOR WISDOM
John Minor Wisdom
United States Circuit Judge

EDWIN F. HUNTER
Edwin F. Hunter
United States District Judge

E. GORDON WEST
E. Gordon West
United States District Judge

APPENDIX C

Reports and Orders of the Commission.

1

No. 29885 [1]

OFFICIAL-SOUTHERN DIVISIONS

IN THE MATTER OF DIVISIONS OF JOINT RATES BETWEEN OFFICIAL AND SOUTHERN TERRITORIES

Decided February 3, 1965

Upon further hearing, present divisions of joint interterritorial rates between official and southern territories found unjust, unreasonable, and inequitable. Just, reasonable, and equitable divisions prescribed. Prior reports, 287 I.C.C. 497, 289 I.C.C. 4, 291 I.C.C. 90, 294 I.C.C. 739, and 298 I.C.C. 83.

REPORT OF THE COMMISSION ON FURTHER HEARING

2

FREAS, *Commissioner:*

By complaint in No. 29799, filed July 24, 1947, the northern lines assailed as unlawful the divisions of joint rates on citrus fruit from points in Florida to destinations

1. This report also embraces No. 29799, Akron, Canton & Youngstown Railroad Company et al. v. Aberdeen & Rockfish Railroad Company et al.

in official territory. Thereafter, on December 4, 1947, we instituted, on our own motion, the investigation in the title case for the purpose of determining whether the then existing divisions of joint class and commodity rates between points in official territory and points in southern territory (as both territories are defined in *Class Rate Investigation, 1939,* 262 I.C.C. 447, 457) were unjust, unreasonable, or otherwise unlawful. All railroad carriers in the two territories were named as respondents.[2] Thus, as originally instituted, the two proceedings brought in issue the divisions of all joint interterritorial rates between the North and the South, except those on coal and coke made from coal which were excluded by mutual consent of the parties.

The original principal decision dated January 12, 1953, 287 I.C.C. 497, called the first 1953 report, embraced all involved traffic. By it, we prescribed primary divisions based upon equal mileage factors for the northern and southern lines, except that as to joint proportional rates on grain and grain products from East St. Louis, Mo., Louisville, Ky., and Cincinnati, Ohio, to points in southern territory, the northern factors prescribed were 75 percent of the northern general factors. That report also provided that arbitraries which were included in the joint rates should be deducted before prorating and that in lieu of specific apportionment of the arbitrary in respect of the rates on citrus fruit from Florida to official territory one percentage point should be deducted from the northern division and added to the southern division.[3] Also in that report the dividing points for such primary divisions were

2. Individual carriers will sometimes be referred to by their initials or other short titles.

3. Southern lines now ask that these findings relating to arbitraries be affirmed. Northern lines voiced no objection thereto, although they include as an arbitrary to be deducted before prorating an excess of $57 per car in the rates on vegetables to New York over the rates to New Jersey. This latter matter is discussed separately hereinafter and is denied. Under the circumstances, the prior findings as to arbitraries will be adopted herein.

fixed at the points of actual interchange rather than at the territorial boundaries.

In a report on reargument, 289 I.C.C. 4, decided May 26, 1953, called the second 1953 report, the prior report was modified so as to make the prescribed divisions applicable only to and from the existing primary dividing points. This report also postponed the effectiveness of the prescribed divisions to and from points on the Norfolk Southern
3 Railway Company, the Atlantic and East Carolina Railway Company, and the Beaufort & Morehead railroad Company (A. T. Leary, lessee) pending further hearing. The prescribed divisions became effective on July 15, 1953.

Upon petitions of various parties the findings in the two prior reports were interpreted and certain conclusions were revised in three supplemental reports. In 291 I.C.C. 90, of November 2, 1953, the definition of northern lines was broadened to include the Toledo, Peoria & Western Railroad Company, and the proceeding was reopened for further hearing with respect to divisions of rates between points on certain western trunklines and points in southern territory where no northern (official territory) carrier was a party to such rates, and with respect to divisions of joint interterritorial rates between points on the line of the Atlantic and Danville Railway Company west of Suffolk, Va., and points in official territory. The third and fourth supplemental reports, 294 I.C.C. 739 and 298 I.C.C. 83, made certain interpretations of previous findings.

On November 2, 1956, the northern lines petitioned for general reopening of these proceedings for further hearing and for modification of the order of January 12, 1953, as modified by the order of May 26, 1953. The petition was held in abeyance at the request of the interested parties until April 1, 1959, when the northern lines asked that the petition be processed. After replies had been duly filed, we reopened the proceeding for further hearing by order

dated July 20, 1959. The scope of the divisions now at issue is in some respects more limited than that covered in the 1953 reports. The joint interterritorial rates now excluded and the reasons therefor are listed in appendix A hereto.

The instant proceedings have been the subject of lengthy hearings during which considerable evidence was adduced by all parties in light of the criteria of section 15(6) of the Interstate Commerce Act. The hearing examiners found the present divisions unjust, unreasonable, and inequitable, and prescribed new divisions. Exceptions to the recommended report and order were filed by the official territory respondents, the southern territory respondents, and jointly by the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners. These parties also filed replies. Exceptions were also filed by the Norfolk Southern Railway Company and the North Carolina Utilities Commission. We have heard the parties in oral argument. Our conclusions differ in part from those recommended.

4 We consider the examiners' statement of facts to be substantially correct, as material, and in this report adopt it as our own. We have used here verbatim certain portions of that statement where necessary for clarity of discussion.

Prior to our consideration of the evidence, however, certain preliminary matters must be resolved. Initially, the southern lines contend on exceptions that our Section of Cost Fnding has consulted with and furnished advice to the examiners upon the issues, and although the southern lines specifically requested that they be given notice of and an opportunity to participate in any such consultations they were denied this right. Such action is said to deny the full and fair hearing guaranteed by section 15(6) of the Interstate Commerce Act, sections 5, 7, and 8 of the Ad-

ministrative Procedure Act, and the fifth amendment to the Constitution.

In our opinion, hearing examiners and the Commission itself may properly consult with staff members of the cost section or receive from them analyses of the cost evidence in the record, and such advice or analyses need not be furnished to the parties when given or prepared by cost section employees who have neither testified nor prepared exhibits in the case. See *United States v. Morgan*, 313 U.S. 409 (1941); *T.S.C. Motor Freight Lines, Inc., v. United States*, 186 F. Supp. 777 (S.D. Tex. 1960), affirmed *sub nom. Herrin Transportation Co. v. United States*, 366 U.S. 419 (1961). Any such cost section assistance is a part of, and solely in aid of, the internal process of decision. There was no error prejudicial to the southern lines. The southern lines also contend that the examiners erred in refusing to receive or mark certain exhibits dealing with switching minutes and empty-return ratios. However, the examiners' ruling related to exhibits offered after the southern lines had rested their case and after the date fixed for the submission of their evidence. Such action was in accord with the procedural order adopted in this proceeding. It did not constitute an abuse of discretion nor deny the southern lines a fair hearing. The ruling is affirmed.

The northern lines contend that the examiners erred in rejecting certain portions of their rebuttal cost exhibit. The involved rejected data was found by the examiners to be new and additional material beyond the scope of rebuttal. Since the northern lines refused to incorporate the material as part of their case in chief and to accord the southern lines the right of rebuttal, the examiners were correct in their ruling that the matter constituted improper rebuttal and in excluding it.

5 Finally, at oral argument, counsel for the southern lines in response to a question by counsel for the northern lines indicated an intent to rely on the holding as

to the typical evidence rule set forth in *Atchinson, T. & S. F. Ry. Co. v. United States,* 225 F. Supp. 584 (D. Colo. 1964), hereinafter called the *Western Trunklines* case. There, the court in reviewing the *Orient* case (*United States v. Abilene & S. Ry. Co.,* 265 U.S. 274 (1924)) and other decisions, held that in finding an existing scale of divisions unlawful the Commission cannot rely exclusively on aggregate or average data in making this initial determination but must have representative evidence which it considers typical in character and ample in quantity to permit a determination with respect to each division of each rate of every carrier. As we understand the position of the southern lines at oral argument, they contend that no such evidence is of record and that only "conglomerate averages" are shown.

The court in the *Western Trunklines* case stated, at page 595:

> Far from precluding Commission consideration and use of average data, the opinion in the *Orient* case states that "aggregate results should properly be taken into consideration by the Commission." The point of the *Orient* case is that the Commission may not rely wholly and exclusively on average or aggregate data. Before it relies on average or aggregate data, the Commission must make sure that the divisions formula under consideration (although seemingly just and equitable when viewed in terms of its impact on a group of railroads as a group), has not been construed in such a way that its impact on any particular division of any particular rate as applied to any particular carrier is unjust. This the Commission must do by considering evidence fairly representative of each division of each rate of every carrier in order that some inequity which might remain undisclosed by average or aggregate data is not permitted to slip in unnoticed.

It also indicated at page 592:

> The "typical evidence" rule in divisions cases, however, does not have to do with individual shipments made by particular carriers, as plaintiff's contend; rather, it has to do with particular divisions of particular rates among particular carriers. Evidence showing the volume and type of traffic moving subject to the representative rates, although highly probative, and probably otherwise essential to a just and equitable decision, is not absolutely required by the "typical evidence" rule.

Counsel for the northern railroads then indicated at the conclusion of oral argument that, if the Commission chooses to rely on the *Western Trunklines* case, it should require both sides to submit the abstracts of settlement statements among the various carriers which would reflect the specific data mentioned in the court's holding. It was urged,
6 however that the holding in the *Western Trunklines* case was erroneous, and that, in any event, no lack of evidence had been advanced of record by the southern lines, except perhaps as to grain and grain products, during the lengthy hearings herein. Both sides had freely exchanged such settlement sheets during the hearing, but they were not made part of the record. If submission of such data were required, the northern railroads indicated that they would waive cross-examination.

Except as hereinafter indicated, necessary typical evidence is of record, and we have properly considered and evaluated it. At this point, we note that the southern lines on brief have characterized their traffic study as providing—

> The most current data available with respect to the normal annual movement of Official-Southern traffic ever presented to the Commission. This information shows the services performed and revenue received by each carrier participating in the movement of the precise traffic at issue. It measures the participation of

Class I and Class II railroads, individually and as groups, in each territory, and shows the relative importance of Official-Southern revenues and ton-miles to the railroad groups and individual carriers.

Moreover, both the northern and southern lines' traffic studies are based on samples of the interline abstracts, the regularly maintained basic records, freely exchanged at the hearing, on which interline revenues from particular rates are divided among each participating carrier. Under the circumstances, as will be further shown and except as hereinafter indicated, we find the typical evidence contention of the southern lines to be without merit. To the extent that the *Western Trunklines* case also requires due consideration of all of the criteria of section 15(6), we have done so.

Traffic Studies

Introduction.—Both the northern and the southern lines made traffic studies for use in this proceeding. The northern lines introduced two studies developed from sampling, embracing carload shipments (except coal and coke made from coal) moving on joint rates (including aggregate-of-intermediate rates which automatically displace single-factor joint rates) between points in southern territory and points in official territory. The southern lines' study, also developed in accordance with a sampling procedure, was broader in scope and coverage than that of the northern lines. The studies of both groups do not
7 cover less-than-carload traffic.

The southern lines' tabulations show many of the characteristics of the traffic in the same form as that produced in the northern lines' study. The southern lines' study, unlike that of the northern lines, does not make separate showings as to citrus fruit and vegetables, such traffic having been included in the overall general study. However, the southern study shows separately the traffic units and revenue, and permits an application and comparison of costs thereto. Coal and coke made from coal

are not included in the southerns' final tabulations. Certain classes of traffic are not embraced in the study since, for reasons shown, the southern lines deem the divisions of rates thereon not here in issue. These segments are: (1) traffic to and from western carriers' stations in official territory, (2) traffic subject to grain proportional and reshipping rates subject to docket No. 29885 prescribed divisions, both categories having been excluded for the reason that no evidence thereon was introduced by an official territory respondent, (3) border traffic between border points and official territory which was the subject of litigation in docket No. 32055 (the parties have stipulated that this traffic is not in issue), (4) Norfolk Southern general traffic between stations on that line and points in official territory, having been excluded because docket No. 29885 divisions were not prescribed thereon and that respondent made a separate presentation thereof in a study including its overhead traffic, and (5) traffic to and from Morehead City, N.C., on the Atlantic & East Carolina, having been excluded for the same reasons as in (4) above.

Northern lines' general traffic study.—The northern lines' general traffic study embracing traffic for the months of March and September 1956 was expanded to a year's basis by multiplying by six. This study, so expanded, embraced a movement of 983,664 cars, 28,416,839.4 tons, with total revenue of $450,909,348. Northbound traffic exceeded the southbound by substantial amounts. About 70 percent of the carloads and 74 percent of the through revenue were in the manufacturers and miscellaneous category. About 75 percent moved in boxcars and refrigerator cars. As in the original case (the first 1953 report), the most important interchange points were Cincinnati, Richmond, and Potomac Yard, Va., with over half being interchanged at Varginia gateways, the remainder at the Ohio River crossings.

The average hauls on the general traffic per car-mile and per ton-mile are shown below:

8

Car-miles	*North* *Miles*	*South* *Miles*	*Total* *Miles*
Route of movement	408	519	927
Short line	362	475	837
Ton-miles			
Route of movement	392	508	900
Short line	347	464	811

The average hauls of the northbound traffic (not including Florida vegetables) in the southern lines' general 1947 study (based on average short-line ton-miles) were 370 miles in the North and 500 miles in the South, and of the southbound, 325 miles in the North and 440 miles in the South. On the same basis, the present northern lines' general traffic study shows on northbound traffic, 371 miles in the North and 496 miles in the South, on southbound, 313 miles in the North and 419 miles in the South, and on total traffic 347 miles in the North and 464 miles in the South, compared with the 1947 study figures of 345 miles north and 478 miles south.

The total revenue of $450,909,348, including the arbitraries was divided between the two groups, 45.44 percent north and 54.56 percent south. The study shows that the northern lines performed 42.8 percent of the short-line ton-miles of service, and 44 percent of actual route of movement car-miles, the southern lines 57.2 and 56 percent, respectively.

The citrus fruit and vegetables study.—This northern lines' study, also developed by sampling, covered the movement of these commodities from southern territory to points in official territory on lines of the northern lines for the 5 months, January through May 1956, and embraced 43,810 cars (713,618 tons). The total revenue was $19,660,843, which was settled 33.38 percent North and 66.62 percent South. The northern carriers performed 29.4 percent of the short-line ton-miles of service, the southern, 70.6 per-

cent. The preponderance of this traffic moved through Richmond and Potomac Yard. Cincinnati was the important Ohio River gateway.

The following table shows the average short-line hauls on this traffic:

9

	Short-line miles		
Car-miles	*North*	*South*	*Total*
Citrus fruit	356	830	1,186
Vegetables	360	893	1,253
Weighted average	359	871	1,230
Ton-miles			
Citrus fruit	355	830	1,185
Vegetables	361	890	1,251
Weighted average	358	860	1,218

Southern lines' study.—This study for the 12-month period July 1958 to June 1959 produced an estimated total of 967,554 cars containing 28,055,720.7 tons of freight yielding total through freight revenue of $496,086,766, including arbitraries totalling $1,365,705. The study included traffic originating or terminating on western or southern lines in official territory when a northern line participated in the haul, and, as stated above, coal and coke made from coal and certain other classes of traffic, not considered by the southern lines as here in issue, were not included in the final tabulations.

By directional flow, by commodity groups, and by types of equipment, this study follows closely those characteristics as produced in the northern lines' study. As in the northern study, Cincinnati led as the principal primary breakpoint, with Richmond and Potomac Yard in second and third place. Of the total cars embraced in the study, 55.4 percent passed through the Ohio River-Illinois-Kentucky gateways, and 44.6 percent through the Virginia gateways.

The average hauls per car and per ton, both route-of-movement and short-line, for the total traffic included in the study are shown below:

	North	*South*	*Total*
Per car	*Miles*	*Miles*	*Miles*
Route of movement	420	567	987
Short line	372	522	894
Per ton			
Route of movement	410	557	967
Short line	361	511	872

10

The following table compares the "as settled" division of the total through revenue in the two groups' studies:

	Combined northern lines' studies, including arbitraries	*Southern lines' study*	
		Including arbitraries	*Excluding arbitraries*
	Percent	*Percent*	*Percent*
North	44.93	44.64	44.75
South	55.07	55.36	55.25

The northern lines point out that the southern study is subject to criticism for failure to include Norfolk Southern traffic so as to permit such traffic to be considered separately or together with Southern traffic as a whole. As stated, the Norfolk Southern submitted a separate presentation for itself with respect to traffic originating or terminating on its line and passing over its line to or from stations on the Atlantic & East Carolina and the Beaufort & Morehead. The divisional situation as to these lines is the subject of later discussion herein. Inclusion of Norfolk Southern originated or terminated traffic reduces by 8 miles the average haul in the South, based on average short-line ton-miles.

Preliminary conclusions as to the traffic studies.—The studies of the two groups are basically similar as to the

general characteristics of the traffic. The least similar results are the average hauls. These differences may be accounted for principally in the difference in the periods studied as well as the inclusion or exclusion of certain traffic in the one and not in the other. The northern study does not include an estimated annual movement of 46,201 cars which originated or terminated on western district lines on which the northern lines performed only intermediate service. Also excluded was traffic (4,092 cars) to or from southern lines' stations in official territory on which the northern lines performed only intermediate service. A third category not included in the northern lines' study (2,955 cars) which the southern study embraces was traffic between the South and Canadian points moving on combination rates breaking at the international boundary on which the revenue accruing to domestic carriers is divided on the 1953 prescribed basis. On the other hand, the northern study includes traffic between points on the Norfolk & Western in southern territory and points in official territory. The extent of this traffic is not revealed but its inclusion tends to understate the southern lines' average haul since such traffic always has a relatively short haul in the South.

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The northern study does not reflect the changes in effective divisions which have occurred since 1956, brought about by vacation of the 1953 order as to certain categories of traffic as requested by mutual petitions. Thus, the "as settled" revenue which the northern lines received is understated under present divisional bases. This is particularly true as to vegetables. Since 1957 most vegetable traffic to the New York rate group has moved on per-car rates, the divisions thereon providing that the charge of $57 per car in the New York City rates, over and above the rates to Jersey City, N. J., shall accrue to the delivering lines before prorating. Thus, the northern lines' study shows that during the first 5 months of 1956 the northern lines received 32.23 percent of the "as settled" revenue on

northbound fresh vegetables whereas the southern lines' study of 21,785 cars of fresh vegetables moved in a year subsequent to the establishment of the per-car rates shows the northern lines received 35.28 percent. The southern study includes vacated order traffic: (1) liquid soda and soda ash from Saltville, Va., to Kingsport and Port Rayon, Tenn., and (2) peaches and fresh vegetables moving on per car rates to piers 22, 27, 28, and 29 at New York City. These two categories represent only 1,209 cars, an inclusion of little significance, but the divisions thereon remain in issue here as do the divisions on trailer-on-flatcar traffic not covered by stipulation of the parties.

We agree with the aforementioned characterization by the southern lines, stated earlier, as to the evidentiary worth of their traffic study. The basic abstract sample of southern lines consists of 100 percent of those abstracts covering $10,000 or more of revenue ("A" abstracts) with a 5-percent random sample of the remaining abstracts ("B" abstracts). The northern lines accepted the reliability of the southern lines' study by using it as the basis for their own final cost computations, and we have used the service units produced by the study in our restatement of the costs. Moreover, a careful consideration of the traffic studies and the abstract samples reveals that there are typical and ample representations of the roads involved, large and small, covering typical movements in ample number for a normal annual period with appropriate adjustments to reflect seasonal variations. A totalling of the divisions on particular traffic (which reflects the rates involved) permits an appropriate consideration of individual carriers and their movements.

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ECONOMIC TRENDS

At pages 501-505 of the first 1953 report, 287 I.C.C. 497, various statistical comparisons were set forth which supported a conclusion "that in the past 20 years the South has bettered its relative economic position in comparison

with the North" and "that the southern railroads have benefited from this improvement in the economic situation of the South." The record in this reopened phase indicates a continuation of these trends. The number of employees in the South in 1958 increased 28 percent over 1947, the number in the North was approximately the same in 1958 as in 1947, while there was an increase of 12 percent for the entire country. In absolute figures, the North in 1958 had almost 10 million employed persons, 5 times as many as the South. The value of manufactures for the Nation almost doubled between 1947 and 1958. It increased about 67 percent in the North, and slightly more than doubled in the South. From 1930 to 1958 the population of the United States increased 41 percent and in the southern States, 44 percent. The percentage population gains during the 20 years 1930 to 1950 were 22.7 percent for the entire country, 24.5 percent in the South, and 18.8 percent in the North, as shown in the 1953 report. A southern respondent in 1960 represented "that the South's economic development since World War II has outpaced the national rate of growth in practically every category you can name." Data adduced also show increases for the South of 40 percent in the number of manufacturing establishments, and 57 percent in the number of industrial and commercial firms, compared with respective national increases of 26 and 25 percent.

However, the South, as an area, was below national levels in several respects on a per capita basis. In 1956 manufacturers' expenditures for new plants and equipment per capita in the South were $48 as compared with $67 on a national level. In the same year value added by manufacture per capita in the South was $500 as compared with $835 in the Nation. In 1955, total bank assets per capita in the South were $670, or 48 percent of the national level of $1,398. The total value of farm products sold per capita in the South in 1954 was $131 as compared with $153 in the

Nation, while retail sales per capita in that year were $815 in the South compared with the national average of $1,054.

Operating and Revenue Results

There has been a relatively greater increase in freight traffic in the South than in official territory since 1947. The number of cars and tons handled within the South in 1958 were 100.40 and 120.21 percent, respectively, of that for 1947 while corresponding percentages for official territory were 64.14 and 68.19. Revenue ton-miles for the southern region in 1958 were 99.6 percent of those shown for 1947, and revenue tonnage originated and terminated in 1958 was 105.5 and 113.6 percent, respectively, of that handled in 1950. Corresponding percentages for the eastern district and Pocahontas region were for revenue ton-miles, 85.4 percent, and for tons originated and terminated, 77.3 and 77.5 percent, respectively. Revenue tons originated and terminated in the entire country in 1958 were 87.9 and 91.3 percent, respectively, of that in 1950.

As shown below, there has been a relatively greater increase in freight revenue of the southern lines since 1950 than in that of the northern lines:

Freight revenue	*Southern region*		*Eastern district and Pocahontas region*	
for—	*Amount*	*Percent*	*Amount*	*Percent*
1950	$1,098,229,000	100	$3,374,542,000	100
1958	1,175,318,000	107	3,217,516,000	95.3

The average net ton-miles of revenue and nonrevenue freight per annum in the southern region for 1956-58, 91.8 billion, were 2.1 billion more than those for 1950, and 37.9 billion greater than in 1940. The annual average for the eastern district and the Pocahontas region in 1956-58 was 253.2 billion, 6.3 billion less than in 1950, and 53.8 billion greater than in 1940.

In the first 1953 report, 287 I.C.C. at page 503, the operating ratios of the two groups of carriers shown for the

years 1941-50 indicate that ratios for the southern lines were consistently below the ratios of the northern lines. The present record does not show freight operating ratios separately. The total operating ratios continue to favor the southern lines as shown below:

Year	*Southern region*	*Eastern district and Pocahontas region*
	Percent	*Percent*
1951	75.14	79.58
1952	73.26	79.03
1953	72.64	78.79
1954	76.00	81.14
1955	72.79	77.09
1956	74.73	77.62
1957	77.68	79.53
1958	78.61	81.20
1959	76.22	80.52

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The first 1953 report also showed that the increase in net railway operating income received by the southern lines in the period 1941-51 had been relatively larger than for the northern lines. Continuation of that trend is shown below:

Net railway operating income

Annual average for—	*Southern region*		*Eastern district and Pocahontas region*	
	Millions	*Percent*	*Millions*	*Percent*
1948-53	$157.8	100	$395.4	100
1954-59	162.4	103	361.1	91

The above table reflects operations of the two groups for the 6 full years prior to and after the presently prescribed divisions became effective under which the prior divisions giving the southern lines on general traffic a 25-percent factor advantage was eliminated. Revenue in 1956 for the northern lines from the traffic at issue was 6 percent of their total freight revenues, while for the southern lines the percentage was 21.4.

Rates of return on depreciated book investment, set forth in the first 1953 report, 287 I.C.C. at page 503, indicate that for the years 1941 to 1951 those for the southern lines consistently exceeded those for the northern lines. In this phase of the instant proceeding, the rates of return based on the net investment [4] are as follows:

Year	*Southern region percent return*	*Eastern district and Pocahontas region percent return*
1952	5.27	3.86
1953	5.45	4.01
1954	4.48	2.89
1955	5.45	4.19
1956	5.02	4.05
1957	4.14	3.29
1958	3.68	2.00
1959	3.63	2.27

Again comparing these statistics for the 6 full years since the present divisions became effective with the 6 years prior thereto, the average rate of return (net investment method) for the southern lines was 4.40 percent in 1954-59 and 4.79 percent in 1948-53, while the northern lines' average was 3.11 and 3.60 percent, respectively.

The southern lines take the position that returns for the calendar years 1958 and 1959 should not be used for comparative purposes to determine future divisions in view of the recession in business activity affecting the first half of 1958 and the severe steel strike affecting the last half of 1959, which affected the northern lines to a greater degree than the southern lines. The rates of return of both groups for these years were lower than for any other year since 1949. A comparison, omitting 1958 and 1959, shows average annual rates of return for the southern lines, 1954-57, 4.77

4. The net investment method is the carriers' investment in road and equipment, material and supplies, and cash, less accrued depreciation and amortization at the end of the year under consideration.

percent and 1950-53, 5.19 percent and for the northern lines during the same respective periods, 3.60 and 3.76 percent. Thus, the spread between the two groups in the 4-year period before the present divisions became effective, 1.43 percentage points, was reduced to 1.17 in the like period subsequent thereto.

The following table shows changes in revenue per ton and revenue per ton-mile for the two groups in the first 4 years since the present divisions became effective:

	Official territory		*Southern region*	
	Revenue per ton	*Revenue per ton-mile*	*Revenue per ton*	*Revenue per ton-mile*
Year		*Cents*		*Cents*
1954	$2.98	1.55	$2.98	1.46
1955	2.91	1.48	2.89	1.40
1956	2.95	1.49	2.82	1.43
1957	3.14	1.56	2.97	1.48

The southern lines observe that the location of new industries in the South near abundant sources of raw materials has meant that the long-haul movement of manufactured products into the South has been replaced by the movement of low-rated raw materials to nearby plants. Increased population in the South has caused finished products to be consumed locally, and the southern lines contend that they are left with less remunerative movements of low-rated raw materials. As an example, the Seaboard handled 33.9 percent more tonnage of low-rated commodities in 1959 than it did in 1951. Between the same years its tonnage of high-rated traffic increased only 5.6 percent. Its revenue increases in the same period were 28.7 percent on low-rated and 2.4 percent on high-rated commodities. The northern lines' tonnage and revenues in the eastern district for both groups of commodities decreased in 1959 compared with 1951. The decrease on low-grade tonnage and revenues was 27.4 and 15.8 percent, re-

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spectively, while on high-grade, 22.4 and 15.2 percent, respectively.

In August 1959, 12.1 percent of the northern lines' cars were undergoing or awaiting repairs; the figure for the southern lines was 5.3 percent. In July 1959, 6.7 percent of the North's locomotives were in or awaiting shop; for the South, 3.1 percent. Using the 4-year period of 1950-53 as a base index of 100 for new rail laid in replacement, the northern lines' indices were 60.6, 60.9, 56.6, 54.4, and 20.5 in the 5 years, 1954-58, respectively, while the respective indices for the southern region roads were 101.2, 90.9, 76.7, 80.7, and 49.8. Indices for crosstie and secondhand rail replacements in the two groups follow similar patterns during the same 5-year period.

The first 1953 report, 287 I.C.C. at page 505, discussed the efforts by each group to show that its revenue was more adversely affected by motor and water competition. However, it was not found there that such competition would be felt more keenly in the future by one group than by the other. Facts respecting such matters, including truck registration, highway construction, truck versus rail tonnage, revenue, and ton-mile revenue, waterborne diversions, and competitive rate reductions, were shown. However, those factors are not shown to have a measurably greater effect on one group as against the other on interterritorial traffic. We find that no adjustment of divisions is in order as a result of competition from other modes of transport.

Efficiency of Operation

In prescribing divisions the Commission is required by section 15(6) of the act to "give due consideration, among other things, to the efficiency with which the carriers concerned are operated." In the original phase of this case the relative efficiency of the northern lines was the subject of substantial evidence directed to support the southern lines' assertion that "performance in the North reflects

less efficient operation than in the South." After reviewing the various statistical indicators of efficiency in the prior record, it was stated at page 519 of the first 1953 report: "In our opinion the figures disprove the charge that the northern lines are less efficiently operated than the southern lines * * *."

17 In this reopened phase, the southern lines do not question the relative efficiency, as such, of their opponents. Instead, they charge that the northern lines have been unwise in choosing to devote available funds to reduction of debt rather than making capital improvements in their transportation plant, that the primary problem confronting the northern lines must be met through the elimination of duplicate facilities and modernization of railroad plant, and that cost savings are available to those lines through elimination of excess and duplicate facilities.

The northern lines assert that the same conclusion as to relative efficiency as made in the first 1953 report is warranted upon this record. It was there stated at page 525:

> We do not interpret section 15(6) as requiring us to determine whether one group of carriers is more or less efficiently operated than another, but rather to give due consideration to any evidence which might tend to indicate that the showing as to cost of service is affected by wasteful or inefficient management.

The record shows that the traffic density in the North is appreciably greater than in the South. From this fact the southern lines reason that the unit costs shown in Rail Form A for recent years for the northern lines should be lower than for the southern lines. However, many factors other than density, as will be hereinafter discussed, affect the operating expenses of a group of railroads. In any event, railroads in the North, including the larger ones, are shown to be in the process of eliminating unnecessary facilities

and services. At the same time, the evidence shows that the northern lines exercised their best managerial judgment, when faced with rising debt, in dealing with problems affecting the cost of service at the time they were encountered. We find no basis for giving effect to criticism of such action. Nor is there a basis for criticizing the judgment of southern lines in expanding and developing their operations. Also the record does not establish that the northern lines' costs are overstated relative to the southern lines' costs as a result of differences in the timing of the modernization programs in each territory. It is true that the savings expected from proposed mergers and consolidations are not reflected in the cost studies of record. However, the southern lines themselves have noted that mergers are now going forward in all territories, including the South. If and when such proposed mergers are ultimately approved and finally consummated in both groups the savings produced thereby will be then reflected in the respective unit costs. The economies hoped to be effected thereby
18 and the savings exepected are not ascertainable for future operation to the degree required for any specific adjustment here of the cost studies of record. We find upon this record that the northern lines' cost of service is not shown to be affected by purported waste or inefficiency. More affirmatively, we find that both groups are being operated efficiently and that neither group should be considered as more or less efficient than the other.

Relative Cost of Service

It was stated in the first 1953 report, when prescribing the present divisions, that: "* * * it is to be the safest assumption for the future upon the facts before us that neither contesting group will have an appreciably lower basis of operating costs than the other, * * *." 287 I.C.C. at page 526. To demonstrate changed conditions, the northern lines presented evidence as to the relationship of territorial average costs, the trend of those costs over a period

of years, and the cost of moving the traffic at issue based on territorial average unit costs applied to traffic samples. They contend that their cost evidence reflects higher costs in the North than in the South for equivalent hauls and loads, that the difference has increased over a period of years, and that the division of the revenues which they receive for hauling the traffic at issue is less than their proportion of the costs of hauling it, thus proving the aforesaid assumption was not well founded.

The basic formula used by both parties was Rail Form A, entitled "Formula for Use in Determining Rail Freight Service Costs," which utilizes the expenses and statistics for a given year as reported to this Commission by the carriers as well as supplemental data derived from special studies made by the carriers. The traffic here at issue moves over three statistical and cost territories: the southern region south of the divisional breakpoints, the eastern district, and the Pocahontas region north of the breakpoints or border. The northern lines rely in these proceedigns upon eastern district territorial costs as developed by Rail Form A. It is their view that such Rail Form A costs—unadjusted—should be used to measure the relative costs of service for the two groups of carriers involved.

The southern lines contend that eastern district territorial costs are appropriate only for the eastern district, and that Pocahontas region costs should be used for the Pocahontas carriers; or that at least official territory cost should be used for official territory (made up of eastern district and Pocahontas region). It is also their view that territorial costs should be somewhat narrowed down to the North-South traffic in issue. Endeavoring to adjust Rail Form A costs to the interterritorial traffic in issue, there are a number of adjustments presented by the southern lines purportedly improving the accuracy of the territorial costs for the two groups of carriers. These adjustments are dealt with in full in subsequent treatment of this subject.

The following table shows the relative participation of the carriers in the traffic at issue as shown in the southern traffic study.

	Cars originated or terminated	*Percent*	*Car-miles*	*Percent*
Official-southern traffic north of gateway:				
Eastern district roads	769,700	79.55	276,278,108	67.98
Pocahontas roads	130,877	13.53	95,562,990	23.51
Class II roads ..	16,697	1.73	417,948	.10
Southern lines in official territory	4,092	.42	24,030,862	5.91
Western lines in official territory	46,201	4.77	10,108,571	2.49
Total	967,567	100.00	406,398,479	99.99
All traffic:				
Eastern district ..	25,434,220	——	6,124,710,420	——
Pocahontas region	5,056,002	16.6	1,397,141,776	18.6
Official	30,490,222	——	7,521,852,196	——
Official-southern traffic south of gateway:				
Southern region roads	894,461	92.44	532,811,465	97.15
Pocahontas roads	0	——	3,006,325	.55
Class II roads ...	55,829	5.77	3,228,070	.59
Western district roads	17,277	1.79	9,412,641	1.72
Total	967,567	100.00	548,458,501	100.01

The participation of the Pocahontas lines in the traffic at issue compared to all traffic is less when measured by cars originated and terminated and more when measured by car-miles. One is related to terminal costs and the other to line-haul costs. A part of the traffic at issue is carried over those portions of southern lines which extend into official territory and over those portions of western lines which extend into official territory and southern re-

gion. The relative participation of the Pocahontas lines in the issue traffic is not shown to be sufficiently different than in the total traffic so as to require separate costing, nor is there any sound evidentiary basis for applying western district costs to traffic moving in official territory which is carried on western lines which lap over into that territory. In view of the foregoing, we find that the most appropriate and reasonable approach to the determination of costs in official territory is the alternative urged by the southern lines; that is, official territory, costs for all traffic north of the gateways. A comparable basis in the South necessitates the use of southern region costs on traffic south of the gateways.

The northern lines presented evidence to show that the average unit costs for comparable service are higher in the North than in the South. The following summary table illustrates this point. The first six lines are based on the northern lines' application of Rail Form A and the last four lines on our cost section's application in its annual studies. These costs include a terminal service at one end only, reflect short-line miles, and are based on a load of 28.9 tons in boxcars.

Relation of northern to southern freight service costs

	100 miles	*300 miles*	*500 miles*	*1,000 miles*
	Percent	*Percent*	*Percent*	*Percent*
Official territory vs. South:				
1948	119	113	111	109
1956	131	123	120	117
1957	131	122	120	117
Eastern district vs. South:				
1948	125	119	117	116
1956	141	131	128	126
1957	141	132	130	126
Eastern district vs. South (cost section study):				
1948	124	116	115	113
1956	143	133	129	127
1957	143	133	131	128
1959	154	143	139	136

These costs indicate that levels thereof are higher in the North than in the South for like services, that official territory costs are not quite as high as eastern district costs, and that the northern lines' application of Rail Form A as compared to the cost section's study application results in a slightly lower relationship, particularly in more recent years.

The northern lines' application of Rail Form A differs from that of the cost section's annual studies in the following respects: (*a*) the use of a 6-percent rate of re-
21 turn without provision for Federal income tax in place of a 4-percent rate of return with provision for Federal income tax; (*b*) the base for return is book investment in road and equipment plus cash and material and supplies less recorded depreciation and amortization instead of on the basis of original costs except lands and rights, working capital, including material and supplies, less recorded depreciation and normalized amortization, plus the present value of land and rights; (*c*) the less-than-carload and passenger deficits are omitted from the constant costs; and (*d*) none of the costs of switching and terminal companies is included.

The northern lines' evidence as to the trends of relative costs over a period of years can best be summarized in tabular form as follows:

Northern percentage of total Form A costs at average hauls

	Citrus and vegetable traffic, refrigerator car— 16.3 tons	*General traffic, boxcar— 28.9 tons*
Average haul-miles:		
North	358	347
South	860	464

	Official territory	*Eastern district*	*Official territory*	*Eastern district*
	Percent	*Percent*	*Percent*	*Percent*
Northern lines' Form A computation:				
Year 1948	32.3	33.3	46.4	47.8
Year 1950	33.5	34.2	48.8	50.1
Year 1952	33.8	34.7	48.8	50.1
Year 1954	33.1	34.7	49.7	51.0
Year 1956	33.9	35.0	48.8	50.5
Year 1957	34.1	35.5	48.8	50.8

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	Citrus and vegetable traffic, eastern district		*General traffic, eastern district*	
	Fully distributed costs	*Out-of-pocket costs*	*Fully distributed costs*	*Out-of-pocket costs*
	Percent	*Percent*	*Percent*	*Percent*
Form A cost from cost section annual study:				
Year 1947 as of Jan 1, 1949	32.9	33.5	47.0	49.0
Year 1948 as of Jan. 1, 1950	33.3	34.1	47.4	49.7
Year 1949 as of Jan. 1, 1951	31.9	31.8	46.7	47.5
Year 1950 as of Jan. 1, 1952	34.2	34.4	49.7	51.2
Year 1951 as of Jan. 1, 1953	34.5	34.5	49.9	50.8
Year 1952 as of Jan. 1, 1954	34.7	34.8	50.2	51.1
Year 1953 as of Jan. 1, 1955	34.2	34.3	50.0	51.2
Year 1954 as of Jan. 1, 1956	34.7	34.7	50.6	51.8
Year 1955 as of Jan. 1, 1957	34.9	34.9	50.5	51.5
Year 1956 as of Jan. 1, 1958	35.5	35.7	50.7	51.8

In the southern lines' traffic study, 69.3 percent of all car-miles were run by boxcars and 9.7 percent by refrigerator cars. The table above indicates that there was an increase in the northern lines' proportion of costs in the year 1950 but that the trend since that year is not pronounced. As to boxcar costs, the northern lines' computation shows no increase for official territory between 1950 and 1957 and only 0.7 percent for eastern district.

The out-of-pocket boxcar costs, based on our cost section's annual study, showed 0.6-percent increase from January 1, 1952, to January 1, 1958.

The northern lines priced out the traffic at issue as measured by their own traffic study both on the basis of Rail Form A unit costs of their own computation and on the basis of Rail Form A unit costs as computed by our cost section's studies. They also applied the cost section's unit costs to the southern lines' traffic study. The cost section costs used were at the fully distributed level; i.e., they included a ton and ton-mile apportionment of the constant costs. All costs were based on the year 1956 and included an allowance for loss and damage. The table following shows for each traffic study, the percentage of revenues received by the northern lines, and the percentage of costs incurred by them:

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	General traffic (percent)			*Citrus and fresh vegetables (percent)*		
	Revenue	*Cost*	*Difference*	*Revenue*	*Cost*	*Difference*
Northern lines' traffic study:	45.44	——	——	33.38	——	——
Northern costs:						
Eastern district vs. southern region	——	49.78	4.34	——	34.62	1.24
Cost section study costs:						
Official territory vs. southern region ..	——	48.19	2.75	——	34.00	0.62
Eastern district vs. southern region ..	——	50.18	4.74	——	35.26	1.88
Southern lines' traffic study:	44.97	——	——	34.63	——	——
Cost section study costs:						
Official territory vs. southern region ..	——	47.34	2.37	——	33.69	(.94)
Eastern district vs. southern region ..	——	49.31	4.34	——	34.97	.34

The difference in the results for citrus and fresh vegetable traffic as between the two traffic studies reflects a revision in the divisions. The more recent southern lines' traffic study shows that the revenues as settled and the costs on this traffic are roughly equal. The following table indicates the dollar amounts involved on the general traffic:

	Traffic study of northern lines			*Traffic study of southern lines*		
	Percent		*Percent*	*Percent*		*Percent*
Total revenue ...	100.00	$450,909,348		100.00	$480,160,317	
Northern lines' share:						
Revenues as settled	45.44	204,889,448	100.00	44.97	215,915,212	100.00
Revenue if based on costs:						
Northern lines' costs ...	49.78	224,462,673				
Increase		19,573,225	9.6			
Cost section study costs:						
Official vs. southern ..	48.19	217,293,215		47.34	227,307,894	
Increase		12,403,767	6.1		11,392,682	5.3
Eastern vs. southern ..	50.18	226,266,311		49.31	236,767,052	
Increase		21,376,863	10.4		20,851,840	9.7

24 The southern lines urge that it is settled law that relative service costs are the decisive measure in determining just and reasonable divisions and that the costs of all roads participating in the official-southern traffic should be so applied and adjusted as to reflect the cost characteristics of the traffic here at issue. In order to develop the relative service costs of this traffic they applied Rail Form A adjusted unit costs at the fully distributed level for the year 1956 to their traffic sample described above. They presented the results of their cost studies in several different forms, but their principal cost evidence can be summarized as shown in the table below. It starts with the application of the costs as computed by the northern lines applied to the southern lines' traffic

study, then the unadjusted Form A costs applied to the same study, and lastly the Form A costs modified to include the effect of 12 adjustments they deem necessary.

	North of gateway	*South of gateway*	*Percent* North	South
Total revenues as settled under present divisions	$221,430,000	$274,656,000	44.64	55.36
Northern lines' costs applied to southern traffic study:				
Eastern district and southern region	158,427,000	170,708,000	48.13	51.87
Official territory and southern region	148,424,000	170,708,000	46.51	53.49
Unadjusted Rail Form A costs—official territory and southern region ..	169,618,000	194,306,000	46.61	53.39
Rail Form A costs including 12 adjustments	152,808,000	201,916,000	43.08	56.92

All of these costs are territorial average costs based on the expenses and operations for 1956, all are at the fully distributed level, and all are applied to the southern lines' traffic study.

The unadjusted Rail Form A costs above result from the standard computation applied to each territory. The specific adjustments made by the southern lines in the unadjusted official territory and southern region unit costs developed by cost section annual studies are discussed in appendix B hereto in full detail.

Restatement.—The differences between the parties as to the cost evidence run to the degree to which territorial average costs should be modified to fit the specific traffic at issue, and to the meaning and significance of various data and statistics.

·25 Both parties computed the cost of service based on the southern lines' traffic study and the territorial average costs (1956) in statement No. 2-58, Rail Carload Cost Scales by Territories, prepared by the cost finding section. The southern lines computed costs for all traffic for official territory and southern region and the northern lines computed costs for general traffic (all traffic except citrus fruits and fresh or green vegetables, not frozen, northbound) and citrus and vegetable traffic separately for official territory, eastern district, and southern region. The cost computation of each side furnished substantial verification of that of the other side. Further, positive verification was made by applying the unit costs in statement No. 2-58 to the service units by type of car. The assertion made by the northern lines that the southern lines omitted 70 percent of the cars in the traffic sample from their cost studies is not true of the latter's final cost presentation.

Our restatement is based on official territory (eastern district plus Pocahontas region) costs north of the breakpoints, for reasons previously discussed, and is at the fully distributed level,[5] as advocated by both groups, on all traffic. Apart from the adjustments rejected in appendix B, our restatement is based on the southern lines' cost computation, as applied to their traffic studies, which, we find, more reliably and accurately reflect the movement of the traffic in question. Incorporating the five adjustments advocated by the southern lines which we have found appropriate, our restatement is shown in the following table:

Restated costs

All traffic	*Official territory*	*Southern region*
Revenue as settled	$221,430,341	$274,656,425
Percent	44.64	55.36
Fully distributed costs—unadjusted	169,617,543	194,306,309
Percent	46.61	53.39

5. As found appropriate in *Louisville & N.R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, 660, sustained in *Carolina & N.W. Ry. Co. v. United States*, 230 F. Supp. 581 (W.D.N.C. 1964).

All traffic—continued	*Official territory*	*Southern territory*
Adjustments:		
Exclude platform cost	$—2,254,075	$—453,673
Way and thru train separation	—2,283,259	—3,595,230
Switching and terminal companies	—163,473	+1,039,610
Include short line (class II railroads) costs	—37,725	+529,347
Train tonnage—		
Pocahontas region	+867,319	0
Total adjustment (net)	—3,871,213	—2,479,946
Fully distributed costs—adjusted	$165,746,330	$191,826,363
Percent	46.35348	53.64682

As indicated, we have fully reviewed in appendix B and restated above the costs as presented by the parties. In addition, however, the southern lines urge that the evaluation of certain factors bearing upon costs establishes that their cost study overstates the costs of the northern lines relative to the costs in the South, all to the general effect that their showing of the northern lines' costs should be reduced by at least 5 percent. These factors include: (1) overstatement of line-haul costs, (2) costs of interchanges between northern and southern carriers, (3) differences in the timing of modernization programs in each territory, and (4) savings which would result from "necessary" elimination of alleged excess capacity and duplicate facilities. The only item to which they attach a cost figure relates to the equalization of gateway interchanges, amounting to $1.6 million. We have discussed this item in appendix B, pointing out our reasons why such an adjustment is not warranted. As to the remainder, they agree that a precise cost figure cannot be ascertained. We have fully considered these factors, and are of the opinion that the service unit costs as determined by the application of Rail Form A, as adjusted, adequately reflect the costs which are

attributable to the traffic at issue. Our overall appraisal of this evidence is reflected in our conclusions and findings.

IMPORTANCE TO THE PUBLIC

Section 15(6) of the act also requires that we give due consideration to the importance to the public of the transportation services of the concerned carriers. No real issue exists between the contending railroad groups themselves in this respect. Each group is considered to be of equal importance to the public.

27

The prior phase of this proceeding was viewed primarily as a struggle between the railroads. In this reopened phase, however, certain interests representing public bodies adduced evidence in support of the southern lines. The Southern Governors' Conference [6] and the Southeastern Association of Railroad & Utilities Commissions [7] endeavored to show why the divisions of the northern lines should not be increased. Unlike the request of the southern lines, their requested finding is that equal factor divisions should be maintained. These interveners contend that a shift of divisions from the southern lines would result in higher rates on southern and interterritorial and intraterritorial traffic, and diminution of services, facilities, and equipment. Thus, they foresee the impairment of the ability of southern shippers to compete in distant markets and diversion to other modes of transportation, thereby impeding the economic growth of the South.

In their exceptions, the southern interveners urge that the examiners failed to give effect to the overriding demands of the public interest which, they say, require uniformity in these divisions. We recognize that the public

6. In this proceeding, composed of the Governors of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

7. Composed of State commissions and their members charged with the regulation of common carriers and other public utilities in the States named in footnote 6.

interest must be considered and the importance to the public of the transportation services of the railroads is not a sectional concept. We are required under the act to preserve an adequate national system of transportation, and must therefore consider the public interest of all concerned. Such a consideration, however, does not by any means require a uniformity of divisions, nor can we find an affirmative virtue in it on this record. *Cf. Western Trunklines* case, 225 F. Supp. at page 604. Moreover, as pointed out in *New England Divisions Case,* 261 U.S. 184, 191 (1923), section 15(6) was designed to help the weak "by preventing needed revenue from passing to prosperous connections." Thus, an adherence to uniformity as such, without a careful evaluation of the statutory criteria and the evidence of record, can hardly result in the fixing of just, reasonable, and equitable shares.

Relying on *New York v. United States,* 331 U.S. 284, 315 (1947), the interveners also take the position that natural disadvantages must be found in the North before we may increase the divisions of the northern railroads. In essence, however, other factors being equal, cost differences generally are the product of, and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories. *Cf. Louisville & N. R. Co. v. Southern Ry. Co.,* 319 I.C.C. 639 at pages 646-47. Moreover, in the *New York* decision, a discriminatory class rate structure was found not justified by territorial conditions. No similar showing as to existing divisions has been demonstrated here by interveners. Indeed, the continued maintenance of divisions which, all other things being equal, do not reflect the relative costs of service would not suggest justice as between the parties. Such inequities being manifest here, we are of the opinion that divisions correcting them can result in no unlawful injury to the South.

28

In sum, we find that there are no differences in importance to the public attributable to the two contending groups of railroads.

DIVIDING POINTS AND DIVISIONS ON PARTICULAR MOVEMENTS

Dividing points.—In this reopened phase the northern lines again urge that the construction of divisions over fictional breakpoints rather than over actual points of interior interchange results in unjust inflation of southern revenues. They request a finding that the dividing points to and from which primary divisions shall apply are the points at which the traffic is interchanged between a northern and southern line.

This problem has been a difficult one ever since these general North-South divisions were first considered in docket No. 24160, the northern lines always contending that actual interchange points should govern, while the southern lines strenuously urged that the primary dividing points should be at the territorial border. In the original 1939 report in docket No. 24160 the Commission found for the northern lines, but reversed its initial determination in the report on reconsideration, 238 I.C.C. 149. Subsequent thereto, the interested lines in 1944 entered into what is known as the Roanoke Agreement as a compromise on traffic moving through the Ohio River gateways to points in central and Illinois territories. Details of this agreement, with which the northern lines are dissatisfied, are stated at page 528 of the first 1953 report, and need not be repeated here.

29 In the first 1953 report the Commission again agreed with the northern lines' contentions but upon reargument in the second 1953 report (289 I.C.C. 4) modified the finding, holding that it would not be desirable to require the use of points in Illinois and Indiana north of the Ohio River as primary dividing points.

The southern lines' traffic test, as stated, embraced a total of 967,554 cars. Of these, 86,843 or 9 percent were interchanged at interior Illinois-Indiana junctions, the most important of which were East St. Louis, 28,783 cars, Chicago, 19,441 cars, and Indianapolis, 12,599 cars.

The following tabulation shows the number of cars so handled by individual lines:

Railroad	*Cars*		
	Northbound	*Southbound*	*Total*
Illinois Central	30,838	15,463	46,301
Gulf, M. & O.	14,476	3,680	18,156
St. Louis-San Francisco	8,832	3,129	11,961
Southern	2,880	2,219	5,099
Louisville & Nashville	2,471	2,798	5,269
Missouri Pacific	—	57	57
Totals	59,497	27,346	86,843

A comparison of the total number of cars moving through primary dividing points with those moving through these points but not interchanged follows:

Dividing points	*Total cars*	*Cars not interchanged*	
		Number	*Percent*
Cairo, Metropolis Thebes-Gale	74,504	65,470	87.9
East St. Louis	55,767	11,005	19.7
Evansville	29,342	5,269	18.0
Louisville	90,538	5,099	5.6
	250,151	86,843	34.7

The total revenue on the 86,843 carloads was $49.6 million which was settled 63.9 percent south and 36.1 percent north. If the primary break were made over the actual points of interchange, the southern lines would have received 58.4 percent, and the northern lines 41.6 percent, reflecting a reduction in southern revenue of $2.7 million, averaging $32 per car. Some 28,136 cars, or 32.4
30 percent, were handled via joint routes that would have required new subdivisional arrangements.

The examiners recommended that the border dividing points be retained as at present. They were of the opinion that the record failed to show any changed conditions since 1953 favoring the northern lines as to the dividing point

issue. The northern lines except to this recommendation but are not joined therein by the Monon and the Chicago & Eastern Illinois, two of the carriers intimately concerned with the divisional break issue.

The northern lines contend that section 15(6) of the act requires that divisions be fixed as among the several carriers, which, they contend, means that the Commission may not recognize geographic areas or rate territories in establishing primary divisions. We do not agree with this view. This argument was rejected by the Supreme Court in *New England Divisions Case, supra,* shortly after the enactment of section 15(6) in 1920. We have administered the act accordingly over the years. See, e.g., *Atlantic Coast Line R. Co. v. Arcade & A. R. Corp.*, 194 I.C.C. 729 (1933), *Divisions of Freight Rates*, 253 I.C.C. 673 (1942).

The southern lines take the position that our order of July 28, 1959, reopening this proceeding, did not contemplate any reconsideration of the dividing point issue. The order was not so restricted. If we were to adopt this contention, our consideration of the divisions on Canadian-northern Maine traffic, which these carriers admit is at issue here for the first time, would likewise not be included in this reopened phase.

In the second 1953 report, 289 I.C.C. 4, it was stated at page 8:

> Upon further consideration we are of the opinion that it may be preferable from the standpoint of carrier competition and simplicity of accounting that the divisions for the service south of any given gateway be uniform and that upon all the facts before us it would not be desirable to require the use of points in Illinois and Indiana north of the Ohio River as primary dividing points. The prescribed divisions will therefore be made applicable only to and from existing primary dividing points.

The northern lines contend that circumstances and conditions have changed since 1953, but we find nothing convincing upon which to base a conclusion to reverse that made in the above-quoted portion of the second 1953 report. The examples given in 1953 as to competitive routes and carriers are much the same today as they were then. It
31 appears that these lines simply are endeavoring to have us reconsider the situation. But the positive virtues of the uniform treatment set forth above still obtain.

The northern lines also rely on the *Border Point* case, *Louisville & N. R. Co. v. Akron, C. & Y. R. Co.*, 309 I.C.C. 491 (1960), as an indication that the southern lines have advocated, and that we have accepted, the proposition that railroads assigned to the southern territory to the extent they operate in official territory are to be treated as southern carriers. However, that proceeding concerned traffic moving between primary dividing points or to and from stations on southern territory carriers which are located south of the primary dividing points, which traffic had not been included in the evidence when the Commission's 1953 reports and orders were entered. The *Border Point* decision merely prescribed the docket No. 29885 divisions on the border point traffic of the Louisville & Nashville and the Coast Line consistent with the divisions prescribed for the border point traffic of the northern lines. It did not include traffic of those two carriers north of primary dividing points.

All things considered, we conclude and find that the divisions prescribed herein should continue to be made applicable only to and from existing primary dividing points. *Cf. Official-Southwestern Divisions*, 289 I.C.C. 11, 16 (1953). Thus, railroads assigned to southern territory in their entirety for statistical purposes will continue to be treated as southern lines for that portion of the operations south of the territory border dividing points and to be treated in

accordance with geographical fact to the extent that they operate as northern lines north of the primary dividing points. Giving consideration to the revenues which will accrue to the contending groups as a result of this finding, together with the revenue division which our prescribed general basis of divisions produces, we are of the opinion that no unjust inflation of southern revenues is occasioned thereby. Further, here as in the second 1953 report, we express no opinion as to the fairness of the method of subdividing the northern primary divisions.

Divisions of rates to and from points in official territory on western lines.—Certain western trunklines requested that the divisions on this traffic which is interchanged by them directly with the southern lines, as well as that originating or terminating on southern lines with a northern line or lines participating in the haul, should be the same as are or may be prescribed herein for the northern lines. The examiners concluded that the evidence was inade-
32 quate to support findings with respect to traffic interchanged without northern lines' participation absent a showing of the present divisions on this traffic and the relative service performed by each group. They further concluded, however, that the divisional scale prescribed for the northern lines should also apply to traffic interchanged between the western trunklines and the southern lines in which there is participation by a northern line or lines. Such traffic is presently subject to the general prescribed basis and is embraced within the southern lines' traffic study. No exceptions were filed to the examiners' conclusions. While our findings call for cost based scales rather than the form prescribed by the examiners, we agree with their ultimate conclusions as to the treatment to be accorded in both situations.

Canadian-northern Maine traffic.—The southern lines' traffic study shows 2,955 cars (3 percent of the total) moved to or from Canadian points on combination rates made over

an international boundary point, 2,227 of which were northbound, and 728 southbound. A slight controversy exists as to the divisional basis applicable to this traffic, since two southern territory lines settled divisions on 245 southbound cars on the docket No. 24160 basis. The southern lines are now, in this reopened phase, for the first time asking us to avoid any similar controversy for the future by prescribing divisions on this traffic "that reflect its demonstrated characteristic, i.e., 'overhead' traffic for the official territory part of the haul." They urge that since the northern lines perform no terminal service thereon the northern factor should be adjusted to reflect the situation.

The northern lines oppose any special basis on Canadian traffic. They point out that these joint rates are the same as the domestic rates to and from the border points and, as such, contemplate two terminal services of which southern lines perform but one. Of the 2,955 cars involved, 1,324 cars moved through the Detroit gateway. Of this number, 609 moved in connection with the Chesapeake & Ohio, indicating that that road bears a heavy expense, in addition to that entailed by normal interchange in the Detroit-Windsor area, largely because of the international character of this traffic.

A similar situation exists with respect to traffic moving between the South and destinations in northern Maine on combination rates made over Brunswick or Lewiston, Maine.

The joint revenue accruing south of these points is
33 divided on the presently prescribed general basis.

Thus, the southern lines contend that the northern lines receive compensation for a terminal service which they do not perform. The southern study embraced 3,158 cars in this category, about 90 percent of which consisted of clay from Georgia origins to papermills in northern Maine, 80 percent thereof going to Maine Central points on combinations over Brunswick. On March 16, 1960, these clay rates were superseded by single-factor joint through rates

over protest of the Maine Central. Clay traffic to Bangor & Aroostook points remained on the combination basis.

The northern lines advance several reasons why the instant Maine traffic should not be excepted from the general basis of divisions. These include characteristics peculiar, in part, to New England territory, such as lower traffic density, higher level of costs, multiline hauls north of the gateways, and lower rates of return. These lines urge that the general basis of divisions is required to compensate them fully for the services they perform.

The Commission is required under section 15(6) of the act to consider "whether any particular participating carrier is an originating, intermediate or delivering line." It has frequently recognized the fact that intermediate carriers having no service to perform in originating or delivering shipments are entitled to a lesser proportion of joint rates for that reason. *Through Routes and Joint Rates,* 174 I.C.C. 477, 485; *Official-Southwestern Divisions,* 287 I.C.C. 553, 580; *Divisions of Rates, Official and Southern Territories,* 278 I.C.C. 89, 94.

The examiners recommended that the divisions on this traffic be determined by making the northern factors thereon 75 percent of the northern general factors recommended by them. The northern lines take exception to this conclusion but recognize that there may be some merit in establishing a special basis to govern these divisions. The facts establish that as to most of this traffic the northern lines perform purely intermediate service with no terminal service involved. These lines state that under the circumstances an equitable basis would result from the use of prorating factors 26 integers less than the northern general factors. The 75-percent basis prescribed in *Divisions of Rates, Official and Southern Territories, supra,* and continued in our 1953 reports in this proceeding, applied only on grain and grain products moving on proportional and reshipping rates

and were specifically related to the unusual characteristics of that traffic. It was not intended that such divi-
34 sional basis should become a precedent of all overhead traffic. Rather, in light of the foregoing, our general discussion and conclusions, and the scales hereinafter prescribed, we are of the opinion and find that the intermediate scale set forth in our ultimate finding 3, modified so as to contain no allowance for terminal service, will be just, reasonable, and equitable for the future on Canadian-northern Maine traffic. Similar action was taken in *Official-Southwestern Divisions, supra.*

Grain and grain products.—In the 1953 reports we prescribed, as stated previously, a separate specific scale of divisions to apply to the joint proportional rates on grain and grain products from East St. Louis, Louisville and Cincinnati to points in southern territory reflecting northern factors 75 percent of the prescribed northern general factors. The evidence upon which that finding was based was principally that which was adduced at a further hearing in docket No. 24160 and made part of the record in the original phase of the instant proceeding by stipulation (287 I.C.C. 543). The examiners recommended that the northern factors covering this traffic should remain at 75 percent of the recommended northern general factors. The southern lines take exception to this conclusion on the ground that no evidence was here adduced dealing with this divisional situation. Under the circumstances, lacking such evidence, we may make no assumptions as to such traffic. The southern lines' exception must be sustained. Our ultimate findings prescribing lawful divisions will include this traffic so as to embrace all North-South traffic except that specifically excluded, and for convenient reference we will incorporate the prior finding as to grain and grain products.

PROPOSED CHANGES

The northern lines favor simple modification rather than complete revision of the present divisional scales, and

ask that we make such modifications therein as shall serve to redistribute the total revenue between the two groups with primary regard for their relative general levels of costs and relative revenue needs. They urge that because of their greater revenue need, the Commission should add 10 percentage points to the 25-percent increase that would be justified on the basis of relative costs alone, and thus prescribe, on general traffic, the present divisional factors for southern lines and the present factors increased by 35 percent for northern lines. On citrus and vegetable traffic their proposition is the same except that they ask
35 that their present factors be increased by only 15 percent. They estimate that the divisions thus proposed would increase their total revenue about $35 million annually, making the adjusted rates of return for 1959 for official territory lines 2.42 percent and for southern region lines 3.19 percent.

The northern lines ask that the divisions of the per-car rates on vegetables to New York be excluded from the general basis and a special provision be applied thereto so that the excess of $57 per car in the New York City rates over and above the rates to Jersey City shall continue to accrue to the delivering lines before prorating. No significant specific evidence was adduced in support of the sought exclusion as to the instant rates and movements. Also, the per-car rates here referred to were found unlawful and the unlawfulness was ordered removed in *Port of New York Authority v. Aberdeen & R. R. Co.*, 321 I.C.C. 738 (1964). The Commission's order therein was restrained, however, and the matter is now the subject of court litigation in the United States District Court for the Eastern District of Pennsylvania. In the circumstances, the sought provision as to such traffic does not appear appropriate. The relief sought is denied.

The northern lines also ask that we exclude the divisions of joint rates on liquid caustic soda and soda ash from Saltville, Va., to Kingsport and Port Rayon, Tenn., as to

which the existing order was vacated in response to mutual petition of the interested carriers. Again, since no evidence was offered dealing specifically with this segment of traffic, we are unable to grant such relief. Similarly, no evidence was adduced as to their request for exclusion of the divisions of joint rates on all trailer-on-flatcar traffic, nor was this request renewed in their exceptions. It is therefore denied.

The southern lines would abandon the present scales of prorating factors and substitute therefor scales constructed directly from the costs developed in their cost study which we have not accepted in its entirety, as shown in our restatement. They oppose the use of divisional scales derived from rate scales because, they contend, partly curvilinear and partly straight line rate of progression favors the short haul in the North. Omitting 50-mile block factors, except for the initial block, the scales proposed by the southern lines are shown below:

36

Distance	*Column 1 (South)*	*Column 2 (North)*	*Column 3 (North)*
50 miles	155	137	144
100 miles	214	194	204
200 miles	330	307	323
300 miles	447	421	443
400 miles	563	535	563
500 miles	680	648	682
600 miles	797	762	802
700 miles	913	875	921
800 miles	1030	989	1041
900 miles	1146	1102	1160
1,000 miles	1263	1216	1280
1,100 miles	1380	1330	1400
1,200 miles	1496	1443	1519
1,300 miles	1613	1557	1639
1,400 miles	1730	1670	1758
1,500 miles	1846	1784	1878
1,600 miles	1963	1897	1997

The scales in columns 1 and 3 are those developed directly from the southern cost study for the southern and northern portions of the hauls, respectively. Instead of using column 3 as northern factors, the southern lines would use 95 percent thereof as reflected in column 2. They contend that such an adjustment is required in the northern scale to correct the alleged relative overstatement of the cost for the northern hauls. We have declined to recognize this adjustment as valid in our discussion of the cost evidence. It will be noted that the factors in columns 1 and 3 become equal at 400 miles but that the 5-percent reduction keeps the column 2 northern factors below the column 1 southern factors throughout the proposal. Such computations are to the advantage of the southern lines who have the longer average hauls. On the average hauls of 522 short-line miles South and 372 North the southern proposal would produce divisions of 58 percent South and 42 percent North. Such proposal obviously would be unfair to the northern lines on a cost of service basis as shown in our restatement of costs.

Construction of the divisional scales.—The examiners recommended the prescription of the factor scale we prescribed in the first 1953 report, except that the northern scale should be increased uniformly by 10 percent. They refused to change the construction of the scales on the ground that the Commission in the prior phase of this case considered the southern lines' contention as to the unsoundness of the prescribed scale and declined to modify the scale in the second 1953 report, 289 I.C.C. 4.

37 On brief and again upon exceptions, the southern lines urge that the construction of the existing scale operates unfairly upon them since they have the longer average hauls. They contend that the scale contains certain defects: (1) an unexplained and excessive allowance for short hauls; (2) the progression of the scale unlawfully depresses the revenues of the long-haul carriers; (3) the

value of each 50-mile block reflects services not performed because of the application of the scale to the upper limit of the mileage blocks; and (4) the value of the initial mileage block is excessive to the extent of 37 integers.

The new evidence adduced upon further hearing demonstrates that the foregoing contentions of the southern lines have merit, and we so find. Under the circumstances, and in light of our subsequent conclusion to be guided by the relative costs in our general determination, we have accordingly revised the general divisional factors to reflect warranted adjustments of record. The resulting scales, set forth in columns 1, 2, and 6 of Appendix C, are constructed from factors based on the fully distributed costs and give due and adequate consideration to terminal, way train, through train, and interchange costs, as incurred by the respective lengths of haul, and the factor for each mileage block has been computed at the midpoint, or median, for each block. We have utilized 50-mile blocks as in the past and as again urged by both groups. The basis of these scales is set forth as follows:

	Column 1 Official territory	*Column 2 Southern region*	*Column 6 Official territory*
Terminal and border interchange (mills per hundredweight)	64.17	44.08	——
Interchange for bridge traffic (mills per hundredweight)	——	——	17.07
Way train (mills per hundredweight-mile)	0.78905	0.67720	——
Way train miles	11	27	——
Through train (mills per hundredweight-mile)	0.63584	0.57756	0.63584

The scales are computed in the following manner using the 201-250 mileage block and column 1 as an example.

Terminal		64.17
Way train	0.78905 x 11 miles	8.68
Through train	0.63584 x 214.5 miles	136.39
Midpoint	225.5 miles	209.24
250 mileage block factor on appendix C, column 1		209

38 *The 15-percent minimum.*—The examiners recommended that the 15-percent minimum be retained under the divisional scales suggested by them. On exceptions the southern lines contend that if a proper divisional scale is used to reflect the services performed in handling the traffic at issue, full credit for terminal service, way train service and through train service (including interchange services) is reflected in the scale itself and there is no need for a minimum division. We agree with the southern lines in this respect. The prorating factors which we prescribe herein give full credit for terminal costs, thus appropriately protecting the very-short-haul carriers which, for the most part, perform principally originating or terminating service. Unlike, the existing scale which is weighed in favor of the very short haul, the scale prescribed herein, reflecting as it does the cost and service involved, gives each type of haul its proper share, and, therefore, no special protection for short hauls is warranted. In any event, the aggregate amount of traffic which would not be accorded a division of at least 15 percent of the through revenue appears to be inconsequential.

Divisions of the Norfolk Southern and Certain Other Lines

In the first 1953 report, 287 I.C.C. at page 544, portions of the 1939 report were quoted to explain why in that earlier proceeding the divisions of the Norfolk Southern Railway Company, except on peaches, were not made subject to the prescribed basis in 1939. Principally, reference was made

to the loss occasioned by such basis and to the resulting increase in the financial burden of this railroad.

This line's condition was found considerably improved in the 1953 phase of this case. The carrier then asked for some small relief through increased divisions, in which request it was joined by the Atlantic and East Carolina Railway Company and the Beaufort and Morehead Railroad Company. After consideration of the evidence concerning these carriers, the Commission was unable to find that a special basis of divisions for them would be justified. One of the considerations which led to this conclusion was the improved financial condition of the Norfolk Southern, particularly when compared with rates of return of the northern lines generally and those of the Pennsylvania in particular, with which line it was presumed that the greater portion of traffic through Norfolk was interchanged.

Thereupon, these three respondents filed sepa-
38 rate petitions seeking reconsideration. It was observed upon reargument (289 I.C.C. 4, 8) that the basis prescribed in the original 1953 report would cause these carriers to incur a proportionately greater reduction in revenue than the southern lines as a whole.

It was there stated:

> Upon further consideration we are in doubt whether the present record contains all the facts which should be currently considered in establishing a proper basis of divisions of joint rates between official territory and points on these lines.

Accordingly, the case was reopened for further hearing and the order as to these respondents was postponed pending the further hearing which was had in this reopened phase. Of the three carriers only the Norfolk Southern introduced evidence. No exception was taken to the examiners' conclusion that the divisions of the Atlantic & East

Carolina and the Beaufort & Morehead should be subject to the general basis prescribed. We affirm that conclusion.

The situation with respect to the Norfolk Southern requires separate detailed consideration. This line has in the past been classed as a weak line, having been awarded arbitraries in various instances. See *Southern Class Rate Investigation*, 100 I.C.C. 513, 128 I.C.C. 567. As noted in the first 1953 report, its condition had improved in years recent to that decision. Its main line extends from Norfolk, in a southwesterly direction, to Charlotte, N. C., 379 miles, with 210 miles of branch lines; 95 percent of its local mileage is in North Carolina, the remainder in Virginia. Its annual constructive year, later described, system freight revenues were $9,712,747, 34 percent, or $3,300,660 of which is involved here. For purpose of this case, the respondent has divided its traffic into three categories:

(1) Traffic in which the Norfolk Southern participates as an intermediate carrier moving between points in the South and points in official territory. The divisions on this overhead traffic are subject to the 1953 prescribed scales. During the constructive year revenue accruing to the Norfolk Southern in this category amounted to $879,069. No special basis of divisions on this traffic is requested, except that if a change is made in favor of the northern lines we are requested that this line's revenues as a whole not be diminished. Under the general basis of divisions prescribed in finding 2 herein we estimate that this revenue would be reduced by the 2.908-percent figure later indicated, or only $25,563. Revenue accruing here to the carrier is a subdivisional question and will not be made subject to a special basis.

(2) Traffic originating or terminating on the Atlantic & East Carolina and the Beaufort & Morehead railroads to and from points in official territory moving over the Norfolk Southern as an overhead or intermediate carrier. During the constructive year this category embraced the movement

of 1,655 cars, interchanged at Norfolk, only 60 cars of which were handled by the Beaufort & Morehead. It is estimated that Norfolk Southern's portion of the revenues would have been about $32,000 less annually if the 1953 prescribed basis had been applicable. The general basis of divisions in finding 2 herein would reduce the revenue by an estimated $47,079. All of the traffic in this category must be handled between New Bern, and Morehead City, N. C., or to and from points between Goldsboro, N. C., and New Bern by the Southern Railway. We find no circumstances which differentiate this traffic from that which originates or terminates on the Atlantic & East Carolina portion of the Southern Railway and is not interchanged with the Norfolk Southern. Revenue accruing to the latter in this category is again a matter of subdivisions and should not be made subject to a special basis.

(3) The third category, characterized as the most important, embraces that traffic which originates and terminates on the line of the Norfolk Southern and moves to or from points on lines of the northern railroads in official territory.

At page 545 of the first 1953 report it was stated:

> The divisions of rates to and from the Norfolk Southern are in an unsatisfactory state. To a large extent they are based on rate prorates running back for many years, as to which there is disagreement. The settlements of revenue apparently are determined by the line which collects the charges. It does not appear that the interested carriers have made any effort to adjust their differences, as we suggested in our 1939 report.

In this reopened phase the record shows that the divisional situation has not changed materially since the 1953 reports. Substantial evidence was adduced by the Norfolk Southern designed to support a finding that a definite

modernized basis of divisions be prescribed. As noted, however, it does not request an increase in its involved divisions, but asks only that the level of its revenue from this interterritorial traffic be preserved.

41 For the purpose of showing the characteristics of this category of traffic, this respondent submitted a traffic study covering all shipments of general traffic originated or terminated by it in the 2 months of November 1958 and March 1959, expanded to an annual basis by multiplying by six, and included separately all shipments of northbound fruits and vegetables for the year 1959. The general study, as expanded, covers what is referred to herein as the constructive year. The interterritorial traffic originated and terminated on the Norfolk Southern accounted for 15.1 percent of its total carloads, 12.6 percent of its total tonnage, and 23.4 percent of its total revenues, thus indicating that traffic in this category is relatively important to it. This general traffic study covers 17,292 cars, 638,394 tons, and total revenue of $5,588,844, of which the Norfolk Southern received $2,271,984 (including $10,284 in arbitraries) or almost 40 percent. The northern lines received about $3 million, almost 54 percent. In addition, there were 432 cars, 8,501 tons, of fruit and vegetables moved in 1959, all of which moved northbound via Norfolk; of the total fruit and vegetable revenue, $130,427, the Norfolk Southern also received about 40 percent. About 54.7 percent of the total cars in the traffic study were northbound, accounting for 50.8 percent of the total revenue. Southbound traffic generally consisted of higher rated commodities. By far the most important gateway on the total traffic was Norfolk through which moved 13,488 cars, 76.1 percent of the total. Second was Richmond, 1,590 cars, and in third place was Lynchburg, Va., 1,422 cars, other gateways sharing in the remaining traffic. Of the total 13,488-car traffic through the Norfolk gateway, the southern lines received about 43.4 percent of the total revenue or

$1,987,902. This latter figure excludes arbitraries of $7,488 accruing to the Norfolk Southern, but includes revenue of $1,326 for southern lines other than the Norfolk Southern, thus leaving for the latter revenues amounting to $1,986,576. However, on the 4,236 cars this respondent originated and terminated through other gateways, the southern lines received about 57.34 percent of the total revenue or $647,034. This latter figure again excludes arbitraries of $2,379 accruing to the Norfolk Southern but includes revenues of $320,052, or almost half, for southern lines other than the Norfolk Southern, the latter carrier thus receiving $326,982, or only slightly more than half of the total. Generally, intermediate southern lines participate in the movements via gateways other than Norfolk and, therefore, the situation presents a question of subdivisions.

42 The study indicates that if this traffic (including fruits and vegetables) during the constructive year had been subject to the 1953 prescribed basis, the revenue accruing to the Norfolk Southern would have been $450,362 less than that "as settled." Our analysis of the record indicates that the revenue accruing to the Norfolk Southern from this traffic, if it had been determined on the general basis provided in finding 2 herein, would have been $1,517,-242, or $796,316 less than that "as settled." As thus computed, the reduction on traffic through the Norfolk gateway would have amounted to $751,548 as contrasted to only $44,768 less than the revenue as settled via the other gateways. The line's net railway operating income in 1958 amounted to $267,700, and in 1959, $434,000. It can readily be seen that substantial deficits would have occurred in connection with the loss of revenue on originating and terminating traffic especially via the Norfolk gateway. The evidence demonstrates that the line is in pressing need of sufficient revenues to improve its physical plant and provide additional rolling equipment. It has paid no dividends since 1957.

Based on short-line ton-mile distances, the weighted average haul on all originated or terminated traffic during the constructive year was 162 miles south and 365 north via all gateways. On traffic moved only through Norfolk (13,488 cars) the averages were 136.6 miles south and 431.3 miles north. On the movement of the 432 cars of fruits and vegetables the averages were 55.2 miles south and 704.2 miles north which tended to reduce Norfolk Southern's average haul shown in the overall figures.

As stated, 76.1 percent of the cars in the traffic test were interchanged at Norfolk. This accounted for 85.9 percent of its total standard line revenue. At Norfolk it interchanges with the Chesapeake & Ohio, Norfolk & Western,[8] and the Pennsylvania. Various statistics of record show that the Pocahontas lines (C. & O. and N. & W.) participate in the traffic to a greater extent than the Pennsylvania. During the constructive year the 13,488 cars were interchanged at Norfolk as follows:

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	Cars	*Percent*
Chesapeake & Ohio	3,412	25.30
Norfolk & Western	6,503	48.21
Total Pocahontas lines	9,915	73.51
Pennsylvania	3,573	26.49
Total	13,488	100.00

Of the cars shown above, 5,281 originated or terminated locally on the lines of the Chesapeake & Ohio and Norfolk & Western, and the remainder on the Pennsylvania. On a revenue basis the Pocahontas lines received 52.71 percent of the total (C. & O. 17.70 percent, N. & W. 34.39 percent, R.F. & P. 0.62 percent), the Pennsylvania 24.75 percent,

8. Data herein with reference to the Norfolk & Western, where applicable, include the Virginian Railway. These railroads merged December 1, 1959.

and all other northern lines 22.54 percent. The traffic moved by the Pennsylvania involves a marine service transfer across Chesapeake Bay at an expense of $35 per car.

Rates of return for the southern region and the eastern district plus the Pocahontas region, 1952 to 1959, are shown earlier in this report. A comparison of average returns 1946-50 of the latter with the Norfolk Southern and the Pennsylvania are shown at page 546 of the first 1953 report. Rates of return, 1952 to 1959, of the eastern district (excluding the Pocahontas region), the Norfolk Southern, and the three connecting lines at Norfolk based on net investment are shown below:

Percent return

Year	*Eastern district excluding Pocahontas region*	*Norfolk Southern*	*Chesapeake & Ohio*	*Norfolk & Western*	*Pennsylvania*
1952	3.43	2.33	6.65	5.43	2.98
1953	3.68	3.39	6.90	5.11	2.98
1954	2.48	1.88	6.16	4.76	1.96
1955	3.64	2.81	7.93	6.94	2.87
1956	3.33	2.81	8.20	7.19	2.76
1957	2.43	2.47	7.88	7.12	1.80
1958	1.13	1.01	6.68	6.63	0.49
1959	1.43	1.50	5.82	7.56	1.26

The northern lines assert that the foregoing comparisons of the eastern district, the Norfolk Southern, and the Pennsylvania are persuasive of the propriety, so far as primary divisions are concerned, of treating the Norfolk Southern in the same manner as other southern lines, leaving it to the respective groups to make any necessary special
44 provisions for the Norfolk Southern through the medium of subdivisional arrangements.

The Norfolk Southern urges that it would be absurd to diminish its revenue when the major beneficiaries would be the Pocahontas lines whose rates of return are rela-

tively high. It proposes that on traffic originated or terminated by it, interchanged at Norfolk, its prorating factors be made 149 percent of the factors presently prescribed for the northern lines, and on traffic moving through other gateways, 125 percent thereof.

The examiners recommended that the divisions on traffic originating or terminating on the Norfolk Southern be determined by the use of the equal-factor basis prescribed for general use on North-South traffic in the first 1953 report. This respondent takes exception to the examiners' report on the principal grounds that the recommended basis would place it in serious financial straits and would be confiscatory. It is supported on oral argument and exceptions by the southern interveners, including the North Carolina Utilities Commission which represents the interests of the State in which the principal operations of this respondent occur.

Respondent originates and terminates traffic of significant importance to itself, other carriers, and the shipping public. Despite its somewhat improved present day status of which we are officially aware, the record demonstrates that it can ill afford the loss of the involved revenue accruing especially on such traffic via the Norfolk gateway. It is apparent that if the Noroflk Southern's divisions on this latter traffic were determined on the general basis prescribed in finding 2 herein, it would be consigned to a deficit position so serious as to impair the rendering of adequate and continuous service to the public. We so find. Moreover, the southern lines' study excluded Norfolk Southern traffic from its scope. It is clear from the record, therefore, that the basis of divisions prescribed in finding 2 herein, derived from the southern study, would have an unjust and unwarranted impact on the Norfolk Southern to a degree not permitted under the *Orient* and *Western Trunklines* holdings. Our finding 4 herein will have the result of retaining for the Norfolk Southern a percentage

of revenue substantially the same as the present 43.4 percent received by it on the traffic through the Norfolk gateway. This will be accomplished by an increase of 108 percent in the factors of column 2 in appendix C. We have, therefore, divided the revenue on shipments originating on the Norfolk Southern moving via the Norfolk gateway on the basis of the cost progression, giving this respondent approximately the same total revenue it now enjoys on the traffic by means of the construction of column 5 in appendix C. We find that the aforementioned scale will result in just and reasonable divisions in the special situation of record with respect to the Norfolk Southern.[9] As noted, this respondent would be deprived of some revenue to the extent that the general basis prescribed would apply to other movements in which it participates with other southern lines. However, no justification for special treatment was presented and relief would involve principally a question of subdivisions, a matter not at issue here. On the whole, the Norfolk Southern, as compared with the other southern lines, would remain in the same relative position as now obtains. All other traffic of the Norfolk Southern will be subject to the general basis of divisions herein prescribed between the northern and southern lines.

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One additional matter requires consideration as to the Norfolk Southern. Under a permissive order of the Commission in *Pooling of Refrigeration Earnings*, 258 I.C.C. 24, effective January 1, 1942, the proprietary lines of the Fruit Growers Express Company were allowed to enter into an arrangement whereby the net loss or gain realized in furnishing protective service could be pooled and at the close of the year such net loss or gain be distributed be-

9. As a matter of practicable scale construction, other southern lines will be subject to this same scale on Norfolk gateway traffic originating or terminating on the Norfolk Southern. However, their participation therein is shown to be relatively nil. Thus, any revenues accruing to them thereunder would be negligible.

tween the participating proprietary lines on the basis of loaded car miles handled by such lines. Members of the pooling arrangement were the major carriers in the South and certain eastern carriers that terminated perishable traffic. The Norfolk Southern joined about May 1, 1945. However, on and since April 1, 1959, several of the principal official territory lines, including the Pennsylvania, Chesapeake & Ohio, Norfolk & Western, and Baltimore & Ohio, have withdrawn, so that now only the Richmond, Fredericksburg & Potomac is still a member. As a result, the Norfolk Southern estimates it is losing an average of $49 on each car of originated fruits and vegetables given protective service. It requests that the prorating factor prescribed for it on its originated and terminated traffic interchanged at Norfolk be an additional 4 percentage points higher as a temporary measure until the pooling situation is adjusted. It contends that the Commission clearly recognized the pooling arrangement as an equitable solution of the divisional problem and that the withdrawal of the northern lines from that arrangement places an unjust divisional burden on it.

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To give effect to the Norfolk Southern's position in this regard and on the limited evidence adduced, as pertinent, would penalize the carriers for withdrawing, despite the permissive aspect of the order. In essence, it would appear that the Norfolk Southern challenges the reasonableness of the level of the charges for protective refrigeration service. That issue is beyond the scope of the instant proceeding. In sum, the foregoing relief sought by the Norfolk Southern is not warranted.

At the time of the hearings herein, points on the line of The Atlantic and Danville Railway Company were generally understood to be in southern territory. As stated earlier, the divisions of joint interterritorial rates between points on the lines of this carrier west of Suffolk, Va., and points on the lines of respondents in official territory are

in issue in this reopened phase. The examiners recommended that the divisions from and to such points be those prescribed for other southern lines generally, to which no exception was filed. However, this carrier has been acquired by, and is now known as, the Norfolk, Franklin and Danville Railway Company, which in turn is under the control of the Norfolk & Western. See *Norfolk & W. Ry. Co.—Control—Norfolk. F. & D. Ry. Co.*, 320 I.C.C. 407. It is now classified in the Pocahontas region for statistical purposes. Our prior definition of northern and southern lines will be amended so as to give proper effect to the examiners' conclusion which we affirm.

The Georgia & Florida Railroad (Alfred W. Jones, receiver) made a presentation in its own behalf. We affirm the examiners' conclusion, to which no exception was taken, that this carrier is not entitled to a special basis of divisions. It has since been purchased by the Georgia & Florida Railway Company which in turn is under control of three subsidiaries of the Southern Railway System. See *Georgia & F. Ry. Co.—Acquisition—Georgia & F.R.*, 317 I.C.C. 745.

The New Haven has pointed to a general need of additional revenues in order to provide funds for maintenance, for capital improvements, and to make some return to its stockholders. We can find no basis here for according it any greater relief than that set forth in the general
47 basis of divisions prescribed hereinafter. Unlike the Norfolk Southern, it participates only to a limited extent in the traffic at issue.

General Discussion and Conclusions

Section 15(6) of the act provides in part as follows:

> Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates * * * applicable to the transportation of * * * property, are or will be unjust,

> unreasonable, inequitable, or unduly preferential or prejudicial as between carriers parties thereto * * * the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers * * *.

In its determination of lawful divisions, the Commission is directed by the second sentence of section 15(6) as follows:

> In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

In commenting upon the importance to be given the various factors, the district court in *Boston & Maine R. v. United States,* 208 F. Supp. 661 (D. Mass. 1962), *affirmed per curiam,* 371 U.S. 26, stated at page 675:

> "'Due consideration' is not the equivalent of 'primary consideration.' The importance to be given any of the factors enumerated in the statute must necessarily depend upon the case under consideration. The evaluation of the importance of the various factors in any given case is peculiarly the function of the Commission.

In one of the first decisions involving these provisions, *New England Divisions,* 66 I.C.C. 196, the Commission

stated at page 199 "that the relative amount and cost under economical and efficient management of the service
48 rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive." In the 1939 report the cost element was given weight upon a showing that from 1932 to 1936 the cost per revenue ton-mile in the South was about 16 percent higher than that in the North. At page 525 of the first 1953 report, as previously referred to, it was stated that the record then showed that "for more than a decade the southern railroads have not labored under a disadvantage of operating costs generally higher than those of the northern lines."

As stated earlier, both groups rely heavily upon relative costs of service as a determining factor in this reopened phase. The northern lines say:

> It is beyond dispute that the power of the Commission to prescribe divisions of joint rates rests upon Section 15(6) of the Act as that provision has been construed by the Commission itself and by the Courts. Those interpretations make it abundantly clear that relative service costs are a primary consideration and that the Commission must, in addition, weigh the relative financial needs of the carriers involved in the light of the public interest. It is the position of Eastern lines that the Commission should, first, undertake to fairly assess the relative service cost levels of the two groups of carriers, parties to the involved rates, and should thereafter adjust its determination made upon the basis of such relative costs to reflect any greater financial need on the part of one of the groups.

The southern lines' emphasis on cost-of-service basis is reflected in their proposed integer scales which, as indicated heretofore, are directly related to the showing of their cost study.

Our restatement of the costs, which are reasonably accurate and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis, shows that the cost level in 1956, the year both groups used in the final cost analysis, is somewhat higher in the North than in the South for like services. A consideration of all factors indicates that this situation will most likely continue in the immediate future.

Both groups also rely upon revenue needs in claiming that they should have a greater share of the joint revenue than the present divisions accord them. The northern lines take exception to the examiners' recommendation which would increase the northern divisions, on the ground that the proposed increase is not large enough. On the other hand, the southern lines contend that the examiners erred in failing to find that the needs of the southern railroads
49 for additional revenues are greater than those of the railroads in the North.

In every divisions case evidence relating to revenue need is material because section 15(6) requires that "due consideration" be given, "among other things" to "the amount of revenues required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation." We are thereby authorized "to take into account and give due weight to revenues from all transportation service, the operating expenses and taxes chargeable to the same and the amounts available as compensation for the use of all carrier property," as well as "the revenues, expenses, taxes and returns attributable to the service covered by the divisions under consideration." *Baltimore & O. R. Co. v. United States,* 298 U.S. 349, 360, 370 (1936). We are free to give such evidence the weight which the particular circumstances appear to justify.

In our determination herein we have considered evidence relating to the cost and other factors concerning the

public interest in maintaining all essential parts of the transportation system. Neither the history of these divisions, the general economic trends, nor any other factor presented here offers a concrete basis on which to find that either group is entitled to a share of the joint rates larger than that accruing under the divisions hereinafter prescribed on the basis of relative costs. In essence, the basic position of the northern lines is that their revenue needs are greater since the southern lines' average rates of return are somewhat higher. However, our prescription of divisions based on relative costs includes allowances for overhead and return, and in our judgment reflects a due proportion of the burden of maintaining the financial integrity and credit of the carriers involved. *Cf. New England Divisions,* 66 I.C.C. 196, 199. Accordingly, we see no justification at this time for adding any special increment favoring one group of carriers over the other. We find that no affirmative reasons appear in this record which would warrant any adjustment of the divisions in question over and above the relative costs of service, either on the grounds of greater revenue needs or otherwise.

The question of prescribing equitable divisions involves the making of practical judgments rather than the solving of a problem with mathematical certainty. See *Boston & Maine R. v. United States, supra.* As we have indicated, a careful evaluation of the factors, other than costs, which we must consider under section 15(6) does not disclose that they require that one group be accorded relatively higher divisions of the joint rates than the other; in other words, there is no convincing evidence of record favoring one group over the other. However, weighing the cost evidence of record in the same balance and similarly considering it, without particular solicitude, we are of the opinion and find that it affords a reasonable basis for the exercise of a practical judgment. Stated in another manner, everything else being substantially equal, the relative costs of the parties reflecting their respective opera-

tions as to this traffic can properly serve here as a guide for the determination of just, reasonable, and equitable divisions. *Cf. Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, at pages 657-658.

We have heretofore noted that the revenues in 1956 for the northern lines from the traffic at issue were but 6 percent of their total freight revenues, while for the southern lines the respective percentage was 21.4. In that year the northern lines received 44.64 percent of the revenue while incurring 46.35318 percent of the fully distributed costs. It is clear that an adjustment in the divisions is required to compensate the respective groups according to their expenditures in the joint effort of handling this interterritorial traffic. To the extent that the present divisions do not meet this test, they are unjust, unreasonable, and inequitable. The scales which we have prescribed in columns 1, 2, and 6 of appendix C herein are based on the fully distributed costs and divide the revenue in the same proportion to those costs. Based on the 1956 traffic study this will increase the revenue divisions of the northern lines with a corresponding decrease in those of the southern lines as follows:

Item	*North*	*South*	*Total*
Revenue as settled [1]	$221,370,940	$273,350,121	$494,721,061
Percentage of costs	46.35318	53.64682	100.00000
Proposed revenue [1] .... division	$229,318,944	$265,402,117	$494,721,061
Difference	$7,948,004	$7,948,004	——

1. Omits arbitraries of $59,401 in the North and $1,306,304 in the South.

The foregoing reflects a 3.590-percent increase in revenue, as settled in the North, and a 2.908-percent decrease in the South. In our opinion, the results achieved through the application of the divisional mileage scales here pre-
51 scribed will for the future be just, reasonable, and equitable, and we so find. However, as in *Louisville*

& N. R. Co. v. Southern Ry. Co., 319 I.C.C. 639, 661, the parties should be permitted to negotiate and agree upon any other modified scales, devised on the same basis, but with different mileage blocks and factors or pursuant to any other method they may deem appropriate. In the event that they fail to reach agreement prior to the effective date of the order herein, the scales set forth in appendix C hereto are prescribed to apply thereafter. The conclusions and subsidiary findings hereinbefore made are reflected in our ultimate findings.

ULTIMATE FINDINGS

Upon further hearing, we find:

1. That the present primary divisions of joint all-rail class and commodity rates (except those on traffic listed in appendix A) between official and southern territories are unjust, unreasonable, and inequitable.

2. That, except as hereinafter provided, just, reasonable, and equitable primary divisions of the rates referred to in finding 1 (including aggregate of intermediate rates which automatically displace single-factor joint rates), in which northern and southern lines [10] participate, should be determined by use of the prorating factors set forth in appendix C in computing percentages expressed as integers, the factor for the northern line or lines being that shown in column 1 for the short-line distance north of the dividing point and the factor for the southern line or lines being that shown in column 2 for the short-line distance south of the dividing point.

3. That just, reasonable, and equitable divisions of the joint combination rates on Canadian and northern Maine traffic to and from points in southern territory should be determined in the same manner as specified in finding 2, except that the factor for the northern line or lines should be that shown in column 6 of appendix C for the short-line

10. As defined in appendix C.

distance north of the dividing point and the factor for the southern line or lines should be that shown in column 2 of appendix C for the short-line distance south of the dividing point.

4. That just, reasonable, and equitable primary divisions of the rates on traffic originating or terminating on the lines of the Norfolk Southern Railway Company,
52 and moving to or from points in official territory, via Norfolk, should be determined by the use of the prorating factors set forth in appendix C in computing percentages expressed as integers, the factor for the northern line or lines being that shown in column 1 for the short-line distance north of the dividing point and the factor for the southern line or lines being that shown in column 5 for the short-line distance south of the dividing point. All other primary divisions of the Norfolk Southern shall be on the basis set forth in finding 2 herein.

5. That the evidence is not sufficient to support conclusions directed to the unreasonableness of the present divisions of the joint rates published between points on southern lines, on the one hand, and points on western lines in official territory, on the other hand, where a northern line does not participate in the movement north of the dividing point, and we find the present divisions not shown to be unjust, unreasonable, inequitable, or unduly preferential or prejudicial.

We affirm our prior finding (287 I.C.C. 547) that just, reasonable, and equitable divisions of joint proportional or reshipping rates on grain and grain products from East St. Louis, Louisville, and Cincinnati to points in southern territory should be determined in the same manner as specified in finding 2, except that the factor for the northern line or lines should be that shown in column 4 of appendix C for the short-line distance north of the dividing point and the factor for the southern line or lines should be that

shown in column 3 of appendix C for the short-line distance south of the dividing point.

We affirm our prior finding (289 I.C.C. 4, 8) that the dividing points to and from which the primary divisions shall apply are the present dividing points.

The prescribed primary divisions shall not be subject to a specific minimum. In disposing of fractions of 1 percent the odd 1 percent should be added to the percentage which contains the larger decimal, or if the percentages contain equal decimals 1 percent should be added to the smaller percentage.

Before the divisions herein prescribed are applied, differentials or arbitraries which are included in the joint rates so as to cause them to exceed standard rates, for hauls in either official or southern territories, whether for short or weak lines or otherwise, shall be deducted before prorating and added to the share of the carrier or carriers in the territory in which the differentials apply, pro-
53 vided, however, that in respect of rates on citrus fruit from Florida to official territory which include an arbitrary one percentage point shall be deducted from the northern division and added to the southern division in lieu of the specific apportionment of the arbitrary.

Our findings are without prejudice to the substitution of modified scales agreed upon by the parties in accordance with the discussion above.

An appropriate order will be entered.

COMMISSIONER MURPHY, dissenting in part:

In prescribing divisions we are required to divide earnings under joint rates according to what is fair and reasonable as between the parties. One of the main criteria used to make such a determination is the relative amount and cost of service performed by each of the several

carriers participating in the movement of the *specific* traffic involved from which this revenue is derived. The report of the majority purports to use as a basis for adjusting divisions the relative costs of service of the two groups of carriers, but in many instances territorial average costs are used which do not fairly measure the relative costs of handling the Official-Southern traffic here at issue. The record shows that the revenue obtained by the territory railroads from the traffic at issue constitutes only 6 percent of their total freight revenues. However, the average statistics used in arriving at the costs utilized by the majority in the report represent 100 percent of the traffic of the official lines. As a result, many of the cost figures have little or no relation to the movement of the traffic involved.

Although a number of adjustments in the Rail Form A statistics were made in the report, other necessary and important adjustments which would truly reflect the cost of moving the traffic involved were rejected or ignored. Consequently, costs for the service performed by the official lines in handling the traffic at issue are overstated. In *Louisville & N. R. Co. v. Akron, C. & Y. R. Co.*, 309 I.C.C. 491, 509, also known as the *Border Points Division* case, the Commission rejected the use of unadjusted Rail Form A costs, stating: "* * * the only comparable cost data for the complainants and the defendants are on the basis of territorial or systemwide averages, which are not determinative of the costs of these particular movements." The Commission therein did accept, however, specific costs supplied by complainants and complainants' adjust-
54 ments in territorywide average costs submitted by defendants. This finding by the Commission was sustained on judicial review, *Boston & Maine R. v. United States*, 208 F. Supp. 661 (D. Mass. 1962), *affirmed per curiam*, 371 U.S. 26.

Included in the cost computations for the official lines are suburban service deficits which are peculiar only to

the large metropolitan areas found in official territory. These deficits have no relation to intercity passenger deficits which normally are considered as part of the cost of providing freight services in that such passenger deficits are for the most part attributable to the apportioned costs of common facilities which must be incurred in any event to provide freight service. Almost all the expenses incurred in providing suburban passenger service have nothing to do with the costs of handling the Official-Southern traffic at issue in this proceeding. This service is provided over lines especially constructed and maintained for that sole purpose with equipment and facilities that have no other use whatever. It is unreasonable to require the southern lines and their shippers to defray a part of the costs of suburban passenger service in official territory cities so that the residents of the suburbs of those cities can travel at fares that do not even cover costs. This burden should be borne by the commuters who benefit thereby and the communities involved.

The higher than average empty return ratios used for cars moving over the official lines is another instance where true costs have not been used. The official lines handle approximately 800,000 carloads of automobile parts annually which originate in the Detroit, Mich., area and are destined to assembly plants in various parts of the country, including New Jersey, California, and Georgia. Many of these cars are fitted with special devices to protect the automobile parts in transit. Because these cars carrying parts contain special devices and are assigned to particular plants manufacturing such parts in official territory, they normally experience an empty return movement which is, for all practical purposes, 100 percent. No adjustment is made in the cost data to cover the higher empty return costs of this type of equipment. Territorial average boxcar empty return ratios, as used in the report, overstate the costs of the official railroads when applied to Official-Southern traffic.

The improper counting of a car interchanged instead of terminated by the official lines affects the weighting of that car in computing switching costs. The official
55 lines report a large volume of coal and ore terminated at port dumping facilities for loading onto boats as cars interchanged, while the southern lines report a large volume of phosphate rock hauled to ports for loading onto boats as cars terminated. These cars receive analogous services and should be treated as such. In both these instances the lading from the car is removed and the empty car is returned to the delivering carriers. The erroneous counting of cars terminated as cars interchanged on the official lines produces higher unit costs for official territory than for southern territory, both for origin and destination switching and for interchange switching.

If the above valid adjustments were to be made in the restated costs the difference between the relative costs of service of both parties would not be as great. In my judgment the amount of increase in divisions awarded the official lines by the majority is unwarranted.

Appendix A

Divisions of joint interterritorial rates prescribed herein do not apply on the following traffic:

1. Coal and coke made from coal, by common consent of the parties.

2. Trailer-on-flatcar traffic moving entirely over the lines of the A.C.L., B. & O., B. & M., F.E.C., N.Y.C., N.Y.N.H.&H., P.R.R., Reading, R.F. & P., and S.A.L., by stipulation at hearing.

3. Trailer-on-flatcar traffic via Potomac Yard, Va., from and to points on the Southern Railway (including its system lines as specified in the stipulation) and points on B. & O., B. & M., C.R.R.N.J., D. & H., L.I.R.R., N.Y.C.,

N.Y.N.H.&H., P.R.R., and Reading, by stipulation dated November 13, 1961.

4. Border point traffic embraced in docket No. 32055 (309 I.C.C. 491) by stipulation.

Appendix B

Southern lines' specific cost adjustments

a. Way and through train separation.—The Form A procedure provides for costing out traffic at either average train costs or a combination of way train and through train costs. Although the northern lines used average train costs in their study on the theory that it was adequate for overall territorial cost comparisons, they have no objection to the more refined procedure of using way and through train costs. This has the effect of giving slightly lower costs at the longer distances and higher costs at the shorter distances, and reduces the proportion of costs of the southern lines by 0.13 percentage point. We approve this adjustment.

b. Platform costs.—The southern lines excluded platform costs from their study of the costs of originating and terminating official-southern traffic. This brought about an increase of their proportion of the costs by 0.28 percentage point or in revenues about $1,389,000. This exclusion was based upon the conclusion that whenever a separate tariff charge was made for carrier loading or unloading, platform costs should be excluded. They examined 19 cars out of a 130,353-car sample of the involved traffic (967,554 cars), and contend that for all practical purposes none of the involved traffic received lighterage or any other service which would include platform handling as a part of the service under the line-haul rates being divided.

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The northern lines took the same 19-car sample and showed that 11 originated on the eastern lines, 8 of which

were from Manhattan and 2 from Brooklyn, all 10 of which required either float or lighterage service and platform service. One car originated in New Jersey which was not involved in the issue of platform service. Of the eight cars destined to eastern carriers in the New York area, only two were actually delivered to Manhattan, one to Long Island City, and one to Brooklyn, the four likewise requiring harbor service. Three cars were destined and delivered to New Jersey points, and therefore did not require harbor service. The one remaining car was shown for diversion at Potomac Yard, but then no destination was shown, and there was no possibility of knowing what final service was required.

It is evident from the facts that platform service is incurred by some of the shipments of official-southern traffic. However, as noted, the southern lines excluded platform costs in each territory, contending that such costs are no longer part of the service covered by the line-haul rates but are covered by a separate charge collected and retained by the northern lines. The southern lines excluded their own platform costs in the interest of relative equality between the territories.

In prior years platform service was considered a part of the line-haul service covered by the through rate, and, accordingly, platform costs less the incidental revenues were correctly included in computing the cost for the line-haul service. Thereafter, however, the conditions at the unloading facilities changed. Whereas prior conditions necessitated that shippers be denied access to the cars for unloading at piers, the new conditions permitted shippers access to the cars. As a result, unloading was no longer a part of the line-haul service provided by the railroad but became the responsibility of the shippers, as it is at other destinations in all territories. The Commission took cognizance of these changed circumstances in *Increased Freight Rates, 1958,* 304 I.C.C. 289, 375, when it indicated:

The line-haul rates on this traffic are designed to cover only normal delivery and do not include compensation for the loading and unloading services, the line-haul rates on the perishable traffic being generally below out-of-pocket costs.

For the purpose of comparing relative territorial cost levels the inclusion of both the incidental revenue and the costs of platform service are correctly shown in Rail Form A; however, where the purpose is to measure the cost of services performed under the line-haul rates to be divided, it is correct to exclude platform service which is not within the scope of the rates. Our restatement reflects this view.

57 *c. Switching and terminal companies.*—An understanding of the switching charges at Chicago and St. Louis requires a consideration of Rail Form A procedures for switching and terminal companies. The Rail Form A procedures separate the costs for such companies as between the costs and services for intraterminal and other operations not chargeable to the origination or termination of cars for the account of class I roads (25 percent) and the costs and services which are so chargeable to class I roads (75 percent). The latter costs and services are then associated with class I line-haul railroads in whose statistics the cars originated or terminated are reported. This procedure is not questioned, but in dividing the switching and terminal company costs among groups of carriers the following complication arises.

The percentage separation of the (75 percent) costs of switching and terminal companies which are located on territorial borders is illustrated below:

	Eastern district	*Western district*	*Southern region*	*Total*
Chicago, Ill.	50	50	—	100
St. Louis, Mo., and East St. Louis, Ill.	50	50	—	100
New Orleans, La.	—	50	50	100
Louisville, Ky.	50	—	50	100

The southern lines consider the allocations at New Orleans and Louisville to be reasonable since carriers assigned to other territories do not reach those points. However, two southern region carriers reach Chicago and four reach St. Louis or East St. Louis. The southern lines maintain that since the reported statistics assign to the southern region carriers the cars switched for their accounts by the switching and terminal companies at those points, the portion of the switching and terminal companies' expenses which are associated with switching such cars must be allocated to the southern region carriers in order to determine the actual unit costs. To accomplish this end, the southern lines determined the proportion of the total transportation revenues of each switching and terminal company at the above-mentioned cities that was paid by the southern region carriers. They then assigned the relative proportion of switching and terminal company cost to the southern region.

The northern lines maintain a different viewpoint toward these switching points at the Chicago and St. Louis areas. They contend that Chicago is not now a primary breakpoint on the North-South traffic and that East St. Louis is such a breakpoint only with respect to certain Mississippi Valley traffic. They believe that it is improper to take any portion of the expense of switching and terminal companies in the North and put it into the costs used to price out southern lines' services south of the primary divisional gateways.

Regardless of where the breakpoint for dividing revenues is located, the cost on each side ought to be properly computed and the so-called territorial costs are, in reality, those for groups of carriers operating principally in each territory. We are of the opinion that the southern lines are justified in making this adjustment of the switching and terminal company costs at the Chicago and St.
58 Louis areas; the involved cars are counted in the southern region, and, accordingly, the expenses asso-

ciated with them also should be included in that region. While revenue does not ordinarily afford a precise indication of costs, the southern lines' apportionment for the switching and terminal companies on the basis of total transportation revenue is an appropriate and practical method for estimating here the amount of a refinement justified in principle. This adjustment increased the southern lines' proportion of the costs of official-southern traffic by 0.16 percentage point or in revenues about $794,000.

d. Count of cars interchanged, originated, and terminated.—Rail Form A cost applications are based on the count of cars from the Freight Commodity Statistics which, briefly stated, provide that certain cars carrying shipments which are transferred between rail and water carriers, such as lake cargo coal, tidewater coal, and ex-lake ore, will be classed as cars interchanged and that certain other cars carrying shipments transferred between rail and water carriers will be classed as cars originated and terminated. This creates a situation where a car of coal transferred to a ship at an Atlantic port would be classified as interchanged if the shipment is destined to New England, and as terminated if the coal is destined to Europe. Further, coal in official territory going to Canada and transferred from rail to vessel at a Great Lakes port is interchanged, whereas phosphate transferred from rail to vessel at Tampa, Fla., is terminated.

The southern lines contend that for the purpose of determining relative costs incurred by northern and southern lines, it is necessary that cars receiving comparable service be counted in a consistent manner in both territories. The southern lines urge that all of these cars which receive such port service should be classed as originated or terminated because they all are said to receive similar switching service. That a larger proportion of these cars in the North than in the South was classified as interchanged is said to inflate both terminal and inter-

change unit costs more in the North than in the South to the southern lines' disadvantage. To correct this alleged inflation, they examined the information furnished periodically to the Commission for the purpose of reconciling its study of terminations reflected in its Carload Waybill Statistics publication with the Freight Commodity Statistics. They found that 1,803,499 cars in the North and 129,019 cars in the South should be changed from "interchanged" to "originated plus terminated." The number of cars originated and terminated was thereby increased 5.4 percent for eastern district, 8.7 percent for Pocahontas region, and 1.1 percent for the southern region. This had the effect of reducing the costs $2,003,871 in the North and $555,541 in the South, and of changing the South's proportion of total costs from 53.44 percent to 53.67 percent, an increase of 0.23 percentage point.

The northern lines contend that the switching characteristics of the port service between rail and vessel of this traffic are more akin to interchange than to terminal service, that interchange costs vary greatly, and that the information available is inadequate to correctly compute the adjustment. The switching characteristics of this traffic are described by the northern lines as follows:

> That the service at tidewider ports on coal, and the lake ports on coal and ore, is interchange rather than terminal is apparent from the facts with respect to these services. Taking lake cargo coal as an example, the coal trains go to the railroads' lake front
> 59 yards at the ports. Unlike cars which are to be terminated, the lake cargo coal cars are not then moved to various industries in transfer runs and then switched to effect delivery at the consignee's plant. Rather, they are moved to a dumping machine at the railroad's water front yards and there dumped into the lake vessel. It is obvious that this service is much more akin to a movement to an interchange track than to a transfer and switching movement to effect delivery

to a consignee. The fact that the car is not given over to the boat line along with the lading cannot, in itself, mean that the shipment is not interchanged. The interchange of an l.c.l. shipment between railroads is not accompanied by a delivery of the car which carried the shipment; but, nevertheless, it is an interchange. Also, the fact that the interchange is with a boat rather than with a railroad—that the movement is to a dumping machine rather than to an interchange track with another railroad—cannot detract from the essentials of the operation and their significance from a cost standpoint.

The northern lines contend that interchange costs vary greatly and that lake cargo coal, tidewater coal, and ex-lake ore are not in a class by themselves. They state:

> Of course, interchange service may involve high, low, or average expense, just as terminal service may involve high, low, or average expense. For example, the interchange of cars between railroads in New York Harbor necessitates the expense of floating service. So does the interchange of cars between the Pennsylvania and connecting lines at Norfolk. Another illustration of an expensive interchange service of cars is in the case of traffic which formerly moved between interior points in the East and interior points in the Southwest over the so-called break bulk water routes. This traffic even when moving under joint rates (like some of the lake cargo coal traffic) required transfer from car to vessel at the ports.

They also urge that the information furnished to the Commission for purposes of reconciling the waybill study with the Freight Commodity Statistics is inadequate for the purpose of computing the number of cars to be transferred from interchange service to terminal service and that a substantial portion had to be estimated.

There is a great variation from one point to another in the amount of both terminal switching and interchange switching due to the physical layout of the tracks, volume handled, and other causes. Rail Form A gives an equating factor of 1.0 to origin or destination switching and a factor of 0.5 to interchange switching which reflect the relative amount of switching. The northern lines have referred to the similarity of switching at lake ports to interchange switching. Also, because of the large volume of this traffic, it lends itself to multiple-car block switching which is less costly than terminal switching and would justify an equating factor less than one. The reconciliation between the waybill study and the Freight Commodity Statistics had to do only with terminations, and therefore the originations were estimates only. These included the large blocks of traffic received by boat, transferred to car, terminated on rail, and which were counted as interchanged at the port.

This traffic has been counted as interchange traffic for
60 many years. The rates on this traffic are different than the rates on traffic originated or terminated at the same ports. Evidence was introduced to show that the switching characteristics of the port service on this traffic are more akin to interchange than to terminal service. There is great variation from one point to another in the amount and cost of both interchange and terminal service. There is no evidence that the service performed on this traffic is comparable to the average service in originating or terminating traffic in official territory. All things considered, we are of the opinion that the estimate lacks sufficient probative force, that the contentions of northern lines have merit, and that a change in the classification of this traffic for costing purposes in this case is not justified. It has therefore not been included in our restatement of the costs.

e. Car costs.—In the transportation of official-southern traffic, 15 percent moves in refrigerator and tank cars, mainly mileage basis cars, and 85 percent in per diem basis cars. It is the car costs of the per diem cars which

are at issue. The southern respondents contend that the territorial differences in car costs are due to factors unrelated to the traffic in this case. To correct this situation, they urge that average car costs for the United States should be used in both territories. The territorial difference in car costs reflected in Form A for a boxcar with a 28.9-ton load moving 350 miles with one terminal is—

		Percent
Official territory	$16.20	132
Southern region	12.27	100
Difference	3.93 [1]	32

[1] Assuming equal empty return ratios.

The relative size of this difference may be judged by comparison with the total out-of-pocket cost of the same service in the southern region of about $85.

In urging United States average car costs, the southern lines list three reasons in explanation of the variation in car costs between territories, and contend that none of these reasons has any bearing on the relative costs incurred in handling official-southern traffic. As the first reason, they state that the territorial average car cost reflects the composite cost of the car fleet owned by each group of roads and there is a different car fleet in each territory very different from the consist of the cars handling official-southern traffic. It is stated that differences in the car costs produced by Rail Form A as between territories do not measure the differences in the cost of repairing boxcars but rather the difference in the composition of the car fleet. About 82 percent of the car-miles of study traffic (per diem cars) in each territory are handled in boxcars.

Information is adduced as to the percentages of ownership of each type of car in each territory and the percentage of car-miles made by each type of car. We view the per-

centages of ownership as more meaningful since the owning road bears the cost of repairs, depreciation, and return. As to boxcars, the proportion in the North is 36.9 percent and in the South it is 37.9 percent; this difference is too small to be significant. The major differences in ownership are that the North has 7.6 percent points more open hopper cars and the South has 7.0 percentage points more rack cars. These percentages may be said to equalize each other,
61 and, in any event, such cars are used only on a limited basis in the instant traffic movements.

Costs per day or per year for repairs, depreciation, and return are shown to be insignificant as between types of cars. However, utilization is the main differentiating factor in costs between individual types of cars.

The effect of the composition of the car fleet on costs developed in Rail Form A can be measured by its effect on car utilization, as follows:

		Percentage of ownership		*Miles per year of composite car*	
Type of car (1)	*Miles per year* (2)	*Official territory* (3)	*Southern region* (4)	*Official territory* (2) x (3) (5)	*Southern region* (2) x (4) (6)
		Percent	*Percent*		
Box	19,635	36.9	37.9	7,245	7,442
Flat, including rack	12,456	1.8	9.7	224	1,208
Stock	16,953	.7	.6	119	102
Gondola	9,503	17.5	15.2	1,663	1,444
Open hopper	11,827	40.4	32.8	4,778	3,879
Covered hopper	13,816	2.5	3.8	345	525
Other (average)	15,178	.2	0	30	0
		100.0	100.0	14,404	14,600

As indicated above, however, the effect of the composition of the car fleet in each territory, as reflected by the overall utilization, is only slight, 14,404 in official territory as against 14,600 in the South. Any explanation for the dif-

ference of 32 percent in the car costs between the two territories would lie elsewhere.

The second reason advanced by the southern lines on this point is that the territorial average car cost developed in Rail Form A is strongly affected by per diem debits or credits. This, they assert, has a distorting effect because the basis used in computing Rail Form A costs differs from that used in determining per diem rates. The third reason is that in determining the unit car costs by dividing the cost of cars owned by the car-miles operated, the numerator and the denominator do not represent the same cars in any given territory. These two reasons are related and will be discussed together. Under Rail Form A, the cost to the railroads of furnishing freight train cars includes the following items:

(a) owner costs (repairs, depreciation, and return on investment) for all cars owned, including both those serving on line and those serving off line, offset by per diem received for those cars serving off line;

(b) user costs (repairs and inspection) of all cars on line, both owned and foreign;

(c) per diem paid for foreign cars on line;

62 (d) repairs (responsibility of owner) to foreign cars offset by amounts billed; and

(e) overhead costs.

The sum of these costs is divided by the car-miles run on line by both foreign and domestic cars to give a cost per car-mile. Thus, the numerator and denominator are consistent; both represent cars serving on the railroad.

The repairs and maintenance represent actual payments for materials and wages; per diem is a cash payment; depreciation is a portion of money paid in the past to purchase cars and allocated to the present period; and even return on investment, a cost of capital, can be considered as analogous to interest payments on money borrowed to pur-

chase cars. Thus, all these items represent actual outlays of moneys and must be recovered by the railroads if they are to remain financially solvent. The determination and fixing of a rate of per diem which is fair as between all railroads and sections of the country is a difficult and complicated problem into which many considerations enter. However, after the rate is determined it becomes an actual disbursement settled in dollars and cents and properly a part of the costs for each road and territory in the year incurred.

The per diem collected by a road for the use of its cars by others should be used to offset its car costs incurred on the lines of the foreign carriers, for it is assumed that, allowing for exceptions in special situations, the per diem charge generally reimburses owning roads for expenditures in owning and maintaining cars in working order.

All of the items entering into the Rail Form A car costs represent actual expenses, and therefore, any difference in the car costs between the two territories, whether caused by per diem or other items, is not a discrepancy but is a reflection of the actual situation, and this difference (because it is actual) should be considered in the comparison of the relative costs of the two territories.

The southern lines contend that the higher average car cost in the North is a reflection of the average car which is largely hopper and gondola cars, but that the cost per car-mile for box cars is no higher in the North than in the South. This arithmetic is illustrated as follows:

Car costs (car repairs, depreciation, and return)

	Cost per car-mile (cents)		
	Official	*South*	*U.S. average*
Box	3.0	3.0	3.0
Gondola and hopper	6.0	3.0	4.5
Other	4.0	4.0	4.0
Average car	4.3	3.3	3.8

The southern lines explain that open top car costs are higher in the North because of the effect on car costs of per diem debits and credits and the mechanics of Rail
63 Form A wherein the per diem computed on reproduction costs is added to or subtracted from a cost based on original cost. The Clinchfield is cited as an extreme case in which the per diem credits are so great that they create a negative figure for the return on investment portion of the car cost. The southern lines conclude that it is wrong to charge, in effect, to boxcars a higher cost caused by the per diem on open top cars through the aggregation of car costs on all types of cars, and, therefore, they use for both territories the United States average car cost.

In rebuttal the northern lines make the following points: First: Open top cars are not more costly than boxcars. They quote the testimony in another proceeding of a southern lines' witness to the effect that, in his opinion, the cost of maintaining a boxcar is considerably higher than the cost or maintaining an open top car. Contending that the purchase price of a car influences both the return and depreciation elements of car cost, northern lines show that in 1959 the average cost of general service boxcars in the United States was $9,851; that of open hoppers, $8,715; and gondolas, $8,409.

Second: In regard to the effect of utilization on the comparative car-mile costs of open hopper cars, the official territory ownership was 40.4 percent and utilization in car-miles was 40 percent whereas the southern region had an ownership of 32.8 percent and utilization of 23.6 percent.

Third: As to the Clinchfield, the northern lines cite the Pittsburgh & Lake Erie in their group as being in the same situation.

The southern line's arithmetical illustration depends entirely on the assumptions that the car-mile cost of gondola and hopper cars is twice as great in the North as in

the South and twice as great as the boxcar costs. There is no sound evidence to support these assumptions. Indeed, the uncontroverted cost and utilization figures furnished by the northern lines render them highly improbable.

We recognize that per diem charges have been based upon car costs computed on a reproduction basis insofar as depreciation and return on investment of the cars are concerned. This differs from the original cost basis used in Form A car cost computations for owned cars. As explained above, the Form A method necessarily includes per diem in the car costs, and is appropriate in situations where, as here, the issues involve divisions of rates on almost all commodities handled in different types of cars, although mainly boxcars, and between numerous carriers throughout both territories. We distinguish the situation here from that presented in *Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, sustained in *Carolina & N. W. Ry. Co. v. United States*, 230 F. Supp. 581 (W.D.N.C. 1964), wherein an adjustment for reproduction costs was made. There the sole commodity at issue was coal (not involved here), only a certain kind of car was used and such equipment was owned exclusively by the originating carrier, the traffic moved intraterritorially over only specified segments of each carrier's lines, and the car costs of the destination carrier consisted solely of the per diem charge. As to the Clinchfield, that carrier is also largely a coal road. Such traffic is not at issue here, and, in any event, that carrier's situation is offset by that of the Pittsburgh & Lake Erie.

There are very real differences in the car costs in each territory and the causes are known. Among these causes are: a difference in utilization of 39.4 car-miles per
64 day in the North and 49.5 car-miles per day in the South; differences in tax and wage rates; and a difference in the relative amount of off-line use of owned cars in all territories. Moreover, there is a greater relative

use in connection with the traffic here at issue of cars owned by official territory railroads than of cars of southern ownership. Eliminating cars of other ownership for purposes of comparison, cars owned by official territory railroads made 54 percent of all car-miles although only 41 percent of those car-miles were run in official territory.

The use of a national average car cost conceals territorial differences in cost which are important in the consideration of divisions between the two involved territories. Accordingly, separate territorial freight train car costs will be used in our restatement.

f. Freight car empty return ratios.—The southern lines take the general position that the history of costs reflects a refinement away from system average costs. Form A departs from overall system average costs by separating line-haul and terminal services, assigning costs on the basis of load per car, and separating tare weight and empty return ratios by type of car. Territorial empty return ratios for all types of cars were broken down into empty return ratios for each of six types of cars in the first 7-day study (August 15, 1948, to July 11, 1949) and for each of 10 types of cars in the second 7-day study[1] (October 22, 1956, to August 18, 1957). Dividing "gondola and hopper" into three types and "flat" into two types of cars is said by the southern lines to be a necessary refinement of the empty return ratios. Further refinement of empty return ratios among the kinds of boxcars and refrigerator cars is, according to the southern lines, consistent with cost finding development and necessary to measure more accurately the costs of the traffic at issue.

The southern traffic study shows that 69.3 percent of the car-miles are incurred by boxcars and 9.7 percent by refrigerator cars. The southern lines changed the empty

1. Cost section statement No. 6-57, "Percent of Empty to Loaded Freight Car-Miles by Class of Equipment and Performance Factors for Way, Through and All Trains Combined."

return ratios from 39 percent in official territory and 33 percent in southern region for all boxcars to 100 percent for auto parts traffic and 30 percent for the remainder of the boxcar traffic in both territories, and the empty return ratios for refrigerator cars in official territory from 90 percent to 75 percent and in southern region from 76 percent to 84 percent. The effect of these adjustments increases the proportion of costs in the South by 0.51 percentage point.

(*1*) *Boxcars.*—The northern lines in applying Rail Form A used empty return ratios based on the second 7-day study of loaded and empty car-miles which produced for each group a single ratio covering all types of boxcars and another ratio covering all ownerships of refrigerator cars. In this category of boxcars are general purpose cars which can be utilized by and are available to all shippers for loading all types of commodities not requiring special type equipment, and boxcars suitable for loading special commodities which, though they may be suited for some type of return load, are in assigned service and thus returned empty, with some exceptions, to the point of loading. Included therein are cars used for transporting auto parts, which are specifically designed to handle such commodities. This 100-percent empty return ratio for specially equipped cars is contrasted by the southern lines with average ratios of less than 40 percent for all boxcars including the assigned cars.

65 The southern lines present the following in support of their adjustment:

(a) A computation showing that if special boxcars have an empty return ratio of 100 percent and general boxcars one of 30 percent, or if special boxcars account for 13 percent of loaded boxcar-miles in the North and 4 percent in the South, the result will be an overall empty ratio of 39 percent in the North and 33 percent in the South, which is what the 7-day study produced.

(b) A showing of the Commission's Transport Statistics of the United States for 1956 as follows:

Boxcars owned

Territory	*Total*	*Special device*	*Percent special device is of total*
Eastern district	267,266	26,779	10.03
Pocahontas region	32,834	1,501	4.57
Eastern plus Pocahontas	300,100	28,280	9.42
Southern region	100,191	4,122	4.11

The southern lines contend that the above indicates that the southern carriers own substantially fewer special device cars than do the eastern or official carriers involved in this proceeding.

(c) The following showing of the relationship in each territory between the amount of traffic commodity class No. 623, Vehicle Parts, N.O.S., and Total Manufactures and Miscellaneous based on carloads originated and terminated and on freight revenue:

VEHICLE PARTS 623—1956

	Eastern district plus Pocahontas region (1)	*South* (2)	*Total (column 1 plus column 2)* (3)	*Percent South of total (column 2 and column 3)* (4)	*Percent eastern district plus Pocahontas region of total (column 1 and column 3)* (5)
	Carloads originated and terminated				
Vehicle parts, N.O.S.	829,934	62,033	891,967	6.95	93.05
Manufactures and miscellaneous	12,669,348	3,787,287	16,486,635	23.01	76.99
Percent vehicle parts	6.55	1.64			
	Freight revenue				
Vehicle parts, N.O.S.	$130,212,468	$19,329,691	$149,542,159	12.93	87.07
Manufactures and miscellaneous	$1,827,508,648	$625,523,731	$2,453,032,379	25.50	74.50
Percent vehicle parts	7.13	3.09			

66 The southern carriers contend that the foregoing demonstrates that they participate to a much more limited extent in vehicle parts traffic than to the official carriers.

(d) The following showing of the empty return ratio of boxcars and the proportion of vehicle parts traffic to all traffic in boxcars for each of the three groups of railroads:

	Boxcars empty return ratio [1]	*Percent vehicle parts 623 to total boxcar traffic* [2]
	Percent	*Percent*
Roads serving Detroit having heavy proportion of vehicle parts to total boxcar traffic [3]	49	14.5
Other official	34	4.2
Total official	39	6.8
Southern region	33	2.6

[1] Second 7-day study.

[2] Percent carloads of vehicle parts 623 handled in boxcars and percent carloads of all traffic handled in boxcars from statement No. TC-3,1956, applied to total carloads handled, vehicle parts and total carloads all traffic, respectively, from Freight Commodity Statistics, Year 1956.

[3] NYC, Wabash, C&O, DTI, and GTW.

(e) A statistical showing of the effect on the empty return ratio from the elimination of vehicle parts traffic. The waybill study does not show for interterritorial traffic the number of car-miles in each territory. Therefore, this missing element was approximated by combining certain items and proportions in the waybill study with originations and terminations and revenues from the Freight Commodity Statistics. The final result after eliminating vehicle parts traffic shows an empty ratio which is 4 percentage points higher in official territory than in southern region.

These five items will be analyzed below:

(a) This is merely a computation showing what the effect would be if certain assumptions are made. By itself,

it does not prove that those conditions actually exist, nor is there other sufficient evidence to this effect.

(b) This shows the percentage ownership of boxcars by railroads in these territorial groups. Cars are interchanged among territories and it is quite probable that cars of eastern ownership travel many car-miles in the western district. It is the car-miles in each territory which affect the empty ratio, and the relative ownership does not necessarily coincide with the relative number of car-miles.

(c) The use of the relationship between the numbers of carloads and the revenues of vehicle parts to total manufactures and miscellaneous group of commodities does not measure the relationship of special boxcars to total boxcars for the reason that many boxcars carried commodities other than manufactures and miscellaneous, and vehicle parts do not all move in special boxcars.

(d) The comparison is based on only three observations and is therefore too limited to be representative. At best, it may be a coincidence or caused by some unknown factor, and is not otherwise supported.

67 (e) The statistical determination of the effect of special cars on the empty return ratio for all boxcars is based on certain assumptions, such as that commodity class No. 623, Vehicle Parts, N.O.S., moves in special cars only and that all special cars have a 100-percent empty return. These assumptions have not been proven. In fact, 12 percent of the vehicle parts move in other than boxcars. This statistical determination is an attempt to show an effect on the empty ratio with mathematical exactness. However, such a degree of accuracy is inappropriate in this particular computation because the individual steps taken to arrive at the answer contain estimates or approximations with a wide margin of error. For example, the percentage distribution of intraterritorial car-miles includes different amounts of car-miles by other than boxcars in each terri-

tory. The equating factors for revenue are also only very rough approximations.

There are undoubtedly instances where specially equipped or directly assigned boxcars have a 100-percent empty return. The record does not indicate, however, whether this is generally prevalent or whether it approaches 50 percent or 100 percent for this class of cars. The five items above tend to show that these cars may have some effect on the empty return ratio, but they do not support a conclusion that any adjustment is warranted here as to the amount of the effect other than that reflected in the averages used.

The southern lines cite the Commission's decision in *Louisville & N. R. Co. v. Akron, C. & Y. R. Co.*, 309 I.C.C. 491, the *Border Point* case, as a precedent for adjusting the empty return ratios because of specially equipped cars. The circumstances were different in that case. Most of the line-haul costs were on only one side of the border. In addition to territorial average costs, 1956 systemwide operating costs were computed separately for the Pennsylvania, the Detroit, Toledo & Ironton, the Louisville & Nashville, and the New York Central. In addition, the Detroit, Toledo & Ironton had 2,596 specially equipped cars for use in transporting automobile parts which generally moved loaded from Detroit to Louisville, and returned empty. This type of car constituted more than half of its owned cars in this area. Moreover, the Louisville & Nashville border point traffic was largely composed of vehicle parts and electric appliances moving to or from Louisville. It was necessary to develop specific data for this dominant traffic. In contrast, the instant proceedings embrace a large and varied body of traffic, incurring line-haul costs on both sides of the border, and the 33,983 cars carrying vehicle parts, commodity No. 623, are not at all dominant but, rather, constitute only 3.5 percent of the total number of cars.

It is claimed that the unbalanced flow of traffic to and from Canada contributes to the high empty return ratio in official territory. A study based on Canadian commodity statistics shows that, excluding automobiles and parts, 468,456 carloads were delivered to Canadian connections and 691,316 were received. If every carload going to Canada could be placed in a car coming therefrom which was unloaded here it would produce the following result:

691,316 southbound loads	
468,456 northbound loads	
222,860 empties	19 percent
1,159,772 total loads	100 percent

68 Thus, under ideal conditions, which rarely obtain, an empty ratio on Canadian traffic of 19 percent might be possible. The figures given as to the imbalance in traffic flow do not indicate that Canadian traffic has a greater empty return ratio than other traffic.

The detail of the southern lines' empty return ratio adjustments follow:

	Official territory	*Southern region*
	Percent	*Percent*
All boxcars	38.93	32.50
Less effect of special device cars	4.27	1.62
General purpose boxcars	34.66	30.88
Less effect of Canadian traffic	2.13	0
Less judgment factor	32.53	30.88
	2.53	0.88
	30.00	30.00

The witness for the southern lines summarized this evidence in the following words:

Bearing in mind that the special device adjustment is merely illustrative and that the use of special device cars for other commodities is of relatively greater importance in the highly industrialized east than in the south it is my conclusion that, as far as North-South traffic is concerned, the empty ratio for box cars is no greater in official territory than in the south. In my judgment a fair ratio for either territory would be 30 percent.

In light of the foregoing, we find that: (1) the adjustment for special device cars of 4.27 percentage points is not adequately supported; at best, it is merely illustrative; (2) that the adjustment for Canadian traffic is in error; and (3) that the last adjustment of 2.53 percentage points is purely an unsupported assumption.

(2) Refrigerator cars.—The second 7-day study developed empty return ratios for eastern district of 90 percent, Pocahontas of 86 percent, and southern region of 76 percent. The southern lines urge that these are not representative of North-South traffic because they include meat traffic, of which very little moves between the North and the South and which has a 98-percent empty return. The southern traffic study shows 80,379 refrigerator cars of which only 1,642 or 2 percent are meat. The waybill study shows that based on originations and terminations (not car-miles, which are not available) fresh meats constitute 19.1 percent of refrigerator car traffic in official territory and 7.2 percent in southern region.

The above percentages are based on a single commodity group, No. 215, Meats, fresh, n.o.s. Generally, a group average is not invalidated because one of the items included in the group is above or below the average. It is normal to have items above offset by those below. For example, the Illinois Central Railroad handles a substantial movement of bananas from New Orleans to destina-
69 tions in official territory. Bananas are transported in refrigerator cars owned or leased by the Illinois

Central and assigned to the movement of bananas. These assigned cars have an empty ratio of 100 percent. In considering whether the cars with 100-percent empty return affect one territory more than another, all such cars must be recognized, not just meat cars. The significance of the banana cars, commodity class No. 51, Bananas, fresh, is that whereas there are proportionately more meat cars in official territory, there are proportionately more banana cars in the southern region. Further, banana cars comprise a much greater proportion of North-South traffic. If all refrigerator cars with a 98- or 100-percent empty return had been considered, the showing would have been entirely different than that for meat cars alone.

The southern lines show that the second 7-day study produced varying results for individual days ranging from 96 percent to 66 percent as the empty return ratio for refrigerator cars in the southern region. The empty and loaded refrigerator car-miles of the principal car owning companies in the southern region obtained from replies to questionnaires sent to the southern roads indicate an empty ratio of 84 percent for all traffic (but not all ownerships) in 1956. This coincides with ratio reported by the Association of American Railroads' Car Service Division on Form CS-57A. This empty ratio of 84 percent is considered more accurate by the southern lines than the results of the 7-day study because it is based on records for the full year and is therefore used in their cost study. However, the southern lines are unwilling to accept the empty return ratios for refrigerator cars in official territory developed in either the 7-day study or the CS-57A reports, and use instead an empty ratio of 75 percent which is the experience of Fruit Growers Express in official territory. Fruit Growers Express handles only 43.3 percent of the North-South refrigerator traffic but the loaded and empty refrigerator car-miles of the other companies were not available to the southern lines. In other words, in determining the ratio of empty return to use in official territory,

the southern lines did not consider the empty return experience of all refrigerator cars of ownerships which handle 56.7 percent of the North-South traffic.

The studies of refrigerator car traffic relied on by the southern lines, like the cost section's 7-day study, cover intraterritorial traffic and traffic from and to other territories and are not confined to North-South traffic. However, unlike the 7-day study, they do not include all traffic and they are not on a comparable basis in both territories.

Although neither party utilized the statistics in the computation of their costs, the southern lines in their exceptions to the recommended report and at oral argument urge that we should use these ratios in our restated costs. The CS-57A statistics cover only private line freight cars and omit railroad owned cars. Thus, it is a complete count of loaded and empty miles for only part of the refrigerator cars. We find that the 7-day study, which is a sample of all of the cars, is more reliable.

For the reasons discussed above, we find that the empty return ratios for both boxcars and refrigerator cars developed by the special studies of the southern lines are not as sound an estimate of the empty return incurred by the official-southern traffic as are the 7-day study territorial empty return ratios. The latter reflect the compilation of actual data reported by the railroads on a
70 comparable basis in each territory under an order of this Commission.

g. Short lines (class II railroads).—The southern lines allege the impropriety of pricing out the services of the short lines (class II railroads) on the basis of territorial average class I railroad costs. They measured in their traffic study the amount of service rendered by short line roads, and, in doing so, adjusted their Form A territorial average costs, which were based on class I railroads, to reflect the level of cost of the short lines. They then ap-

scientific sampling plan, a preliminary sample containing
497 cars in 8 batches was drawn. From this, a
73 sample of 83 cars was taken. A further (and controverted) subsample of 41 cars was then produced. Of these 41 cars, 16 were terminated and 25 were originated; 26 were handled by yard engines and 15 by train engines.

The southern lines made switching studies pursuant to Rail Form F of all cars at each of the points in southern region where a car in the sample had originated or terminated. The switch engine minutes per car for origin or destination switching varied from 3.39 at Huber, Ga., to 72.54 at Gadsden, Ala., with an average of 26.03 minutes for all 41 cars.

The 41-car subsample was itself further divided into 10 subsamples and a "standard error" of 2.2 minutes was computed. It is virtually conceded by all concerned that error due to sampling cannot exceed three standard errors or 6.6 minutes. Thus, if all 967,554 cars had been studied, the average thereof would have been within the range of 26.03 minutes plus or minus 6.6 minutes, or between 19.43 minutes and 32.63 minutes per car. The terminal switching cost for the southern region in the South's cost study of all 967,554 cars is based on the 26.03 minutes so developed.

The southern lines adjusted the official territory costs by applying Pocahontas region switching minutes to bituminous coal for the entire official territory and using special minute per car factors for iron ore and anthracite-to-washers in accordance with a method used by the cost finding section in its periodic publication "Distribution of The Rail Revenue Contribution by Commodity Groups." The minutes per car were thereby reduced for these commodities with a corresponding increase for all other commodities.

This adjustment, which increases the costs in official territory, was approved by the examiners because: (1) it

is based on a method found useful in certain situations involving coal and ore operations; (2) its purpose was to exclude the effect of those operations; (3) the traffic at issue does not include coal; and (4) the adjustment was proposed by the southern lines. However, upon consideration of the exceptions and oral argument, and especially the fact that the adjustment applied to official territory only whereas the southern region also has a large volume of coal traffic, we conclude and find that a fairer basis of cost comparison between the two groups of parties will be attained by deleting this adjustment.

Evidence was introduced to show that volume commodities comprise over 37 percent of the total traffic in official territory. The northern lines point out that if volume commodities exert a depressing effect upon system average switching minutes in the southern region, the presence of volume traffic in the North produces, at the very least, a corresponding influence on the northern lines. They also urge that 13 study points used by the southern lines to illustrate the difference between system average and volume commodity switching minutes were handpicked for the sole purpose of showing that volume commodities do depress the territorial average. Thus, it is asserted that they are extreme instances, not typical or representative. Moreover, 2 of these 13 points are also among those studied for the 41-car sample. Thus, with the two points being common to both studies, the northern lines contend that it is necessarily erroneous to conclude that the principal volume commodity movements affect territorial switching costs to the extent claimed by the southern lines. They also point out that respondents' principal witness in a prior case studied 582 loaded and 591 empty cars of pulpwood, a major volume commodity, and found 14.62 minutes for origin
74 switching and 17.81 minutes for destination switching, which is not far from the system average figures.

See *Reduced Rates on Pulpwood in Southern Territory*, 297 I.C.C. 735, 745.

These three contentions, (1) that volume commodities exist in both territories, (2) that the 13 points were hand-picked and that 2 were common to the points sampled as representative of official-southern traffic, and (3) that pulpwood, a volume commodity, has average switching minutes, are cited by northern lines to show that there is no necessity to make an adjustment for volume commodities. They also urge that a sample of 41 cars is too small to be relied on as representative of almost a million cars of study traffic. They show further that the sample included no cars from Boston, Philadelphia, Detroit, St. Louis, or Buffalo, among other large northern cities, and not a single car of citrus or fresh vegetable traffic.

Of the 967,554 cars of official-southern traffic, 46 percent were southbound and 54 percent were northbound, whereas the 41-car sample showed 39 percent southbound and 61 percent northbound. Thus, the 41-car sample showed 7 percent too many origin studies and 7 percent too few destination studies as compared to the total figure. The 25 cars originated had 24.08 minutes per car and the 16 cars terminated had 29.07 minutes per car. The northern lines point out that although southern lines' operating witnesses have almost uniformly taken the position that it is more burdensome to originate a car in the South than to terminate it, the switching studies of the 41 cars show the opposite.

The 26 cars given yard switching averaged 30.75 minutes and the 15 cars given train switching averaged 17.84 minutes. The original sample of 497 cars contained 59.8 percent given yard switching and 40.2 percent given train switching, whereas of the 41 cars, 63.4 percent were given yard switching and 36.6 percent were given train switching. The northern lines point out that to restore in the same sample the 60-40 relationship of yard to train

switching shown in the more comprehensive sample it is necessary to drop four cars of yard switching from the small sample. If the 4 cars dropped were those with the largest number of switch engine minutes, the average per car for the remaining 37 cars would be 22.30 minutes. If the four cars with the lowest number of switching minutes were dropped the average would be 27.48 minutes.

The northern lines assert that the 41 cars were not selected by subsampling but were later assigned to subsamples. They contend that a distortion of the use of subsamples thereby results throwing doubt on the value of the standard error computed therefrom. They point out that the Form A factors are 17.8 minutes for boxcars and 19.8 minutes for other cars, which is an average of about 19 minutes, and that the principal witness on sampling for southern respondents did not claim any greater reliability for the switching study factor of 26.03 minutes than a range of about 7 minutes, the difference being 19 minutes. Thus, they state that even if the studies were to be taken at face value, there is no justification for the conclusion that the involved traffic, assuming it could be found to be fairly typified by the 41-car sample, "an assumption which offends common sense," is significantly different from average traffic in the South in respect of switching service rendered, since the claimed excess over average minutes and the conceded range of reliability of the study are almost exactly the same.

75 As to the 41 switching studies, 40 were conducted in 1960 and 1 in 1957 whereas the 41 cars were handled during the latter half of 1958 or first half of 1959. Switching minutes were developed for each category of service at all industries in the terminal area. Inasmuch as all cars were included in the divisor in each instance, the minutes attributed to each reflect the average traffic and not necessarily the characteristics of official-southern traffic. No investigation was made to determine whether operations were con-

plied these adjusted unit costs to the service units of the short lines. The resulting increase of the southern lines' proportion of the costs by 0.09 percentage point amounted to approximately $446,000 in revenue. They employed the following procedure in their cost study in order to reflect the level of short-line costs:

1. The total costs of each short line that participated in the official-southern traffic were determined from the 1956 annual reports of each carrier.

2. The costs which were imputed to the operations of each short line by the Rail Form A costs of the class I roads were then aggregated.

3. The ratio of the actual costs in 1. above to the cost imputed by the Rail Form A costs of class I roads in 2. above was computed for each short line.

4. And finally, the ratios thus developed were applied to the territorial Form A costs of official-southern traffic on each class II road.

The actual expenses and traffic volume for the year 1956 as reported by the class II carriers in their annual reports were used in computing these costs.

The northern lines objected to the assumption that compilation of 1956 cars originated and terminated were on the basis of 1955 operations, and that the traffic consist, operating characteristics, and the resulting expenses would be the same for 1956 as for 1955. These assumptions were made because the typical short line report in the year 1956 did not contain as much detailed data as the report for the year 1955.

The southern lines' traffic study showed the number of cars originated or terminated on short lines for the official territory and southern region to be:

	Traffic originated or terminated on other than class I line-haul roads participating in official-southern divisions	
	Number of cars	*Percent of cars*
In official territory	16,697	1.73
In southern territory	55,826	5.77

The northern lines do not question the count of car data regarding short lines on the abstracts underlying the southern lines' traffic study, but observe that there are many class II railroads in official territory which perform only switching or terminal service, whose charges for such service are paid entirely out of eastern line-haul carriers' revenue, and whose participation is not ordinarily shown on the abstracts. The southern lines introduced the following table to illustrate the imputation of class I railroads' costs to the services of these:

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Costs of short lines in year 1956 imputation of class I roads' costs compared with application of the actual costs of the short lines

Source	*North*	*Percent*	*South*	*Percent*
Territorial average Form A costs	$537,359	100.0	$1,594,486	100.0
Southern lines' study of short-lines cost	509,943	94.9	1,963,632	123.2
Difference	—27,416	—5.1	+369,143	—23.2
Northern lines' study of short-lines' cost	496,545	92.4	1,878,029	117.8
Difference	—40,814	—7.6	+283,543	+17.8
Difference between northern lines' and southern lines' studies	13,398	2.5	85,603	5.4

The above table shows that the imputation of class I road cost to the service of these short lines overstates the costs in the North by $27,416 (southern lines' method) or $40,814 (northern lines' method) and understates the costs in the South by $369,146 (southern lines' method) or $283,543 (northern lines' method).

The southern lines' method reflects the cost level of each short line while retaining the separation between line-haul services (car-miles and ton-miles) and terminal services (cars and tons), whereas the northern lines start with the identical actual carload freight cost for each short line as used by the southern lines but, instead, spread the entire costs of each short line over revenue ton-miles, producing an average cost per revenue ton-mile with no separation of line-haul and terminal services.

In our opinion, and we so find, the southern lines' cost study for short lines is the more acceptable procedure in that it conforms to the principle of separating line-haul and terminal costs set forth in Rail Form A. The southern lines' traffic study more closely reflects the actual level of costs of each participating short line, whereas the northern lines imputes to each short line the cost level of class I railroads. Basically, the class II and the class I railroads should reflect their own respective costs. This adjustment is shown in our restatement of the costs.

h. Adjustment of switching costs to eliminate the effect of volume switching at origin and destination.—The territorial average switching minutes per car at origin or destination, 1956, are as follows:

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	Official territory		*Southern region*	
	Boxcars	*Other cars*	*Boxcars*	*Other cars*
Cost section study application of Form A	25.9	28.8	17.3	19.2
After the effect of southern respondents' adjustments for "Switching and Terminal Cost" and "Corrected Car Count"	25.4	28.2	17.8	19.8
After adjustment for volume switching	27.65	30.72	26.03	26.03
Volume switching adjustment	2.25	2.52	8.23	6.23
Total amount added to costs by this volume switching adjustment	$1,310,743		$3,648,130	
Change in percentage of costs	44.71–44.45=0.26		55.29–55.55=+0.26	

Some volume commodities frequently move in multiple-car blocks at origin and/or destination with a consequently lower switching cost than for commodities usually handled in one car at a time. The following table indicates the significance of certain volume commodities:

	Number of cars originated or terminated (year 1959)—		*Number of cars official-southern traffic involved in this proceeding*
	On official territory roads	*On southern region roads*	*(as shown in southern lines' traffic study)*
Pulpwood	162,572	1,102,741	564
Sand and gravel	340,072	653,972	2,229
Wet phosphate rock	——	287,892	None
Crushed stone and rock	407,630	813,734	8,372
Iron ore	789,188	113,452	661
Coal	6,186,315	1,915,566	None
Coke	558,823	79,984	2,811
Fluxing stone and dolomite	395,811	3,558	51
Total cars of volume commodities	8,840,511	4,970,899	14,758
Total cars	23,771,003	10,840,187	967,554
Percent cars of volume commodities to total cars of all commodities	*Percent* 37.19	*Percent* 45.86	*Percent* 1.52

The southern lines urge that their territorial average switching costs are depressed by the large proportion of volume commodities in their region to the point that these costs are not representative of the official-southern traffic which includes only a small amount of these commodities. For this reason, they used in their cost study origin or destination switching costs based on a special study in the South and on an adjustment in the territorial costs in the North.

As stated, there were 967,554 cars of official-southern traffic in the year studied. From this figure, pursuant to a

ducted in 1960 in a manner similar to the time the sample cars moved, and no comparison was made of the volume of traffic at the study points between the two periods. For example, at least one car in the sample was picked from an "A" abstract containing 82 similar movements during the period of 1 month, and there necessarily must have been at least 3 or 4 cars per day, which suggests multiple-car block switching. However, no determination was made of this latter aspect which would have required a reduction of the switching minutes claimed on a single-car basis. The northern lines made an examination of the switching studies and found six alleged errors amounting to an overstatement of 63.87 minutes out of 1,067.20 minutes. Four of the errors were disputed by the southern lines and two amounting to 21.73 minutes were conceded.

The northern lines point out that the switching minute adjustment was made on an entirely different basis in the North than in the South and that although the increase in switching minutes in the South was 46 percent for boxcars and 31 percent for other cars it was only about 9 percent for both kinds of cars in the North. Since the justification for, and intent of, the adjustments were to offset the effect of volume commodities on the average, the amount of the adjustments would suggest four or five times as much volume commodity traffic in the South; but such is not the case.

Northern lines also take the position that assuming that comparable methods had been followed in furtherance of the sought purpose of the switching adjustments the net effect of such an adjustment upon relative costs would have been virtually nil. They assert that this would appear to be so because of the similar, and hence at the very least offsetting, consist of the general traffic of northern and southern lines in terms of the respective proportions of volume commodities handled by each.

This offsetting effect can be approximated for official territory by the following computations, the first of which

assumes that volume switching minutes are the same as in the southern region, and the second that volume switching minutes are greater in the same proportion as the territorial average:

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	Proportion of cars originated or terminated	*Switching minutes per car*	
Southern region:	*Percent*		
All commodities (regional average)	100.00	× 19.2	= 19.2
Other than volume commodities	54.14	× 26.03	= 14.1
Volume commodities (remainder)	45.86		5.1
Volume commodities (5.1 ÷ 45.86 percent)		11.1	
Official territory:			
All commodities (territorial average)	100.00	× 27.3	= 27.3
Volume commodities	37.19	× 11.1	= 4.1
Other than volume commodities (remainder)	62.81		23.2
Other than volume commodities (23.2 ÷ 62.81 percent)		36.9	
Official territory:			
All commodities	100.00	× 27.3	= 27.3
27.3			
Volume commodities (19.2 × 11.1 = 15.8)	37.19	× 15.8	= 5.9
Other than volume commodities	62.81		21.4
Other than volume commodities (21.4 ÷ 62.81 per cent)		34.1	

Assuming the same difference between boxcars and other cars, the switching minutes per car for other than volume commodities in official territory should be:

	All cars	*Boxcars*	*Other cars*
First computation	36.9	34.3	38.1
Second computation	34.1	31.7	35.2
Used in southern lines' cost study		27.65	30.72

The above computations indicate that the adjustment of switching minutes for official territory made by the southern lines is inadequate by from 4 to 7 minutes in comparison with the adjustment they made for their own region, and are therefore rejected.

Territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic moving to and coming from terminals in all parts of both territories. In our opinion, and we so find, the depressing effect, if any, of volume switching commodities on the average would affect both territories and, for purposes of comparison, would be largely offsetting.

The switching studies in the South have weaknesses, both in the sample and in the studies themselves. The adjustment in the North was not made on a basis comparable to that in the South, and here, where the relationship of North and South is of prime importance, this is a major defect.

77 For these reasons, we conclude that the contentions of the northern lines are of merit and that Rail Form A territorial average switching costs more accurately measure the relative switching costs on each side of the border of the official-southern traffic than the switching costs computed by the southern lines.

i. Train tonnage adjustment.—The large volume of coal traffic on the Chesapeake & Ohio and Norfolk & Western railroads has a depressing effect on the costs of other traffic because it moves in heavier than average trains. Based on merchandise traffic movements on the Chesapeake & Ohio in trains of 3,200 tons and on the Norfolk & Western in trains of 5,128 tons, the southern lines adjusted the

through train weights used in their cost computations as follows:

	Official territory	*Eastern district*	*Pocahontas region*
Territorial average before adjustment (tons)	3,840	3,434	5,426
After adjustment	3,611	3,434	4,121

This adjustment had the effect of increasing the costs in the North by $867,319 without any change in the costs of the South and resulted in a decrease of the South's proportion of the costs of 0.14 percentage point. This adjustment was necessitated by the proper inclusion of Pocahontas region costs in those of the northern lines and is therefore warranted.

j. Adjustment of constant costs.—The southern lines made two adjustments to constant costs: one, the exclusion of passenger suburban service deficits, and the other, the inclusion in the southern lines' costs of the fully distributed cost deficits on pulpwood and wet phosphate rock which they consider to be related (in transit) to the outbound movement of paper products and dry phosphate rock.

(1) Suburban passenger service deficits.—The southern lines contend that the basic reason justifying the inclusion of passenger service deficits as a part of the cost of providing freight services is that such passenger deficits are almost entirely attributable to the apportioned costs of common facilities which must be incurred in any event to provide freight service. They would include the passenger deficits from intercity service in the constant costs assigned to freight service, but they would exclude the deficits from suburban passenger service for the reason that the suburban service facilities are separate and not used in common with the freight service.

They excluded from the cost of official-southern traffic north of the gateways the amount of $2,830,575, based on

data presented on behalf of eastern territory suburban railroads before the Senate Committee on Interstate and Foreign Commerce in April of 1960 regarding the suburban service of the Boston & Maine, New Haven, New York Central, Delaware, Lackawanna & Western, Central of New Jersey, Erie, Pennsylvania, and Reading railroads. The amount ($377,070) excluded south of the gateways is based on the suburban service deficit of the Illinois Central Railroad.

The northern lines point out that, putting aside entirely the common expenses that are apportioned between freight and passenger service and considering only expenses that are solely related to passenger service, there is a
78 deficit in the southern region whereas in both the eastern district and in official territory the passenger revenues exceed the solely related expenses. Further, in relation to the cost of handling official-southern freight traffic, they contend that there is no difference between that part of the passenger deficit which results from suburban operations and that part which results from through or local passenger trains. They also assert that if the southern lines should not properly be charged with any part of the deficit in handling commuters from "A" to "B" in the East, it would logically follow that the northern lines should not be charged with any part of the deficit in handling passengers from "X" to "Y" in the South.

The southern lines state that the suburban service deficits of the northern roads could be eliminated by the discontinuance of commutation service since the separate facilities maintained solely for suburban service are not used for freight or intercity passenger service. They give the following example: "—Reference to Exhibit J exemplifies the situation which actually exists. It shows track occupancy by various types of trains in the twenty-four hours of a typical week-day of October 1958 on the line of the Pennsylvania Railroad between Overbrook and Bryn Mawr, Penn-

sylvania, which is a portion of one of that company's principal Philadelphia suburban lines. It will be noted that there are four main tracks in this territory. The outside track—No. 1, Eastbound and No. 4, Westbound—are used primarily by suburban trains: while the middle tracks (Nos. 2 and 3) are used primarily for through passenger and freight trains."

It is true that, in the example given, certain track expenses for tracks Nos. 1 and 4 could be saved by abandoning the suburban service and those tracks; however, other costs related to the roadway would continue, such items as land taxes, grading, ditching, culverts, bridges, and signaling systems. Many large passenger terminals are used by both suburban and intercity passengers. In other words, although many individual items of suburban service can be considered solely related, the facilities and service as a whole cannot be considered solely related to suburban service and treated entirely apart from the freight service and intercity passenger service. Because the suburban service deficit includes common costs which must be incurred to provide freight service or intercity passenger service, such costs are properly chargeable to those services to the extent they cannot be recovered from suburban operations, and the deficit from suburban operations should not be excluded from the constant costs. We so find.

(2) Constant cost of transit commodities.—The southern lines included the following amounts in their costs:

Pulpwood	$7,221,986
Wet phosphate rock	615,883
Total	7,837,869

These amounts represent the constant costs not covered by the revenue and deficits sustained by the southern lines in handling, within the South, these commodities into mills which originate South-to-North outbound traffic of paper and paper products and dry phosphate rock.

Both groups have included in their traffic and cost studies the service from point of origin to destination of traffic identified on the interline abstracts as transit traffic.

79 The pulpwood and wet phosphate rock movements are not so identified, and the tariffs for them do not provide for through rates from the points of origin of the raw materials. However, the southern lines claim that a situation, essentially of a transit nature, exists because they maintain rates on the inbound wet phosphate rock and pulpwood which are conditioned upon the outbound movement by rail of the dry phosphate rock and paper products.

The revenue on pulpwood contributes approximately $5 million per year in excess of out-of-pocket costs, whereas the ton and ton-mile method of distribution assigns about $21 million of constant costs to pulpwood. Therefore, say the southern lines, the constant costs in excess of the contribution of pulpwood ($21 million minus $5 million) must be recovered from the high-rated paper and paper products, including southern-official paper traffic. Approximately 54 percent of the paper and paper products originated by the southern lines moves to destinations in official territory, and this traffic produces revenues 36 percent greater than fully distributed costs.

The southern lines urge that they maintain the low rates on the inbound raw materials in order to hold the outbound high-rated paper and dry phosphate rock traffic to rail movement for the benefit of all carriers participating in the haul, and since the northern lines participate in the movement of this high-rated traffic they cannot deny the southern lines divisions which reflect the services performed as an integral part of the joint enterprise.

The northern lines made three principal points in rebuttal:

First: The northern lines can make an even better cost showing on the basis of out-of-pocket costs:

Eastern percentages of total costs on general traffic at average hauls.

Year 1956 Fully distributed 50.7 percent
Out-of-pocket 51.7 percent
Year 1957 Fully distributed 50.9 percent
Out-of-pocket 52.0 percent

Even if fully distributed costs should be completely disregarded the northern lines' case would not suffer, yet the whole basis of the suggested adjustment depends on the use of fully distributed costs which assign the constant expenses on a ton and ton-mile basis.

Second: The wet phosphate rock and pulpwood move wholly within the South, and the northern lines have no participation in their rates, no control over them, and no voice as to their level. These rates on pulpwood "were made on a low basis to attract plants from the North, and now the southern lines want the Commission to require eastern lines to help make up the deficit under constant costs which they incur." The northern lines also point out that another reason for the low level of rates on pulpwood and wet phosphate rock is competition from other modes of transportation, and that any commodity which earns $5 million above out-of-pocket costs is very worthwhile.

Third: The northern lines urge that this adjustment cannot be made by the southern lines in their territory alone but, to be fair, must also be made in the territory of the northern lines with respect to the movement of such raw materials as iron ore and coal and fluxing stone, for example, which go into the manufacture of iron and steel which move from North to South, and as to which there could be no movement without the prior movement of the raw material.

The southern lines justify their adjustment on the basis of an essentially transit relationship on pulpwood and wet phosphate rock. On this point, the northern lines contend that a transit relationship is one that is readily identifiable from the tariff and either exists or does not exist. If an actual transit relationship exists, they assert that the through rates from the initial origin of the raw material via the transit point to the ultimate destination of the finished product would here be in issue if that movement were between the territories involved. In that situation, the through cost would likewise appropriately be considered in fixing divisions. But, they note, no transit is here provided by the appropriate tariffs.

They further point out that the only joint interterritorial rates here before the Commission are those applying on paper and paper products and on dry phosphate rock. They characterize the so-called transit arrangement as, at best, a recognition of the obvious physical fact that the production of finished and semifinished products necessitates an inbound flow of basic materials.

The southern lines' position that losses on pulpwood and wet phosphate rock are incurred in behalf of a joint enterprise (paper and dry phosphate rock traffic), in which the northern lines share, is largely refuted by the evidence that these rates yield revenues profitable to the extent of $5 million a year above out-of-pocket costs.

The transfer to paper products and dry phosphate rock of that portion of the constant costs allocated to pulpwood and wet phosphate rock which the revenue fails to cover is based on a misunderstanding of the nature, significance, and use of constant costs. Each shipment must pay its out-of-pocket costs since they are incurred by and because of that shipment. However, the constant costs, because they are incurred on behalf of the operation as a whole, should

be shared by all traffic. In our judgment, the ton and ton-mile apportionment of constant costs made in the same way in each territory on this large and varied body of traffic is fair to both territories, and the transfer to interterritorial traffic of a part of the constant costs which had been assigned to intraterritorial traffic is not well founded. Stated in another way, we cannot find that for purposes of interterritorial divisions the pulpwood and wet phosphate rates within the South are so specifically and intrinsically related to the rates under consideration that there is a sound basis here for the adjustment made by the southern lines. *Cf. American Sugar Refining Co. v. Ahnapee & W. Ry. Co.*, 322 I.C.C. 717, 720; *Sugar from the West to Central Territory*, 319 I.C.C. 686, 705.

k. Equalization of gateway interchanges.—The cost study submitted by the southern lines does not include an adjustment for equalization of interchange costs at gateway points although their operating witnesses testified that at many of the important gateways the amount of service and the joint yard cost are equalized. However, they did equalize the amount of service performed by each railroad through the equalization of engine-hours operating on each other's rails. It was estimated that if all the cars of North-South traffic, except those interchanged at interior Illinois and Indiana points, were interchanged at equalized gateways, the cost in official territory would be reduced $797,043, and the costs in southern region would be increased a like amount.

81 There are several weaknesses in this estimate. Initially, equalizing the number of engine-hours performed on the other lines' rails does not equalize interchange service because each carrier performs a major part thereof on its own rails. Secondly, although many important gateways are cited, not all are included, and the proportion of cars passing through unequalized gateways is

not shown. Thirdly, the cost of engine time is not equal in the two territories. There is another, and major, criticism of this proposed adjustment. Rail Form A territorial costs produce a cost which is an average for all the service units in the territory, such as interchange handlings. When greater or lesser costs than Form A costs are assigned to particular items, then lesser or greater costs of corresponding amounts must be assigned to the remaining units. Unless this is done, a situation exists where either more dollars are assigned to all the service units than were actually expended, or only part of the dollars incurred are assigned and some are left over and not assigned to anything. It would create a distortion to assign a cost different than average to 880,711 interchange handlings without a corresponding adjustment in the cost of those remaining. As the northern lines explain:

Another substantial objection to the suggested adjustment is that it would be incomplete. If southern lines are assumed to have incurred interchange costs at the gateways at the rate of $4.045 per interchange as compared with their 1956 Form A average of $3.14, that would necessarily mean that their costs for other interchanges would be reduced by $797,043. Conversely, the corresponding adjustment of northern gateway interchange costs would require an *increase* of the same sum in the costs of other interchanges in official territory. But in proposing the making of such adjustment in respect to this item the southern lines did not attempt to show to what extent their costs of the other interchanges on the traffic involved would be *decreased* or to what extent the northern costs of other interchanges would be *increased*. Further, they presented no such data as would permit the completion of such an adjustment.

For the reasons indicated above, we do not accept the proposed adjustment.

APPENDIX C

Scales of prorating factors prescribed

Distance	*Column 1*	*Column 2*	*Column 3*	*Column 4*	*Column 5*	*Column 6*
50 miles ..	82	61	65	49	127	33
100 miles ..	114	90	77	58	187	65
150 miles ..	146	119	89	67	247	97
200 miles ..	177	148	101	76	307	129
250 miles ..	209	177	113	85	367	160
300 miles ..	241	206	125	94	427	192
350 miles ..	273	235	137	103	487	224
400 miles ..	305	264	149	112	547	256
450 miles ..	336	293	161	121	607	288
500 miles ..	368	321	174	131	—	319
550 miles ..	400	350	186	140	—	351
600 miles ..	432	379	198	149	—	383
650 miles ..	464	408	210	158	—	415
700 miles ..	495	437	222	167	—	447
750 miles ..	527	466	234	176	—	478
800 miles ..	559	495	246	185	—	510
850 miles ..	591	524	258	194	—	542
900 miles ..	623	552	270	203	—	574
950 miles ..	654	581	282	212	—	606
1,000 miles ..	686	610	294	221	—	637
1,050 miles ..	718	639	306	230	—	669
1,100 miles ..	750	668	318	239	—	701
1,150 miles ..	781	697	330	248	—	733
1,200 miles ..	813	726	342	257	—	764
1,250 miles ..	845	755	354	—	—	796
1,300 miles ..	877	783	367	—	—	828
1,350 miles ..	909	812	379	—	—	860
1,400 miles ..	940	841	391	—	—	892
1,450 miles ..	972	870	403	—	—	923
1,500 miles ..	1,004	899	415	—	—	955
1,550 miles ..	1,036	928	427	—	—	987
1,600 miles ..	1,068	957	439	—	—	1,019

Definitions

Northern lines are defined as those assigned to the eastern district and Pocahontas region, except the Norfolk, Franklin and Danville Railway Company, and include the Toledo, Peoria & Western Railroad Company.

Southern lines are defined as those assigned to the southern region, and, in addition, the lines of the St. Louis-San Francisco Railway Company in southern territory and the line of the Norfolk, Franklin and Danville Railway Company west of Suffolk, Va.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 3d day of February A. D. 1965.

No. 29885

OFFICIAL-SOUTHERN DIVISIONS
IN THE MATTER OF DIVISIONS OF JOINT RATES BETWEEN OFFICIAL AND SOUTHERN TERRITORIES

No. 29799

AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, ET AL.

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY, ET AL.

It appearing, That a full investigation of the matters and things involved in these proceedings has been made, and that the Commission, on the date hereof, has made and filed a report on further hearing containing its findings of fact and conclusions thereon, which said report on further hearing is hereby referred to and made a part hereof:

It is ordered, That the Georgia & Florida Railway Company and the Norfolk, Franklin and Danville Railway Company, be, and they are hereby, made respondents in Docket No. 29885.

It is further ordered, That the complainants, cross-complainants, defendants, and respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before April 20, 1965, and thereafter to apply, divisions of joint all-rail interstate rates for the transportation of property between points in official territory, on the one hand, and, on the

other, points in southern territory, determined as provided in said report on further hearing.

It is further ordered, That the said complainants, cross-complainants, defendants, and respondents be, and they are hereby, notified and required to cease and desist, on or before April 20, 1965, and thereafter to abstain from asking, demanding, collecting, or receiving divisions of said joint rates upon bases other than those prescribed in said report on further hearing.

It is further ordered, That the order entered herein on January 12, 1953, as amended by order dated May 26, 1953, and the subsequent orders entered herein to the extent such said subsequent orders vacated or modified said order of January 12, 1953, as amended, be, and they are hereby, vacated and set aside as of the date the divisions prescribed in said report on further hearing become effective.

And it is further ordered, That this order shall continue in force until further order of the Commission.

By the Commission.

BERTHA F. ARMES,
Acting Secretary.

(SEAL)

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INTERSTATE COMMERCE COMMISSION

No. 29885 [1]

OFFICIAL-SOUTHERN DIVISIONS

IN THE MATTER OF DIVISIONS OF JOINT RATES BETWEEN OFFICIAL AND SOUTHERN TERRITORIES

Decided May 18, 1965

Upon petition of Norfolk Southern Railway Company, proceedings as they relate to specified traffic of that carrier reopened for reconsideration and findings modified accordingly. In all other respects, upon further consideration and amplification, findings in prior report, 325 I.C.C. 1, prescribing new just, reasonable, and equitable divisions of joint interterritorial rates between official and southern territories affirmed.

Appearances as shown in prior report.

SUPPLEMENTAL REPORT AND ORDER OF THE COMMISSION ON FURTHER CONSIDERATION

FREAS, *Commissioner:*

In the prior report herein [2] at 325 I.C.C. 1, we found, upon further hearing, that the existing divisions of joint interterritorial rates between official and southern territories were unjust, unreasonable, and inequitable. Just, reasonable, and equitable divisions were prescribed. Subsequently, on April 12, 1965, in civil action No. 15454,

1. This report also embraces No. 29799, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen & Rockfish Railroad Company, et al.

2. Referred to and made a part hereof.

Aberdeen and Rockfish Railroad Company, et al. v. United States, the United States District Court for the Eastern District of Louisiana, New Orleans Division, the Honorable E. Gordon West, entered an order temporarily restraining our order prescribing the aforesaid divisions from taking effect on April 20, 1965. Such action had the effect of temporarily mooting the request in the petition of the Norfolk Southern Railway Company, filed April 1, 1965, for
450 postponement of the said effective date pending determination of its request for reconsideration of the report and order insofar as it affects "traffic moving between points on Norfolk Southern and points in official territory via the gateway of Norfolk, Virginia."

Since the enactment of section 15(6) as part of the Transportation Act of 1920, it has been our policy in interterritorial divisions cases to employ a group method or system of determining just, reasonable, and equitable divisions. Because of the number of carriers and the numerous rates and divisions involved, the actual necessities of procedure and administration have required the adoption of such a method in order to accomplish the task imposed upon the Commission by Congress. *New England Divisions Case,* 261 U. S. 184, 196-9 (1923). To avoid serious injustice to any carrier, our procedures permit any railroad to be excepted from a group order, in whole or in part, on a proper showing of differing circumstances. Where it is demonstrated by competent and reliable evidence that a carrier's financial or revenue needs situation requires the preservation of its share of the joint rates on the same level as presently existing or at a level different than that to be maintained for the group as a whole, we may provide special individual treatment in order to maintain such carrier as part of the Nation's transportation system without regard to its costs of rendering the service.

On the basis of such a special showing by the Norfolk Southern, we conclude in our prior report that to prescribe

divisions for Norfolk Southern's originated and terminated traffic moving through the Norfolk gateway on the same basis as prescribed for other southern carriers in finding 2 would place that carrier in a deficit position so serious as to impair the rendering of adequate and continuous service to the public. Accordingly, our findings in the prior report, 325 I.C.C. 1 at pages 44, 51-52, sought to retain for the Norfolk Southern a percentage of revenue substantially the same as it presently receives on such traffic. A special scale was prescribed in column 5 of appendix C which increased the column 2 factors applicable to other southern carriers by 108 percent in order to give the Norfolk Southern approximately the same total revenue it now enjoys on shipments originating or terminating on its line and moving via the Norfolk gateway. We constructed column 5 on the basis of the only available evidence of record concerning an average haul formula which the Norfolk Southern urged would produce reasonably reliable results and achieve the end sought.

451 In its petition for reconsideration, however, the Norfolk Southern now asserts that the prorating factors of column 5 fail to preserve its revenue from the traffic in question by a substantial margin estimated to be $106,000 annually ($89,160 from general traffic and $17,699 from perishable traffic). This total amount is computed by expanding to an annual basis the application of the prescribed column 5 factors to waybills of all individual shipments of general traffic moving during the months of March 1958 and November 1959, and for perishable traffic moving during the 1959 season, the latter being admittedly incomplete and preliminary. Although these waybills covering individual shipments constitute the underlying data for the Norfolk Southern's traffic study, they are not of record in these proceedings. Petitioner makes no request to reopen the proceedings for further hearing for the purpose of introducing this evidence in the form of a more detailed study which would provide a more accurate means of con-

structing a special scale of prorating factors to preserve its *status quo.* It merely requests reconsideration and revision of the column 5 scale by the addition of 15 integers to each prorating factor in each mileage block of that scale.

Under the circumstances, it would ordinarily be improper for the Commission to base any supplemental order increasing the prorating factors in column 5 of appendix C on extra record facts. Moreover, the facts now relied upon by the Norfolk Southern are not based upon newly discovered evidence and, as such, fail to meet the appropriate test as specified in *Yourga v. United States,* 191 F. Supp. 373, 376-7 (W. D. Pa. 1961). The Norfolk Southern's petition merely represents a change in theory from that originally urged as a reliable method of constructing a scale of divisional factors which would preserve its *status quo.* Generally, all carriers subject to regulation under the provisions of the Interstate Commerce Act should be admonished against piecemeal trials. *Cf. Mechling Barge Line, Inc. v. United States,* 376 U. S. 375, 383-386 (1964). Ordinarily, any attempt to have the Commission revise its findings in response to a theory different from that originally urged by a party and adopted by the Commission tends to frustrate the administrative process and should not be countenanced in the absence of unusual circumstances. There is, however, such a circumstance present here which requires consideration.

In reply to the Norfolk Southern's petition, the northern lines assert:

> 452 Notwithstanding the insufficiency of the facts alleged in the petition to support the reconsideration or order sought, the Eastern railroads respondent herein, in order to simplify the issues in the said Court action, and to secure the prompt establishment of a uniform, simple, and readily applicable basis of divisions on the Norfolk gateway traffic originated or terminated by the Norfolk Southern, without prej-

udice to their position otherwise, and fully reserving their rights to apply for modification thereof as conditions may warrant, hereby consent to modification of the Commission's report and order of February 3, 1965, so as to increase, by 15 integers, each of the factors contained in Column 5 of Appendix C of the Commission's said report (325 I.C.C. 82).

We consider this consent of the northern lines to be, in effect, an agreement with the Norfolk Southern concerning divisions on the Norfolk gateway traffic under discussion. The question is whether we should modify our findings and the column 5 scale to include an additional 15 integers in each factor thereof in view of the incomplete state of the record. Divisions cases are in the nature of contractual disputes between carriers. Here, as elsewhere in the law, settlements should be encouraged. *Cf.* Administrative Procedure Act, section 5(b). Since the parties themselves are in agreement,[3] we see no reason to object to this course of action. From all that appears, the basis agreed to reflects a reasonable accord. We therefore approve the agrement as just, reasonable, and otherwise equitable. We further find that the northern lines' consent to an increase of each of the prorating factors in column 5 of appendix C by 15 integers warrants modification of that scale at this time to reflect the agreement of the parties concerned. The ends of justice would be better served by incorporating such agreement in our findings which, all parties agree, place the Norfolk Southern's divisions on a systematic basis for the first time by prescribing a modernized scale of divisional factors. As usual, the parties will be permitted to apply for modification thereof as conditions may warrant.

It should be noted, however, that the restraining order issued on April 12, 1965, in the pending court action en-

3. A circumstance rather unusual, unfortunately, in interterritorial divisional proceedings.

joins our prior order from taking effect on April 20, 1965, with respect to all divisional scales prescribed, pending hearing and determination of an application for interlocutory injunction by the three-judge statutory court. Varous protective conditions concerning repayment on the prescribed bases back to April 20, 1965, are offered in the event of either a grant or a denial of the interlocu-
453 tory injunction. Under the circumstances, our order herein prescribing an increase in the prorating factors of the column 5 scale for the Norfolk Southern will be effective from the date therein specified. However, actual settlement on the basis of the new divisions shall be postponed pending decision of the court on the application for interlocutory injunction and, thereafter, shall be governed by the court's order granting or denying said injunction and any protective payback conditions which may be imposed therein.

Insofar as the complaint in the pending court action is concerned, it has been brought to our attention that it alleges, *inter alia*, the following:

> The Commission's report contains no findings which relate to evidence of record the specific cost factors used in the construction of the divisional scales which it prescribed. Plaintiffs are unable to trace these cost factors to evidence in this record. From the record, it can be calculated that the application of the divisional scales prescribed by the Commission would reduce the revenues of the Southern railroads by $8,745,000.

Had this allegation been made by the filing with us of an appropriate petition as is plaintiffs' right, it would have been given full and proper consideration. In any event, we deem it to be in the public interest, and indeed our duty, to make our position and findings as clear and specific as possible insofar as the aforesaid matters are concerned.

Turning first to the allegation that the prior report contains no findings which relate to evidence of record the specific cost factors used in the construction of the divisional scales prescribed, we will amplify our prior discussion at 325 I.C.C. at pages 24-26 and 34-38. Specifically, the appendix hereto demonstrates, in detail, with appropriate references to the record, the manner of the construction of the scales. The fully distributed cost factors used are clearly shown as are the mathematics of their utilization. Reading the aforesaid discussion in light of this appendix, it is clear that the cost scales are based solely on evidence of record and are directly related to the specific cost factors involved. In so finding, we affirm our prior conclusions.

With regard to the asserted reduction in the revenue of the southern railroads by $8,745,000, the prior report indicated a difference of $7,948,004 as a reduction for the southern lines and as a gain for the northern lines. 325 I.C.C. at page 50. Our prior figure represented an overall estimate relating and applying the percentage of costs to the total revenue involved. To the extent that the
454 higher figure now urged by southern lines may reflect a more detailed picture when related to past individual movements, it does not warrant a change in our findings. The scales prescribed still reflect the restated costs of record and, for the reasons indicated in the prior report, can properly serve here as a guide for the determination of just, reasonable, and equitable divisions. *Cf. Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, 657-658, sustained in *Carolina & N. W. Ry. Co. v. United States*, 230 F. Supp. 581 (W.D. N.C. 1964), affirmed *per curiam* by the Supreme Court on April 26, 1965, 33 L.W. 3349.

In rejecting the old scale of divisional factors, we found numerous deficiencies therein.[4] Those deficiencies

4. See, e.g., 325 I.C.C. at page 37.

were viewed in light of our conclusion that an adjustment is required to compensate the respective groups of carriers according to their expenditures in the joint effort of handling the interterritorial traffic in question. No one deficiency was found controlling. In so holding, we also rejected arguments that equal factor divisions should be maintained. 325 I.C.C. at page 27. To the extent the present divisions did not meet the foregoing test, they were found unjust, unreasonable, and inequitable. 325 I.C.C. at page 50. In our judgment, all other factors of section 15(6) being substantially equal, the divisional scales prescribed on the basis of restated cost proportions will produce divisions which we consider fair and equitable as between the parties. No other basis has been shown to be appropriate here. In any event, except for the Norfolk Southern, no carrier at any time has satisfactorily demonstrated a special situation which required special and separate treatment. Accordingly, considering the scales prescribed in light of the traffic and cost studies referred to in our prior report, and the record as a whole, we find nothing revenue-wise or in any other respect which would warrant a change in our findings as to railroads in either territory, individually or as groups. We affirm our prior findings and conclusions as warranted by the record.

COMMISSIONER MURPHY, dissenting in part:

I am in accord with the majority's findings that the basis agreed to between the official lines and the Norfolk Southern is reasonable and may be approved. I do not agree, however, that the record contains evidence of specific cost factors which would support the construction of the divisional scales prescribed in the prior report. In this regard, I adhere to my separate dissenting-in-part expression in that report.

COMMISSIONER TUGGLE did not participate.

It is ordered, That insofar as the prior report, 325 I.C.C. 1, involved traffic moving between points on the Norfolk Southern and points in official territory via the gateway of Norfolk, Va., the instant proceedings be, and they are hereby, reopened for reconsideration on the present record, and the effective date of the order herein, dated February 3, 1965, and served March 2, 1965, having been temporarily restrained by the United States District Court for the Eastern District of Louisiana, New Orleans Division, on April 12, 1965, in civil action No. 15454, Aberdeen and Rockfish R.R. Co., et al. *v.* United States, et al., be, and it is hereby, vacated and set aside insofar as said order requires prescription of scales of prorating factors applicable to said traffic.

It is further ordered, That the complainants, cross-complainants, defendants, and respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before July 30, 1965, and thereafter to apply, divisions of joint all-rail interstate rates for the transportation of property on traffic originating or terminating on the lines of the Norfolk Southern Railway Company, and moving to or from points in official territory, via Norfolk, Va., determined as provided in the supplemental report on further consideration issued contemporaneously herewith and made a part hereof. Actual settlement on the basis of the new divisions shall be, and it is hereby, postponed pending decision of the three-judge statutory court on the pending application for interlocutory injunction, and thereafter shall be governed by and subject to the court's order granting or denying said in-

junction and any protective payback conditions which may be imposed therein.

It is further ordered, That our prior report and order herein, dated February 3, 1965, and served March 2, 1965, except as modified and amplified in said supplemental report on further consideration be, and it is hereby, affirmed in all respects and together with this order, subject to the above-mentioned restraining order of the court, shall continue in force until further order of the Commission.

By the Commission.

BERTHA F. ARMES,
Acting Secretary.

(SEAL)

Development of the unit costs underlying the divisional factor scales in columns 1, 2, and 6 of appendix

Line No.	Item	Source	North				
			Terminal	Way train	Thru train	Total line haul	Tota
	(1)	(2)	(3)	(4)	(5)	(6)	
1	F.D. costs—unadj. (on 325 I.C.C. at 25).	V.S. 40, table 6, p. 13 and exh. B corrected, p. 3.	$33,564,609	—	—	$136,052,934	$169,
	Platform adj. and way & thru train adj.						
2	Cost before adjustment	V.S. 40A, exh. G corrected, page 1 for terminal, page 2 for line haul.	33,564,609	—	—	135,397,990	
3	Cost after adjustment	V.S. 40A, exh. G corrected, page 2 for terminal, page 1 for line haul.	31,310,534	5,211,818	127,902,913	133,114,731	
4	Adjustments	Line 2 minus line 3	$—2,254,075	—	—	$—2,283,259	
5	Cost after adj. for switching and terminal companies.	V.S. 40A, exh. G, page 3 corrected	33,501,339	—	—	135,297,787	
6	Switching and terminal co. adjustment.	Line 2 minus line 5	—63,270	—	—	—100,203	—
7	Short line railroads (class II) adjustment.	See attachment hereto	—30,446	—	—	—7,279	
8	F.D. costs with four adjustments	Line 1 plus or minus lines 4, 6, and 7.	$31,216,818	—	—	$133,662,193	
9	Interchange, avg. per handling	Southern brief, page 146	$4.95	—	—	—	
10	Cars handled	V.S. 11, exh. 1, page 1	967,554	—	—	—	
11	Cost of interchange at gateways	Line 9 x line 10	+4,789,392	—	—	—4,789,392	
12	Subtotal	Line 8 plus or minus line 11	$36,006,210	—	—	$128,872,801	
13	Way and thru train percentage	Line 3 above	xxx	3.915%	96.085%	100.000%	
14	Way and thru train costs	Line 12, cols. 6 & 11, x line 13	xxx	$5,045,370	$123,827,431	—	
15	Costs, after train tonnage adustment.	V.S. 40A, exh. G, p. 7, corrected	—	—	120,614,461	—	
16	Costs, before train tonnage adjustment.	V.S. 40, exh. D, p. 1, corrected (table 10)	—	—	119,747,142	—	
17	Train tonnage, Pocahontas region	Line 15 minus line 16	—	—	$+867,319	—	
18	F.D. costs—adjusted (on 325 I.C.C. at 26).	Lines 12 and 14 plus 17	$36,006,210	$5,045,370	$124,694,750	—	$165
	Service units						
19	Route of movement ton-miles	Way train: V.S. 40, exh. D corrected, p. 4—total: V.S. 11, exh. 1, tab. B.	xxx	363,179,565	—	11,501,773,060	
20	Tons and short line ton-miles	V.S. 11, exh. 1, tab. B	28,055,720.7	—	—	10,125,161,202	
21	Circuity	Line 19 ÷ line 20	xxx	—	—	1.13596	
22	Short line ton-miles	Way; line 19 cols. 4 & 9 ÷ line 21—thru: line 20 minus way.	xxx	319,711,579	9,805,449,623	—	
23	Cwt. and short line cwt.-miles	Times 20	561,114,414	6,394,231,580	196,108,992,460	—	
24	Two interchanges for bridge traffic	Line 11, col. 3 times 2	$9,578,784	—	—	—	
	Unit costs (325 I.C.C. at 37)						
25	Interchange unrelated to distance	Line 24 ÷ line 23 (mills)	17.07	xxx	xxx	xxx	
26	Terminal, way train, and thru train	Line 18 ÷ line 23 (mills)	64.17	0.78905	0.63584	xxx	
27	Way train miles	On line 23: col. 4 ÷ col. 3 and col. 9 ÷ col. 8.	xxx	11	xxx	xxx	

APPENDIX

t costs underlying the divisional factor scales in columns 1, 2, and 6 of appendix C in prior report, 325 I.C.C. 1, 82

North					South				
Terminal	*Way train*	*Thru train*	*Total line haul*	*Total north*	*Terminal*	*Way train*	*Thru train*	*line haul*	*Total south*
(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
$33,564,609	—	—	$136,052,934	$169,617,543	$21,520,444	—	—	$172,785,865	$194,306,309
33,564,609	—	—	135,397,990	—	21,520,444	—	—	172,423,048	—
31,310,534	5,211,818	127,902,913	133,114,731	—	21,066,771	10,548,593	158,279,225	168,827,818	—
$—2,254,075	—	—	$—2,283,259	—	$—453,673	—	—	$—3,595,230	—
33,501,339	—	—	135,297,787	—	21,847,448	—	—	173,135,654	—
—63,270	—	—	—100,203	—163,473	+327,004	—	—	+712,606	+1,039,610
—30,446	—	—	—7,279	—37,725	+302,795	—	—	+226,552	+529,347
$31,216,818	—	—	$133,662,193	—	$21,696,570	—	—	$170,129,793	—
$4.95	—	—	—	—	$3.14	—	—	—	—
967,554	—	—	—	—	967,554	—	—	—	—
+4,789,392	—	—	—4,789,392	—	+3,038,120	—	—	—3,038,120	—
$36,006,210	—	—	$128,872,801	—	$24,734,690	—	—	$167,091,673	—
xxx	3.915%	96.085%	100.000%	—	xxx	6.248%	93.752%	100.000%	—
xxx	$5,045,370	$123,827,431	—	—	xxx	$10,439,888	$156,651,785	—	—
—	—	120,614,461	—	—	—	—	—	—	—
—	—	119,747,142	—	—	—	—	—	—	—
—	—	$+867,319	—	—	xxx	xxx	xxx	xxx	xxx
$36,006,210	$5,045,370	$124,694,750	—	$165,746,330	$24,734,690	$10,439,888	$156,651,785	—	$191,826,363
xxx	363,179,565	—	11,501,773,060	—	xxx	840,353,018	—	15,625,355,583	—
28,055,720.7	—	—	10,125,161,202	—	28,055,720.7	—	—	14,332,240,646	—
xxx	—	—	1.13596	—	xxx	—	—	1.09022	—
xxx	319,711,579	9,805,449,623	—	—	xxx	770,810,495	13,561,430,151	—	—
561,114,414	6,394,231,580	196,108,992,460	—	—	561,114,414	15,416,209,900	271,228,603,020	—	—
$9,578,784	—	—	—	—	—	—	—	—	—
17.07	xxx	xxx	xxx	xxx	xxx	—	—	xxx	xxx
64.17	0.78905	0.63584	xxx	xxx	44.08	0.67720	0.57756	xxx	xxx
xxx	11	xxx	xxx	xxx	xxx	27	xxx	xxx	xxx

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APPENDIX ATTACHMENT

Adjustment for class II (short line) costs

Line No.	Item (1)	Participation in Off.-Sou. traffic: 15 class II's exh. R-30 (2)	Participation in Off.-Sou. traffic: All class II's V.S. 36, exh. 4 (3)	Participation in Off.-Sou. traffic: Ratio col. (3) ÷ col. (2) (4)	Form A costs: 15 roads exh. R-30 (5)	Form A costs: All class II's col. (5) × col. (4) (6)	Witness Wooden* basic costs: 15 class II's V.S. 80, sec. D, exh. A (7)	Witness Wooden* basic costs: Ratio col. (7) ÷ col. (5) (8)	Witness Wooden* basic costs: All class II's col. (6) × col. (8) (9)	Adj. included in costs of Sou. lines col. (9) less col. (6) (10)
1	North of gateway:									
2	Cars	11,561	16,697	1.444252	$306,856	$443,177	—	—	—	—
3	Tons	342,197	490,926	1.434630	107,045	153,570	—	—	—	—
4	Terminal	—	—	—	—	596,747	—	—	$566,301	—$30,446
5	Car-miles	358,312	417,948	1.166436	35,178	41,033	—	—	—	—
6	Ton-miles	11,019,486	12,686,071	1.151240	88,280	101,631	—	—	—	—
7	Line-haul	—	—	—	—	142,664	—	—	135,385	—7,279
8	Total	—	—	—	537,359	739,411	$509,943	0.948980	701,686	—37,725
9	South of gateway:									
10	Cars	31,725	55,829	1.759779	538,056	946,860	—	—	—	—
11	Tons	1,027,923	1,839,072	1.789115	201,792	361,029	—	—	—	—
12	Terminal	—	—	—	—	1,307,889	—	—	1,610,684	+302,795
13	Car-miles	2,820,106	3,228,070	1.144663	163,320	186,946	—	—	—	—
14	Ton-miles	89,300,055	102,256,571	1.145090	691,318	791,621	—	—	—	—
15	Line-haul	—	—	—	—	978,567	—	—	1,205,119	+226,552
16	Total	—	—	—	1,594,486	2,286,456	1,963,632	1.231514	2,815,803	+529,347

* V.S. 37, pages 3-4 and appendix B therein.

APPENDIX D

A. Section 1(4) of the Interstate Commerce Act, 49 U.S.C. § 1(4), provides in pertinent part:

> It shall be the duty of every such common carrier establishing through routes . . . in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

Section 15(6) of the Interstate Commerce Act, 49 U.S.C. § 15(6), provides:

> (6) Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers

concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

B. Section 8(b) of the Administrative Procedure Act, formerly 5 U. S. C. § 1007(b) and now revised and codified as 5 U. S. C. § 557(c), (80 Stat. 387), provides:

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Section 10(e) of the Administrative Procedure Act, formerly 5 U. S. C. § 1009(e), and now revised and codified as 5 U. S. C. § 706 (80 Stat. 393), provides:

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—
>
> (1) compel agency action unlawfully withheld or unreasonably delayed; and
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (B) contrary to constitutional right, power, privilege, or immunity;
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutry right;
>
> (D) without observance of procedure required by law;
>
> (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
>
> (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
>
> In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

APPENDIX E.

LIST OF APPELLANTS

The Baltimore and Ohio Railroad Company
The Akron, Canton & Youngstown Railroad Company
The Ann Arbor Railroad Company
Bangor and Aroostook Railroad Company
Belfast and Moosehead Lake Railroad Company
Bessemer and Lake Erie Railroad Company
Boston and Maine Corporation
Boyne City Railroad Company
Canadian National Railways
Canadian Pacific Railway Company
Central Indiana Railway Company
The Central Railroad Company of New Jersey
(P. M. Shoemaker and John E. Farrell, Trustees)
Central Vermont Railway, Inc.
The Chesapeake and Ohio Railway Company
Chesapeake Western Railway
Chestnut Ridge Railway Company
Chicago & Eastern Illinois Railroad Company
Chicago & Illinois Midland Railway Company
Chicago South Shore and South Bend Railroad
Coudersport and Port Allegheny Railroad Company
The Delaware and Hudson Railroad Corporation
Detroit and Mackinac Railway Company
The Detroit and Toledo Shore Line Railroad Company
Detroit, Toledo and Ironton Railroad Company

Elgin, Joliet and Eastern Railway Company
Erie Lackawanna Railroad Company
Grand Trunk Western Railroad Company
Illinois Terminal Railroad Company
Indiana Harbor Belt Railroad Company
The Lehigh and Hudson River Railway Company
Lehigh Valley Railroad Company
The Long Island Rail Road Company
The Lorain & West Virginia Railway Company
Maine Central Railroad Company
Maryland and Pennsylvania Railroad Company
The Monongahela Railway Company
Monon Railroad
Morristown & Erie Railroad Company
The New York Central Railroad Company
The New York, New Haven and Hartford Railroad Company
(Richard Joyce Smith and William J. Kirk, Trustees)
New York, Susquehenna and Western Railroad Company
Norfolk and Western Railway Company
The Pennsylvania Railroad Company
Pennsylvania-Reading Seashore Lines
The Pittsburg & Shawmut Railroad Company
Pittsburgh & Lake Erie Railroad Company
Pittsburgh, Chartiers & Youghiogheny Railway Company
The Pittsburgh & West Virginia Railway Company
(Norfolk and Western Railway Company, Lessee)
Raritan River Rail Road Company
Reading Company
Richmond, Fredericksburg and Potomac Railroad Company

St. Johnsbury & Lamoille County Railroad
The Staten Island Rapid Transit Railway Company
Toledo, Peoria & Western Railroad Company
Wabash Railroad Company
(Norfolk and Western Railway Company, Lessee)
Western Maryland Railway Company
The Winfield Railroad Company

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CITATIONS

Cases:

Baltimore & Ohio R. Co. v. *United States*, 298 U.S. 349 ..... 2, 13, 14, 16

Boston & M. R.R. Co. v. *United States*, 208 F. Supp. 661, affirmed, 371 U.S. 26 17

Brotherhood of Maintenance of Way Employees v. *United States*, 221 F. Supp. 19, affirmed, 375 U.S. 216 17–18

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Chicago & N.W. Ry. Co. v. *Atchison, T. & S.F. Ry. Co.*, 387 U.S. 326 ..... 2, 11, 12, 15, 16, 17

Florida East Coast Ry. Co. v. *United States*, 259 F. Supp. 993, affirmed, 386 U.S. 8 18

285-459—68——1

JURISDICTION

The judgment of the three-judge district court was entered on August 22, 1967.[3] The notice of appeal was filed on October 23, 1967.[4] The jurisdiction of this Court is invoked under 28 U.S.C. 1253 and 2101(b). *Chicago and N.W. Ry. Co.* v. *Atchison, T. & S.F. Ry. Co.*, 387 U.S. 326, and *Baltimore & Ohio R. Co.* v. *United States*, 298 U.S. 349.

QUESTION PRESENTED

A petition filed with the Interstate Commerce Commission under Section 15(6) of the Interstate Commerce Act (49 U.S.C. 15(6)) sought modification of Commission-prescribed divisions for apportioning the revenues received from the interterritorial transportation of North-South freight under joint rates. After considering data and upon making findings relating to each of the Section 15(6) criteria, the Commission found the existing divisions inequitable and prescribed new divisions in proportion to the relative costs of the two groups of carriers in handling the interterritorial traffic at issue. The cost figures used by the Commission were basically derived from Rail

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[3] Although the district court's judgment is dated August 8, 1967, only Circuit Judge Wisdom signed it on that date—the other judges (West and Hunter) separately signing it on later and different dates at different places prior to its entry on August 22, 1967; this is reflected by the clerk's filing stamp (see B. & O. J. S. App. 33a).

[4] Since the sixtieth day after entry of judgment was October 21, 1967, a Saturday, filing of the notice of appeal in the district court on the following Monday, October 23, 1967, was timely. See Rule 6(a), F.R.Civ.P.; *Union National Bank* v. *Lamb*, 337 U.S. 38, 40–41. Also Saturday is a legal holiday in New Orleans (La. Rev. Stat. Ch. 2, § 55.

Form A,[5] which produces average unit costs for territorial freight service, although the Commission made certain adjustments to Rail Form A costs to reflect more accurately the costs of the particular traffic involved. The district court, in rejecting adjusted Rail Form A costs as a proper yardstick for this purpose, held that the Commission was required to base its computations on more refined cost data. The question presented is whether, in ascertaining the relative costs of service in an interterritorial divisions case, the Commission may rely on Rail Form A data as to territorial average costs, adjusted to reflect more accurately the costs of the particular traffic involved, or is required to develop more refined cost data.

[5] Rail Form A, first developed in 1939, is the basic formula almost universally recognized and used by the transportation industry and the Commission as an acceptable and reliable method of ascertaining and comparing relative costs of rail service in all types of rate proceedings involving a large and varied body of traffic. See *New York* v. *United States*, 331 U.S. 284, 315–318. Generally, the expenses of carriers assigned to geographical areas are first broken down into groups and are translated into territorial average unit costs of performing each of the kinds of services involved in moving specific shipments or in furnishing a given amount of service in each territory. The territorial figures achieved reflect the average unit costs for carload freight service under a wide range of operating conditions within each territory. Adjustments are contemplated to fit any peculiar characteristics of particular shipments for individual as well as groups of railroads. When the average unit costs are multiplied by the number of work units of each of the services found to be employed in moving the specific shipment or furnishing the given amount of service in the territory, the cost figures thus produced will be the substantial equivalent of specific costs of the particular traffic in question. Costs are placed into two classes—(1) out-of-pocket or variable expenses which vary directly with the kind

(footnote continued)

STATUTES INVOLVED

Section 1(4) of the Interstate Commerce Act (49 U.S.C. 1(4)), and Sections 8(b) and 10(e) of the Administrative Procedure Act (5 U.S.C. (Supp. II, 1965–1966) 557(c) and 706) are set forth in Appendix D to the Jurisdictional Statement filed by the Baltimore & Ohio R. Co., *et al.* in the companion appeal.

Primarily involved is Section 15(6) of the Interstate Commerce Act (49 U.S.C. 15(6)), which provides:

> Whenever * * * the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential * * * the Commission shall by order prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers * * *. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of

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of traffic handled; and (2) constant or fixed costs not capable of assignment to particular kinds of traffic which normally must be borne by various types of traffic in proportion to the ability of each to pay. The sum of the out-of-pocket costs plus a *pro rata* distribution of the constant or fixed costs is referred to as "fully distributed costs".

such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge.

STATEMENT

1. INTRODUCTION

This appeal concerns the imposition by a district court of certain novel standards for the Interstate Commerce Commission to follow in exercising its Section 15(6) authority to prescribe just, reasonable and equitable divisions of joint rates. The case arises out of the Commission's 1965 order prescribing new divisions of the revenues derived from interterritorial freight traffic moving under joint rates between points in the Northern and Southern[6] sections of the eastern part of the country. The rates subjected to the Commission's order cover all commodities, with a few exceptions, and produce approximately $496 million in revenues annually. The shift in revenues which would result from the new divisions is approximately $8 million a year, which amounts to an overall reduction of approximately three percent of the revenues of the Southern lines from the traffic involved (325 I.C.C. at 50, 453–454).

[6] As here used, the North embraces Official Territory, which lies generally east of Lake Michigan, Chicago, Peoria, and Cairo, Illinois, and St. Louis, Missouri, and north of the Ohio River and Norfolk, Virginia; the South embraces Southern Territory, which lies south of Official Territory and east of the Mississippi River.

2 PROCEEDINGS BEFORE THE COMMISSION

In 1953, in *Official-Southern Divisions*, 287 I.C.C. 497, the Commission prescribed divisions, on the basis of equal-mileage factors, for apportioning the North-South freight revenues. That determination was based on a finding that, in computing costs of service under Rail Form A standards, "the safest assumption for the future * * * [is] that neither contesting group will have an appreciably lower basis of operating costs than the other * * *" (287 I.C.C. at 526).

In 1956, the Northern roads petitioned for a general reopening and rehearing, and for modification of the divisions previously prescribed, on the ground, among others, that the Northern lines' costs had proved to be substantially higher than those of the Southern roads. Upon completion of the reopened proceeding in 1965, the Commission found that the existing divisions were in violation of Section 15(6) in that they allocated to the Southern lines a greater share of the revenues from the joint rates than that to which they were entitled (325 I.C.C. at 50). Considering each of the Section 15(6) criteria, the Commission found all of the relevant factors, except for costs, to be substantially equal,[7] but concluded that

[7] It was found that both groups are being operated efficiently and neither group should be considered as more or less efficient than the other (325 I.C.C. at 18); that there are no differences in importance to the public attributable to the services of the two groups (325 I.C.C. at 28), and that neither group has greater revenue needs than the other (325 I.C.C. at 49).

computations under restated Rail Form A cost standards established a decisive difference in the relative costs of rendering the service involved.

More specifically, the Commission pointed out (325 I.C.C. at 18–19, 24) that both groups of carriers had tried and submitted their cases on the basis of fully distriuted costs computed under Rail Form A, although the Southern lines had presented twelve adjustments to Rail Form A costs which, they asserted, would improve the accuracy of the figures so derived. The Northern lines introduced other detailed data, in considerable bulk, establishing the validity of the Rail Form A costs as a proper standard of measurement and the impropriety of the Southern lines' proposed adjustments. Disputes over the applicability of Rail Form A costs and the various adjustments occupied a large part of the administrative record. However, the only essential differences between the parties related to the degree to which Rail Form A territorial average costs should be modified to fit the specific traffic, and to the meaning and significance of the Southern lines' suggested adjustments. In a comprehensive analysis rejecting seven of the Southern lines' adjustments as unsound or based on unsupported and inapplicable facts or assumptions, the Commission concluded that the restated Rail Form A costs which it used, based on the Southern lines' cost and traffic studies except as to the rejected adjustments, "more reliably", "accurately", and "adequately reflect the

costs which are attributable to the traffic at issue" (325 I.C.C. at 25–26, 48).[8]

Noting that in the sample year selected by the Southern lines "the northern lines received 44.64 percent of the revenue while incurring 46.35318 percent of the fully distributed costs," the Commission determined that "[i]t is clear that an adjustment in the divisions is required to compensate the respective groups according to their expenditures in the joint effort of handling this interterritorial traffic" (325 I.C.C. at 50).[9] "To the extent that the present divisions do not meet this test," the Commission stated, "they are unjust, unreasonable, and inequitable" (*ibid.*). Accordingly, the Commission prescribed new divisions in the form of divisional mileage scales (*id.* at 82) which "are based on the fully distributed costs and divide the

[8] Consideration of such cost data lead the Commission to conclude that its "restatement of the costs, which are reasonably accurate and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis, shows that the cost level in 1956, the year both groups used in the final cost analysis, is somewhat higher in the North than in the South for like services. A consideration of all factors indicates that this situation will most likely continue in the immediate future" (325 I.C.C. at 48).

[9] In rejecting the contentions of the Southern Governors' Conference that uniform divisions based on equal-mileage factors should be continued, the Commission pointed out that "an adherence to uniformity as such, without a careful evaluation of the statutory criteria and the evidence of record, can hardly result in the fixing of just, reasonable, and equitable shares" (325 I.C.C. at 27). Application of the revised divisions would result, the Commission stated, in a 3.59-percent increase in the revenues of the Northern roads, and a corresponding 2.908-percent decrease in the revenues of the Southern lines (325 I.C.C. at 50).

revenue in the same proportion to those costs" (*id.* at 50), finding that "the results achieved through the application of the * * * scales here prescribed will for the future be just, reasonable, and equitable * * *" (*id.* at 51).[10]

3. PROCEEDINGS IN THE DISTRICT COURT

In March 1965, the Southern roads brought suit before a three-judge district court to enjoin enforcement of and to set aside the Commission's order establishing the new divisions. The court held that the Commission's restated Rail Form A costs, based on territorial costs of all freight service, were not a proper yardstick for measuring the costs of the particular traffic in a divisions case. In the court's view, the Commission was required "to take affirmative action to require the development of an adequate record as to the actual costs of handling the specific traffic at issue" (B. & O. J.S. App. 30a). The district court, accordingly, set aside the Commission's order as not supported by substantial evidence and reasoned findings within the meaning of Sections 8(b) and 10(e) of the Administrative Procedure Act, and remanded the case for further proceedings consistent with its opinion.[11]

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[10] See also 325 I.C.C. at 453–454, where, in its supplemental report, the Commission reaffirmed its conclusions, that revised divisions were required and that the cost data used provided an adequate evidentiary basis for the newly-prescribed divisional scales.

[11] However, the court granted a stay of judgment pending appeal (B. & O. J.S. App. 35a). Accordingly, the new divisions are in effect subject to conditions requiring a financial settle-

(footnote continued)

THE QUESTION PRESENTED IS SUBSTANTIAL

This appeal raises important issues concerning the administration of Section 15(6) of the Interstate Commerce Act, under which the Commission is charged with assuring that revenues from joint rates are fairly and equitably divided among the participating carriers. Despite language to the contrary in its opinion, the district court in effect held that the Commission may not compute the relative costs of handling particular traffic in an interterritorial divisions case on the basis of Rail Form A territorial average costs. In so holding the district court rejected a procedure previously approved by this Court and one which the carriers here had followed before the Commission—that of presenting data and providing analysis on the basis of Rail Form A computations, adjusted in certain respects to reflect more accurately the relative costs of handling the specific traffic at issue. In disapproving this established procedure, and in imposing on the Commission the burden of conducting special cost studies, the district court has significantly impaired the Commission's ability to resolve this or any subsequent divisions case of similar magnitude and to administer Section 15(6) effectively. Plenary consideration by this Court is thus warranted.

1. The distict court erred in holding that, in a divisions case involving virtually all traffic between two widespread territories, the Commission is required to develop more refined data reflecting the exact costs of

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ment among the carriers back to the date the Commission's order was permitted by the court to go into effect (April 20, 1965), if the judgment is affirmed on appeal.

the particular service and cannot accept, as a standard of measurement, computations produced through use of Rail Form A territorial average costs as appropriately adjusted.[12]

Years ago this Court sustained the integrity of the Rail Form A formula (*New York* v. *United States,* 331 U.S. 284), and has consistently approved the application of restated Rail Form A costs as a proper standard for measuring costs of service in divisions cases involving a large and varied body of interterritorial traffic handled by over 300 railroads (*Chicago & N.W. Ry. Co.* v. *Atchison, T. & S.F. Ry. Co.,* 387 U.S. 326), as well as a single commodity handled by two railroads intraterritorially (*Carolina & N.W. Ry. Co.* v. *United States,* 234 F. Supp. 114, affirmed, 380 U.S. 526). In addition, the Rail Form A formula is only one of a number of similar approaches developed by the Commission for determination of the costs of service of the various kinds of common carriers subject to its regulation. Rejection by the district court of Rail Form A cost figures necessarily raises doubt as to the validity of other similar formulas as well.

Whether a cost study is adequate or should have been refined or supplemented by additional data has long been recognized as a question of fact which is

[12] While the Commission's order was in terms ultimately set aside for lack of substantial evidence and adequate findings, the district court reached that conclusion only after rejecting the Commission's specific findings as to the adequacy of restated Rail Form A costs because these findings did not comply with the court's view of the proper standard of cost measurement to be applied (see, *e.g.*, B. & O. J.S. App. 11a, 25a, 29a).

within the special competence and discretion of the Commission. *E.g., Illinois Commerce Comm'n* v. *United States,* 292 U.S. 474, 481, 484. Here the parties requested that the fully distributed costs of service be utilized, and the Commission merely adhered to the recognized practice of restating Rail Form A territorial average costs to produce a reasonable reflection of the expenses incurred in handling the particular North-South traffic in question.[18]

Indeed, the use of Rail Form A cost figures, in ascertaining relative fully distributed costs in a large interterritorial divisions case such as this, is compelled as a practical matter. Rail Form A data is readily available, and does not include the biases which special cost studies conducted by the contesting parties might understandably reflect. Allocation of an appropriate part of some overhead or constant cost items to the particular traffic is plainly proper, and,

[18] The costing procedures or methods used here in adjusting the Southern lines' studies (325 I.C.C. at 24–25) are the same as those which the Commission employed with the unanimous approval of this Court just last Term in *Chicago & N.W. Ry. Co.* v. *Atchison, T., & S.F. Ry. Co.*, 387 U.S. at 351, 354, except that the costs here were computed on a fully distributed basis. In the *Chicago & N.W. Ry. Co.* case the Commission found significant the smallness of the percentage-point difference between two cost showings—one based on a study made in great detail of the particular service rendered, and the other involving a straight Rail Form A application. It concluded that "one substantiates the other, and supports the view that, for a large and varied body of traffic as here at issue, territorial average costs will be the substantial equivalent of specific costs". (321 I.C.C. at 49–50). In this case, a similar comparison of two such studies establishes that the percentage-point difference is almost infinitesimal (see 325 I.C.C. at 25–26).

if appropriate, Rail Form A cost figures can be restated or adjusted so as to exclude those constant cost items which should not be taken into acount. As to each item the question is essentially one of practical and informed judgment. In its report the Commission here pointed out that "[t]erritorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic moving to and coming from terminals in all parts of both territories" (325 I.C.C. at 96). Yet, the district court substituted its own view for that of the body charged by Congress with the duty of effectuating the public interest in the existence of "divisions that colloquially may be said to be fair" (*Baltimore & Ohio R. Co.* v. *United States,* 298 U.S. 349, 357–360).

The district court was quite correct in stating that here the Commission prescribed new divisions on the basis of the relative costs of service in handling the interterritoral traffic involved, and that the Commission concluded that neither group of carriers had shown its revenue needs to be greater than those of the other. But that hardly leads to the conclusion that the restated Rail Form A costs data used by the Commission was inadequate. Here the Commission compared the relative costs of the respective groups in providing the service at issue by using fully distributed costs adjusted in certain respects to reflect the costs of the particular traffic more accurately. What the Southern roads complained about—and persuaded the district court to accept—was that, in their view, the Commission had not made additional adjustments to the cost data which they had suggested. In that

respect, both the Southern lines and the district court seriously misconceive the Commission's function under Section 15(6).

Congress, in enacting Section 15(6), never intended for the Commission, whether in cases grounded on a comparison of costs of service or a consideration of other factors as well, simply to perform essentially ministerial tasks in calculating how joint freight rates should be divided. Rather, the Commission's duty is to effectuate "the public interest in maintaining all essential parts of the transportation system" (325 I.C.C. at 49). Here, in rejecting the Northern lines' argument "that their revenue needs are greater since the Southern lines' average rates of return are somewhat higher," the Commission specifically pointed out that its "prescription of divisions based on relative costs includes allowance for overhead and return, and in our judgment reflects a due proportion of the burden of maintaining the financial integrity and credit of the carriers involved" (*ibid.*).[14] Thus, in determin-

[14] Indeed, this Court has approved the Commission's use in divisions cases of cost evidence which reflects a due or fair proportion of the overall burden of doing business. *Baltimore & Ohio R.R. Co.* v. *United States*, 298 U.S. 349, 360, 378 (see 325 I.C.C. at 49). That the language of Section 15(6)—"property held for and used in the service of transportation"—is broad enough to support consideration of all railroad property—and thus fully distributed costs—was recognized in the *Baltimore & Ohio R.R. Co.* case, where the Court stated (298 U.S. at 360): "It requires no discussion to demonstrate that § 15(6) authorizes the Commission to take into account and give due weight to revenues from all transportation service, the operating expenses and taxes chargeable to the same and the amounts available as compensation for the use of all carrier property. And unquestionably the paragraph also em-

(footnote continued)

ing the adequacy of the cost data and the propriety of using fully distributed costs, as appropriately adjusted, the Commission was acting in consonance with the statutory duty imposed upon it by Congress. The significance of that congressional authorization, and the wide latitude of discretion which necessarily accompanies it, was disregarded by the district court in substituting its judgment for that of the Commission with regard to the sufficiency of the cost evidence on which its determination was based.

Nor is the district court's suggested distinction (B. & O. J.S. App. 25a–26a) of this Court's decision of last Term in *Chicago & N.W. Ry. Co.* v. *Atchison, T. & S.F. R. Co.*, 387 U.S. 326, apposite (see note 13, *supra*). There, although the lower court had not dealt directly with the cost issues, this Court found the "attacks on the legal invalidity of the Commission's findings on costs * * * so insubstantial that no useful purpose would be served by further proceedings * * *" (*id.* at 356). In the instant case, like in *Chicago & N.W. Ry. Co.*, "[t]he presentation and discussion of evidence on cost issues constituted a dominant part of the lengthy administrative hearings, and the issues were fully explored before the Commission," and "[i]ts factual findings and treatment of accounting problems concerned matters relating entirely to the special and complex peculiarities of the railroad industry" (*ibid.*). Here, like there, "the Commission's

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powers the Commission to take into account the revenues, expenses, taxes and returns attributable to the service covered by the divisions under consideration."

disposition of these matters is sufficient to show that its conclusions had reasoned foundation and were within the area of its expert judgment" (*ibid.*). It follows, then, that the district court failed to accord sufficient weight to the Commission's resolution of such matters in the instant case. Indeed, under that court's holding, little if anything is left to informed expertise and practical judgment of the administrative body in this regard. Such a result was not intended by Congress when it conferred sweeping authority on the Commission, in Section 15(6), to ensure the fairness of divisions in the public interest.[15]

It was never contemplated by Congress that costs of service in divisons cases be ascertained with exact and irrefutable mathematical precision.[16] Indeed, it is rather illusory to assume that the exact costs allocable to particular traffic can be definitively ascertained. In point of fact, any particular shipment's actual cost is necessarily an apportionment of the various expenses incurred in providing and maintaining facilities and in

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[15] Nor can enactment of the Administrative Procedure Act be viewed as having restricted the scope of the Commission's authority under Section 15(6), or as having overruled or qualified this Court's past decisions upholding that authority (see *Chicago & N.W. Ry. Co.* v. *Atchison, T., & S.F. Ry. Co.*, 387 U.S. at 342).

[16] Mathematical precision is, of course, technically impossible since empirical judgments are essential to the distribution of overhead. *New York* v. *United States*, 331 U.S. 284 at 324, 328; *Baltimore & Ohio R.R. Co.* v. *United States*, 298 U.S. 349 at 378. When conclusions are based on cost, the entire cost must be taken into account, *i.e.*, "the outlays that exclusively pertain to a given class of traffic must be assigned to that class, and the other expenses must be fairly apportioned." *Northern Pacific R.R. Co.* v. *North Dakota*, 236 U.S. 585, 597.

conducting rail operations generally. Here the contesting groups of carriers recognized the necessity of using the Rail Form A territorial average formula for measuring costs of service; the only difference between the parties involved the degree to which such costs should be modified to fit the specific traffic at issue. In view of its conclusion that, as restated with some adjustments, the Rail Form A cost data submitted was of such quality, credibility and accuracy so as to persuade it that such data adequately and reliably reflected the costs of handling the North-South traffic at issue, there was no need for the Commission to have embarked upon an independent investigation to determine whether the parties might be overlooking or concealing some relevant evidence. See *Chicago & N.W. Ry. Co.* v. *Atchison, T., & S.F. Ry. Co.*, 387 U.S. at 343. Under the circumstances, it can hardly be said that the Commission violated any statutory duty or abused its discretion in failing to have undertaken the development of more refined cost data.[17] Cf. *Brotherhood of Maintenance of Way Em-*

[17] Indeed, it is clear that only limited use could be made of the more refined cost data required by the district court. First, the Commission could decide that Rail Form A computations are not adequate to measure the costs of handling North-South traffic because the characteristics of the services performed in handling that traffic are so different from average traffic as to require special treatment (see *Boston & M. R.R. Co.* v. *United States*, 208 F. Supp. 661, 674-5 (D.C. Mass., 1962), affirmed 371 U.S. 26). But this possibility was provided for by Commission procedure and the contrary was shown. A second possible use would be to demonstrate that the Rail Form A territorial data with respect to individual services was so extreme as to distort the costs of handling North-South traffic. Here again, how-

(footnote continued)

ployees v. *United States*, 221 F. Supp. 19, 28 (E.D. Mich.), affirmed, 375 U.S. 216; *Florida East Coast Ry. Co.* v. *United States*, 259 F. Supp. 993, 1013–1014 (M.D. Fla.), affirmed, 386 U.S. 8. And, despite the Southern lines' assertion that the Northern roads had failed to carry their burden of showing that the existing divisions were unjust and should be revised (see B. & O. J.S. App. 12a), what the Commission actually concluded—as the district court acknowledged—was that "the Northern lines established a prima facie case that Rail Form A costs properly measure the cost of the specific traffic" (*id.* at 19a), and that the Southern roads had not overcome this *prima facie* case insofar as their suggested but rejected adjustments were concerned.

In sum, the district court's holding that the restated Rail Form A cost figures were improperly utilized by the Commission is erroneous and conflicts with established practice under decisions of this Court. It is of great importance to the administration of the Commission's Section 15(6) duty to effectively super-

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ever, the Commission allowed for such a showing. Thus, the Southern lines contended, for example, that empty-return ratio on auto parts cars should be adjusted. The Commission considered, but rejected, such allegations (325 I.C.C. at 69). Accordingly, the only new purpose to be served by refined cost data would be to challenge the propriety of the Rail Form A cost formula—either to require more accuracy or to restrict consideration to only those costs directly pertaining to the traffic in question. Moreover, this effort to achieve a theoretically perfect formula for ascertaining relative costs of particular traffic without allowances for overhead and return conflicts with the broad purposes underlying Section 15(6)—even in a case such as this where relative costs of service was the criterion on which the adjustment was grounded.

vise the fairness of divisions on interterritorial traffic that the judgment below be reversed.[18]

2. Although the district court placed major emphasis on the Commission's use of Rail Form A figures, it cited three cost items—solely related costs of suburban passenger service, switching costs, and empty-return ratios of box cars—as "important separate issues" of "greater significance as illustrations of the more pervasive error" in using Rail Form A as a standard for measuring the relative costs of particular traffic in a divisions case. We submit the court erred again in rejecting the Commission's computations with respect to these cost items on the ground that they were unsupported by reasoned findings and substantial evidence within the meaning of Sections 8(b) and 10(e) of the Administrative Procedure Act.[19]

The Commission adequately took into account in this case the questions whether expenses solely related to suburban passenger service should be excluded from the fully distributed costs and whether Rail Form A switching costs and empty-return ratios should

[18] In a concluding paragraph of its opinion, the district court stated that the cost data used by the Commission, in addition to the other infirmities which it had found, "[w]ith the passage of each year * * * becomes more and more vulnerable to the charge of staleness," so that a reopening of the proceeding by the Commission to obtain more current data "well might be warranted" (B. & O. J.S. App. 32a). Considering the time-consuming nature of complex, interterritorial divisions cases such as this one, however, the court's suggestion in this regard might result in the Commission's never being able to decide such cases on the basis of sufficiently recent data—thus negating its authority under Section 15(6).

[19] 5 U.S.C. 557(c)(A) and 706(2)(E).

be refined to reflect more accurately the costs of the North-South traffic involved. With respect to the latter items, the Commission made comprehensive findings rejecting the Southern lines' proposed adjustments because they were based on unsupported theoretical computations and factual assumptions and contained a variety of weaknesses, both in the sample used and in the studies themselves (325 I.C.C. at 64–68, 69–70, 71–77).[20] Here the Commission had before it an abundance of evidence, typical in character and ample in quantity, which established that the services performed in handling the interterritorial traffic shared the same facilities in common with other traffic and that the North-South traffic involved is average traffic, influenced by and in turn influencing other traffic.

With respect to suburban passenger deficits, the Commission first referred to the Southern lines' single example of solely related costs and found that "although many individual items of suburban service can be considered solely related, the facilities and service as a whole cannot be considered solely related

[20] For example, as to switching cost studies, the Southern lines made reference to only 41 out of 967,554 cars. As to empty-return ratios, the Commission applied empty-return ratios from a seven-day study developed from supervised data all railroads are required to furnish by Commission order, which produced ratios of 39 percent in the North and 33 percent in the South. This data included auto parts' cars. The Southern Lines proposed to assign an assumed 100-percent empty-return ratio for auto parts' cars and an assumed 30-percent ratio for all other box car traffic. The Commission found the assumptions on which the proposed adjustments were based erroneous and unsupported (325 I.C.C. at 68).

* * * and treated entirely apart from freight service and intercity passenger service" (325 I.C.C. at 78). The Commission then went on to conclude that (*ibid.*):

> Because the suburban service deficit includes common costs which must be incurred to provide freight service and intercity service, such costs are properly chargable to those services to the extent they cannot be recovered from suburban operations, and the deficit from suburban operations should not be excluded from the constant costs.[21]

Indeed, the Commission's approach in this regard is consistent with the established practice, specifically approved by this Court, of fixing freight rates on the basis of including passenger deficits as part of freight service costs. See *King* v. *United States*, 344 U.S. 254, 261, 267; *Chicago, M., St. P & P. R.R. Co.* v. *Illinois*, 355 U.S. 300, 307; *Public Service Comm'n of Utah* v. *United States*, 356 U.S. 421, 426. And here, the passenger deficits were unquestionably included in fixing

[21] In point of fact, the Southern lines supported inclusion of passenger deficits in the cost figures to be used in assaying the propriety of the existing divisions. However, they sought to have the Commission draw a distinction between intercity and suburban passenger deficits, since it was desirable, from their point of view, to have the intercity passenger deficits of the Southern roads included. The Commission found it unjustifiable, as a practical matter, to make such a distinction. The district court, however, overturned the Commission on this question, since it viewed intercity deficits as sufficiently related to the common facilities which must be maintained to provide freight service (B. & O. J.S. App. 20a), but, ignoring the Commission's express findings to the contrary, chose to regard suburban deficits quite differently.

the level of, and in granting general increases in, the joint freight rates on North-South traffic. See *Increased Freight Rates, 1948,* 276 I.C.C. 9, 32–39; *Increased Freight Rates E. W. & S. Territories, 1956,* 300 I.C.C. 633, 641–647, 657–658; *Railroad Passenger Train Deficit,* 306 I.C.C. 417, 477–479; and S. Rep. No. 445, 87th Cong., 1st Sess., p. 285.

Thus, after making the basic determination that passenger deficits should be included in the fully distributed costs, the Commission apportioned a share of the entire Northern and Southern lines' passenger deficits to the costs of the North-South service involved, in the same proportion that that particular traffic bears to the total traffic in each territory.[22] The district court rejected the method employed by the Commission, stating flatly that the Administrative Procedure Act requires findings on "the critical

[22] The formula employed by the Commission provides equal recognition and treatment of passenger deficits on each side of the border since it includes intercity and suburban deficits in the North and the South as well as local passenger service deficits in the South. Thus, contrary to the district court's view (B. & O. J.S. App. 20a–21a), this is not a case where the Commission has given controlling weight to passenger deficits and has required carriers in one part of the country to subsidize passenger operations elsewhere. Upon Southern lines insistence the Commission included passenger deficits within fully distributed costs. But as to anything beyond that it specifically found (325 I.C.C. at 49) that nothing "presented here offers a concrete basis on which to find that either group is entitled to a share of the joint rates larger than accruing under the divisions hereinafter prescribed on the basis of relative costs [which] includes allowances for overhead and return, and in our judgment reflects a due proportion of the burden of maintaining the financial integrity and credit of the carriers involved."

issue * * * [of] how much of the railroads' cost of commuter service was in fact common with the cost of freight service and how much was solely related to commuter service" (B. & O. J.S. App. 21a),[23] and concluded that the Commission failed to make adequate findings in this regard. However, a meaningful comparison of the relationship of fully distributed costs can only be made on the basis of including all passenger deficits. These deficits represent money lost to the respective railroads by reason of the fact that the Interstate Commerce Act requires the continued rendition of necessary passenger services. Such losses must be recovered from profitable freight traffic if the railroads are to remain solvent and continue to operate in conformity with the congressional objectives enunciated in the National Transportation Policy (49 U.S.C. preceding Section 1). Here the district court's decision would unduly restrict the Commission's ability to carry out the will of Congress

[23] At several places in its opinion, the district court referred to the fact that the Commission itself had noted that some costs of providing suburban service could be considered as solely related to that kind of service (B. & O. J.S. App. 20a–21a, 31a). In light of what it regarded as "a concession that many commuter facilities are solely related to that service and have nothing whatsoever to do with the cost of handling the North-South traffic or any other freight traffic" (*id.* at 21), the court found the Commission's treatment of suburban passenger deficits inconsistent and unsupportable. That some costs of providing suburban service might be considered as solely related, however, hardly leads to the conclusion that all such costs can or should be so regarded or that the Commission acted improperly in not excluding some of these costs here. Many costs of inter-city passenger service are also solely related thereto, e.g. stations, cars, train operation etc., and the Commission included these.

by prohibiting the dividing of joint rates in conformity with the factors which went into their composition. In this respect as well, therefore, the decision below would seriously interfere with the Commission's effective administration of Section 15(6).[24]

CONCLUSION

The district court has erected a rigid formula for ascertaining relative costs of service which will impair

[24] Several paragraphs of the district court's opinion discuss in quixotic fashion the question of "inherent territorial disadvantages" (B. & O. J.S. App. 16a–19a). As the court pointed out, it was strenuously urged that "as a matter of law the Northern railroads cannot have an increase [in divisions] in the absence of inherent territorial disadvantages" (*id.* at 19a). Stating that it could not determine whether the Commission had resolved this issue, the district court concluded that, if it had, its determination suffered from a lack of findings and substantial evidence, and that, if it had not, it had failed to resolve a material issue. Thus, the court stated that the case was being decided on other grounds but that the Commission "should decide and dispose of this contention in accordance with the Administrative Procedure Act" upon remand (*ibid.*). As the Commission pointed out, "In essence, however, other factors being equal, cost differences generally are the product of, and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories" (325 I.C.C. at 28). Continuing, the Commission further stated, "Indeed, the continued maintenance of divisions which, all other things being equal, do not reflect the relative costs of service would not suggest justice between the parties" (*ibid.*). Thus, the Commission simply determined that, in a divisions case where the carriers were found to be efficient and the fairness of existing divisions and the need for revised divisions was assessed on the basis of relative costs of service, it was appropriate to conclude that cost differences reflect inherent territorial disadvantages, insofar as that consideration is relevant under Section 15(6).

the Commission's Section 15(6) power to prescribe fair divisions. In substituting its own view as to what constitutes the proper yardstick for measuring relative costs, the district court departed from prior decisions of this Court and past Commission practice, and misconceived not only the requirements of Section 15(6) but also its own function as a reviewing tribunal. See *United States* v. *Pierce Auto Freight Lines,* 327 U.S. 515, 535–536. This appeal thus presents a substantial question in the administration of the Interstate Commerce Act and probable jurisdiction should be noted.

Respectfully submitted.

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DECEMBER 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967

MOTION TO AFFIRM

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FILED
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

THE BALTIMORE AND OHIO RAILROAD COMPANY, *et al., Appellants,*

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al., Appellees.*

INTERSTATE COMMERCE COMMISSION, *Appellant,*

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al., Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

THE BALTIMORE AND OHIO RAILROAD COMPANY, *et al.*, *Appellants*,
v.
ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*, *Appellees*.
No. 925

INTERSTATE COMMERCE COMMISSION, *Appellant*,
v.
ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*, *Appellees*.
No. 938

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

Appellee Southern railroads, listed in Appendix A hereto, move pursuant to Rule 16 of the Revised Rules of this Court that the judgment of the district court be affirmed on the ground that the judgment below is so clearly correct that plenary review by this Court is not warranted.

QUESTION PRESENTED

The Interstate Commerce Commission entered an order which abandoned the previously-established equal treatment of the North and the South in dividing the revenues from

freight traffic moving between those territories and substituted a new basis of divisions substantially inflating the Northern share of the joint revenues and correspondingly reducing the share of the Southern railroads. The question presented to this Court is whether the district court properly set aside this order and remanded the cause to the Commission on the ground that the order violated Sections 8(b) and 10(e) of the Administrative Procedure Act in that it was supported neither by reasoned findings nor substantial evidence in the record.

STATEMENT

Prior to the Commission's decision in this case, divisions of joint rates on North-South traffic were made by use of an equal-factor scale so that railroads in Northern and Southern territories received equal compensation for the same amount of service performed.[1] This equal basis of divisions had been in effect since 1953 when the Commission prescribed uniform divisional scales for use in dividing revenues on North-South freight traffic. *Official-Southern Divisions,* 287 I.C.C. 497, 523, 546-547 (1953). The establishment of equal divisions came shortly after the Commission's historic decision in *Class Rates Investigation, 1939,* 262 I.C.C. 447 (1945), affirmed by this Court in *New York* v. *United States,* 331 U.S. 284 (1947), which determined that the higher rate levels at that time applicable to the movement of rail freight throughout Southern territory constituted an unlawful discrimination against the South, and replaced the discriminatory structure with a uniform rate structure applicable throughout the United States east of the Rocky Mountains.

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[1] Thus, on a shipment travelling 300 miles in both Northern and Southern territories, the Northern and Southern railroads each received 50% of the joint rate (287 I.C.C. at 547, 552).

The Northern railroads thereafter petitioned the Commission for an inflation in the divisional scale for the North. Their claim for preferential treatment was based exclusively upon allegedly higher costs, as shown by the "Rail Form A" cost formula. The Southern railroads pointed out that the relevant costs were not territorial average costs, which are the product of the Rail Form A formula, but rather the costs incurred in handling North-South traffic—the traffic which produced the joint rates being divided.[2] They presented evidence showing that territorial averages do not measure the costs of performing the various services which go into the transportation of North-South freight traffic. They showed that for most items, such as running trains, maintaining roadway, and the like, Northern and Southern average costs were equal, and that a relatively few factors, such as higher territorial "interchange" costs, car costs, "switching" costs, "empty return ratios," and suburban commuter deficits, were responsible for producing the claimed higher costs in the North. The issue thus presented was whether these relatively few "inflating" territorial average factors were, in fact, related to North-South traffic, or whether on the other hand, the unadjusted territorial averages misstated the costs of North-South traffic.

The Commission held that Section 15(6) criteria such as "revenue need" and "public importance" were substantially

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[2] The relevant traffic, i.e., the North-South traffic which produces the revenues to be divided, yields only 6.0% of the total freight revenue of the Northern railroads, and only 21.4% of the freight revenues of the Southern railroads (Verified Statement No. 36, Ex. 5). Where, as here, the relevant traffic comprises only about 6% of the total traffic, it is necessary to distinguish between (1) territorial average costs developed for *all* traffic, and (2) the costs of North-South traffic, which the Commission found to be the controlling test in this case.

equal, and that divisions of joint rates should reflect the relative costs of handling North-South traffic (325 I.C.C. at 26, 50, 56). However, the Commission actually used unadjusted territorial averages to compute the costs of the controverted services involved in transporting North-South freight. On the basis of these averages, which were higher in the North than in the South, the Commission abandoned the divisional equality between the two territories and prescribed new divisions substantially inflating the share of the Northern railroads at the expense of the Southern railroads. For example, under the newly-prescribed divisions, for a shipment moving 300 miles in both Northern and Southern territories, the Northern divisional factor was 241, whereas the Southern factor was 206 (325 I.C.C. at 82). This constitutes a 17 per cent inflation in favor of the Northern railroads—an inflation which becomes much greater (up to 45 per cent) at the shorter hauls and somewhat less at the longer hauls (*ibid.*).

The Southern railroads filed this action in the District Court for the Eastern District of Louisiana to set aside that part of the Commission's order prescribing the inflation in the divisions of the Northen railroads. The Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners filed an intervening complaint.

The three-judge district court (Circuit Judge Wisdom and District Judges West and Hunter) set aside the Commissioner's order and remanded the cause to the Commission for further proceedings on the ground that the Commission erred "in prescribing divisions on the basis of the average cost of all traffic for this series of important elements of cost which are higher in the North for reasons that have not been shown to have any relation to the North-South freight traffic here at issue" (B&O J.S. App. A, p. 24a). The district court held that in a case such as this,

where "the outcome of factual issues is bound to cut deeply into economic relations on such a scale and when the result involves a departure from an equal division formula previously adopted," the Commission must satisfy the requirements of the Administrative Procedure Act that there be substantial evidence supporting findings with respect to the several critically important cost elements that accounted for the entire inflation awarded to the North (B&O J.S. App. A, p. 31a). The Northern railroads (B&O et al.) and the Interstate Commerce Commission appealed from the district court's judgment.[3] The United States, the statutory defendant, did not join in the appeals.

NO SUBSTANTIAL QUESTION IS PRESENTED BECAUSE THE DISTRICT COURT'S ACTION IN SETTING ASIDE THE COMMISSION'S ORDER FOR VIOLATIONS OF SECTIONS 8(b) AND 10(e) OF THE ADMINISTRATIVE PROCEDURE ACT WAS CLEARLY CORRECT.

I. The fundamental question presented to the district court was whether the Commission's use of the costs of one category of traffic (unadjusted territorial average costs) to measure the costs of a different category (the costs of

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[3] 28 U.S.C.A. § 2101, provides that the time within which to appeal an adverse judgment to the Supreme Court begins with the entry of that judgment. Commission counsel contend that the judgment of the district court was entered on August 22, 1967 (ICC J.S. p. 2) so that the Commission's notice of appeal was timely filed within the sixty-day time limit. However, the date of entry was August 8, 1967—the date appearing on the face of the decree (B&O J.S. App. B, p. 34a). The district court stated in its "Order Staying Decree," which was also dated August 8, 1967, that the Decree itself was "signed, dated, *and entered* concurrently herein on this date" *(id.* pp. 35a-36a) (emphasis added).

North-South traffic at issue) had any foundation in findings supported by substantial evidence. The absence of any such foundation was the basis on which the district court set aside the Commission's orders.

Yet counsel for the Commission and the Northern railroads would make it appear that the district court's decision contained principles much more far-reaching and ominous. They say that the district court imposed "novel standards" on the Commission (ICC J.S. p. 5), and that it invaded the Commission's authority in holding that the Commission "was obligated as a matter of law to develop more refined cost data described by the District Court as the 'actual costs of handling the specific traffic at issue'" (B&O J.S. p. 4). They also interpret the district court's decision as a "rejection by the district court of Rail Form A cost figures . . ." and as a holding that the Commission "cannot accept, as a standard of measurement, computations produced through use of Rail Form A territorial average costs as appropriately adjusted" (ICC J.S. p. 11). Finally, they contend that the district court overstepped the bounds of appropriate judicial review and left "little if anything . . . to informed expertise and practical judgment of the administrative body" (ICC J.S. p. 16; see also B&O J.S. pp. 21-22).

The "horribles" paraded in the Jurisdictional Statements of appellants are entirely imaginary, for they have no basis in the decision of the district court. The district court imposed no "novel standards" on the Commission. It was the Commission itself, not the district court, which held that the controlling factor in the determination of equitable divisions on North-South traffic should be the relative costs of the Northern and Southern railroads with respect to that particular traffic—not their relative costs on all

traffic in both territories (325 I.C.C. at 26, 50, 56).[4] The court below held, as it was obliged to do as a matter of law (p. 18, *infra*), that the Commission having selected the standard upon which the case was to be decided, the adequacy of the Commission's findings and evidence must be tested in the light of that standard (B&O J.S. App. A, p. 25a).

Nothing in the decision of the district court precludes the Commission from relying on Rail Form A costs "as appropriately adjusted" (see ICC J.S. p. 11). Nor does anything in that decision justify the Commission's concern that the integrity of Rail Form A is under attack, or its fear that other cost formulas have been tainted by the suspicion of invalidity (*ibid.*).[5] The district court recognized explicity that:

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[4] The Commission repeatedly and unequivocally stated its standard as "the relative costs of the parties reflecting their respective operations as to this traffic" (325 I.C.C. at 50), "the costs which are attributable to the traffic at issue" (326 I.C.C. at 26), and "the purpose is to measure the cost of services performed under the line-haul rates to be divided" (325 I.C.C. at 56). Yet the Northern railroads persistently and erroneously attribute the establishment of this standard to the district court (e.g., B&O J.S. pp. 16, 21, 9).

[5] Thus, the elaborate justification of Rail Form A offered by the Northern railroads (B&O J.S. pp. 13-16) only justifies that which is not in dispute. In the *Class Rate Investigation*, relied upon by the Northern railroads, "the intent of the cost study was to reflect territorial average operating conditions . . ." (262 I.C.C. at 588). This Court's decision in *New York* v. *United States*, 331 U.S. 284, 309 (1947) upheld the Commission's class rate action as intended to affect the rate levels on all traffic. As a result, that case can be cited as authority for the use of Rail Form A territorial averages to measure territorial average costs, a proposition we have nowhere disputed; but it is no authority for using Rail Form A, without adjustment or supporting evidence, to measure a 6% segment of those total costs.

> ". . . the Rail Form A cost formula was devised for the express purpose of measuring territorial average costs and has been widely used as an acceptable means of comparing relative transportation costs. It represents a comprehensive study entitled to full weight when the issue is one that it was designed to cover." (B&O J.S. p. 24a.)

However, when the Commission has adopted as its standard the costs of handling North-South traffic, unadjusted territorial averages are not enough, by themselves. Appellants are seeking to use unadjusted territorial averages, which are admittedly higher in the North than in the South, to measure the controverted and important elements of the costs of North-South traffic, without *any* evidence that the costs of the former measure the costs of the latter. However, as the district court stated:

> "[Territorial average costs] cannot appropriately be accepted *without further evidence for mechanical application to particular segments of traffic* in a divisions case. The 'many minute calculations' contained in Rail Form A were used to measure the overall average costs and certainly produce a misleading appearance of exactitude when applied mechanically to measure a specific cost of a specific body of traffic such as that involved here. Evidence of overall territorial averages surely can and should be considered, but as to specific important cost items the Commission should *not wholly and exclusively* rely on such averages. *United States* v. *Abilene and Southern R.R. Co.*, 265 U.S. 274; *Atchison, Topeka and Santa Fe Ry. Co.* v. *United States*, 225 F. Supp. 584.[6] The Commission stated its exclusive standard to be the relevant cost of handling the specific

[6] In that case, the District Court for the District of Colorado (per Judge Doyle) set aside orders of the Commission in a divisions case between the North and part of the Midwest for failure to comply with the requirements of the Administrative Procedure Act (225 F. Supp. at 606-607). Neither the Commission nor the United States appealed.

> freight traffic to which the divisions apply. We are persuaded that the order is not based on substantial evidence nor supported by reasoned findings within the meaning of Sections 8(b) and 10(e) of the Administrative Procedure Act because the use of territorial averages accounting for the Northern inflation has not been supported with findings of evidence relating any such inflation to the North-South freight traffic." (B&O J.S. pp. 24a-25a; emphasis added)

In referring to "specific important cost items" as to which the Commission relied upon Rail Form A without adjustment, the district court was well aware that the entire inflation in the Northern territorial averages stems from a few services as to which the averages are higher in the North than the South (B&O J.S. App. A, p. 11a). Freight transportation service is a combination of numerous different elements.[7] As to most services involved in hauling freight, such as operating trains and maintaining tracks and stations, the costs of the Northern and Southern railroads are the same. The overall Northern territorial average cost inflation is attributable to a few higher Northern service costs, such as car costs, the cost of commuter operations, the ratio of empty-to-loaded cars, the costs of interchanging and switching the cars (Verified Statement No. 39, pp. 62-63). Indeed, even now Commission counsel do not challenge the holding below that these several cost items are responsible for the entire Northern inflation.[8]

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[7] Rail Form A territorial costs are, as Commission counsel concede, broken down into the costs "of performing each of the kinds of service involved in that transportation" (ICC J.S. p. 3).

[8] The Northern railroads refer to Northern wage levels, which they say are higher than those in the South (B&O J.S. p. 22 n. 12). The cost of labor was not one of the elements of Rail Form A costs relied upon by the Commission to show a generally higher Northern cost level. Nor could the Commission have relied upon labor costs, because higher wages in the North, which are only 2 per cent higher

Because the Commission granted an inflation to the North under the standard of costs related to North-South traffic, and because the higher Northern territorial averages actually used by the Commission are higher only because of a few elements of costs, it is especially incumbent upon Commission counsel to state the reasons and point to the evidence in the record which justifies the use of unadjusted territorial average costs with respect to these critical services.[9] No such evidence is identified; there are only the averages themselves.

Since North-South traffic constitutes only 6% of all Northern traffic, it is arbitrary to assume without evidence that the average costs of 100% of Northern traffic would measure the costs of 6% of that traffic, as it would be arbitrary to assume that every 6% segment of the traffic would fairly represent the entire traffic. To say that samples must be based on evidence showing that they are

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than in the South and which occur in the "executive and professional" categories (Tr. R. 2629-31; Verified Statement No. 80, Ex. F-1, F-2), are offset by the far greater traffic density on the lines of the Northern railroads than is enjoyed on the lines of the railroads operating in the South (Verified Statement No. 36, Ex. 1, p. 21). Whatever the factors affecting the levels of these costs in the several territories their net effect is that the costs *per unit* of traffic are not higher in the North except for the several critical elements referred to in the text.

[9] Commission counsel have a curious way of putting the question. They say several times that the question is whether the Commission may rely on territorial averages "as appropriately adjusted" (ICC J.S. p. 11; see also pp. 3, 13, 17). The difficulty is that, with respect to costs of performing the particular services in North-South traffic which account for the Northern territorial inflation, the Commission did *not* rely on averages which were adjusted in *any* way, much less "appropriately adjusted." The Commission relied instead on unadjusted averages—with no evidence that these averages measured the cost of North-South traffic which the Commission found to be the decisive standard.

representative is not to say that samples may not be used.[10] By the same token, to require that averages must be supported by evidence indicating that they are fairly representative of the costs on a narrow segment of traffic is a far cry from holding that averages may not be used. Yet that is all that the district court required here: "[T]his formula was designed to measure the cost of handling all the traffic in two or more territories, and cannot appropriately be accepted *without further evidence* for mechanical application to particular segments of traffic in a divisions case" (B&O J.S. App. A, p. 24a) (emphasis supplied).

Where is the evidence to support the use of unadjusted average Rail Form A costs to measure the critical cost factors? There is no such evidence.[11] There is only the unsup-

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[10] The Commission itself has subsequently held, in *Increased Rates within Southwest, and Between Colo. & Wyoming and Southwest*, 326 I.C.C. 216, 236-237 (1966), that "if selected carriers are used as a basis for a showing of revenue needs for all respondents, competent testimony must be produced to establish that they are typical of the group as a whole. . . . Facts, and not unsupported conclusions or opinions of interested witnesses, are required for such a finding."

[11] The Northern railroads now refer to evidence which they say shows "that territorial costs properly show the cost of performing the service on the North-South traffic (V.S. 8)" (B&O J.S. pp. 14-15). The Verified Statement referred to is a "train utilization study" which was not even cited by the Commission and which had nothing to do with the service costs responsible for the Northern inflation; it dealt with the costs of operating trains—costs which do not account for the inflation granted to the North. With respect to the cost elements that do account for that inflation, the witness who introduced the "train utilization study" conceded that he knew nothing about empty return ratios (Tr. R. 499); and a study of freight trains obviously had no bearing on the costs of commuter service or the other elements accounting for the inflation.

By relying on the "train utilization study," appellants in effect admit that unadjusted averages, by themselves, are insufficient to

ported conclusion that territorial average costs are appropriate to the traffic in this case because "it is a large and varied body of traffic" (ICC J.S. p. 13; B&O J.S. p. 23). However, this statement was made in connection with a single proposed adjustment, having to do with switching costs (325 IC.C. at 76). It does not alter the uncontroverted fact that North-South traffic constitutes only 6% of the total Northern traffic. Furthermore, the varied nature of this traffic has nothing to do with the fact that by relying on territorial average costs the Commission included deficits arising out of Northern commuter operations unrelated in *any* way to North-South traffic. Nor does it lend any support to the Commission's use of territorial average empty return ratios 10% higher in the North than the South even though the Northern average is inflated by the unusually high empty return ratios of special box cars which are used to a much greater extent in the North than in connection with the North-South traffic—such as the specially-designed auto parts cars in service in the Detroit area (325 I.C.C. at 64, 54). Similarly, it is completely unrelated to the Commission's use of 58% higher Northern costs of interchanging cars at the territorial gateway (325 I.C.C. at 37, 456)—an inflation unjustifiable where the costs are incurred by the Northern and Southern railroads in handling the *same* cars at the *same* points.

The Northern railroads cite *Chicago & N.W.R. Co.* v. *A.T. & S.F. R. Co.*, 387 U.S. 326 (1967), as authority for the proposition that the cost studies used in divisions cases

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show the costs of North-South traffic. Yet appellants are unable to point to any evidence which even purports to relate to North-South freight traffic the average costs for those elements which account for the entire inflation given to the Northern railroads. This Court has held that use by the Commission of general formulas and unsifted averages cannot take the place of findings and evidence. *I.C.C.* v. *Mechling*, 330 U.S. 567, 581-583 (1947).

can be "predicated upon Form A territorial averages" (B&O J.S. p. 19), and Commission counsel argue to the same effect (ICC J.S. p. 15). But no party here contends that Rail Form A cannot provide the framework for analysis. The critical point here is that neither the Northern railroads nor the Commission counsel can cite this Court's decision in that case to support the abandonment of territorial equality in divisions without substantial supporting evidence. In *Chicago & N.W. R. Co.*, the Commission's order reduced a divisional inflation favoring the Mountain-Pacific lines (387 U.S. at 331-332, 336-337), whereas in this case the Commission's order *created* the Northern inflation which is now under attack; also, the alignment of the parties is reversed since in this case it is the victims—not the beneficiaries of the inflation—who attack the order. The district court in this case gave full consideration to, and carefully distinguished the *Chicago & N.W. R. Co.* case (B&O J.S. App. A, pp. 25a-26a).

Finally, it is argued that matters of cost are questions of fact "within the special competence and discretion of the Commission" (ICC J.S. p. 12), and that the district court's decision reduces the Commission's function to "ministerial tasks" of performing calculations (ICC J.S. p. 14; see also B&O J.S. pp. 21-22). The Commission fears that "little if anything is left to informed expertise and practical judgment" (ICC J.S. p. 16). But the decision below in no way invades the Commission's special province. The court below explicitly recognized the special responsibility of the Commission:

> "We start, of course, from the premise that on the subject of transport economics, the Commission's judgment is entitled to great weight. The appraisal of cost figures is itself a task for experts and, unlike a problem in mathematics, it cannot be precisely right or wrong." (B&O J.S. App. A, p. 24a)

The district court understood that: "As to the sufficiency of the evidence to support the order, it is *not* the proper function of this Court to substitute its judgment or to weigh evidence" (*ibid.* p. 26a) (emphasis supplied). Its decision thus represents no more than an application of the requirements set forth in the Administrative Procedure Act, and enforced by this Court in *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 168 (1962):

> "[The Commission] must make findings that support its decision, and those findings must be supported by substantial evidence. *Interstate Commerce Comm'n* v. *J-T Transport Co.*, 368 U.S. 81, 93; *United States* v. *Carolina Carriers Corp.*, 315 U.S. 475, 488-489; *United States* v. *Chicago, M., St. P.R. Co.*, 294 U.S. 499, 511."

What counsel for the Commission are now asking is an end to any effective judicial review of its decisions in matters where costs are of central significance. Appellants are contending, essentially, that the requirements of the Administrative Procedure Act do not operate with respect to the Commission in prescribing divisions. But they are unable to cite any case which would relieve the Commission of its obligations under the Act to support its action with findings based upon substantial evidence.[12]

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[12] The Northern railroads rely heavily on the pre-Administrative Procedure Act decision in *Illinois Commerce Commission* v. *United States*, 292 U.S. 474 (1934) (B&O J.S. pp. 21-22, 25), even though that case had nothing whatsoever to do with the requirement of adequate findings or substantial evidence. It involved a Commission order directing "the removal of unjust discrimination against interstate commerce, resulting from disparity of the intrastate and interstate switching rates of interstate rate carriers in the Chicago Switching District" (292 U.S. at 476), based on a specific cost study of switching movements in Chicago. That case would be analogous to the present case only if the cost study actually relied upon to measure Chicago switching costs had been developed from the costs of all switching movements throughout the entire State of Illinois, or perhaps the entire Official Territory.

The district court below inquired whether there was any rational basis or any evidence to support the use of unadjusted territorial averages in place of the costs of several particular services involved in North-South traffic. It could find none. Although it was the district court's task to decide in the first instance if the requirements of the Administrative Procedure Act had been met, and despite the holding below that there was no substantial evidence to support the Commission's use of unadjusted territorial averages to measure the particular cost factors which account for the entire inflation given the North, appellants do not even suggest that this Court should actually review the evidence in the record to determine if the lower court was in error. They ask that this Court reverse the decision below, but they do not refer to any part of the record where such evidence can be found. Indeed, Commission counsel now attempt to defend its orders with the theory that the district court should not have inquired into the basis for the Commission's reliance on Rail Form A averages. This kind of defense is wholly incompatible with the obligations imposed on both the Commission and reviewing courts by the Administrative Procedure Act. *Burlington Truck Lines* v. *United States,* 371 U.S. 156, 167-168 (1962); *Mississippi River Fuel Corp.* v. *F.P.C.,* 163 F.2d 433, 439 (D.C. Cir. 1947); *Government of Guam* v. *Federal Maritime Commission,* 365 F.2d 515 (D.C. Cir. 1966).

II. As to the seven cost elements of North-South freight transportation which account for the entire Northern cost inflation, the Commission used unadjusted Rail Form A territorial average costs to measure the costs of North-South traffic. The district court found that inclusion of one such cost—suburban passenger deficits—as part of the cost of North-South traffic through reliance on territorial averages was "typical of the overall approach of the Commission" (B&O J.S. App. A, p. 20a).

The territorial average costs used by the Commission include deficits attributable to both intercity passenger service and suburban commuter service. The Commission held that deficits attributable to passenger service should be assessed as a part of the cost of freight service where there are common costs, and no party disputes this finding. Common costs include the costs of maintaining track and bridges and the like where passenger and freight trains use the same facilities. Consequently, if passenger service is unable to bear its full share of the burden of facilities which must be maintained to handle freight trains, the burden may properly be assigned to freight service.

The same cannot be said of many commuter facilities. The operation of suburban commuter trains requires equipment and facilities which have no relation at all to freight service. Many of the tracks are different, as are the terminals and yards. The Commission recognized this when it expressly found that "many individual items of suburban service can be considered solely related . . . to suburban service" (325 I.C.C. at 78). The Commission itself thus found that many of the costs incurred in providing suburban commuter service were completely unrelated to any freight traffic, much less North-South freight traffic. Yet, through the use of Rail Form A unadjusted averages, the deficits arising out of all Northern commuter operations—including those completely unrelated to freight traffic—were included in the Northern average costs which the Commission applied to North-South traffic.

The district court recognized the inconsistency in the Commission's finding that many aspects of commuter operations are totally unrelated to North-South freight traffic, and its simultaneous inclusion of deficits arising from those unrelated commuter operations as a part of the costs of North-South freight traffic. There is no rational support

for the inclusion of such deficits as a part of the relevant costs which, by the Commission's own test, are the costs of the North-South freight traffic. Thus, under the Commission's own findings the pertinent question was what part of the North's total suburban operation was related, by virtue of common facilities, to North-South freight traffic. The Commission's finding, quoted by appellants (ICC J.S. p. 21) justifies attributing a portion of *common* costs to freight traffic costs. But that finding provides no justification whatever for attributing to North-South freight traffic any costs that are solely related to commuter service and thus have no relation to North-South freight traffic. As the court below held (B&O J.S. App. A, p. 21a):

> "The critical issue on this cost item was to determine how much of the railroad's cost of commuter service was in fact common with the cost of freight service and how much was solely related to commuter service. But, in accordance with its general approach to these issues the Commission, by adopting Rail Form A, inflated the Northern railroads' freight costs by the entire commuter deficit of those railroads, without regard to the plain conflict between this action and its own finding that 'many individual items of suburban service can be considered solely related . . . to suburban service.'"

The district court thus held that the Commission's result was arbitrary and unsupported by evidence, and set aside the order, which would have placed the burden of Northern commuter deficits, unrelated to North-South freight traffic, on the Southern economy, its railroads and its people, through an inflation in the Northern divisions.

The present attempts of counsel for the Commission and the Northern railroads to bridge the gap between the costs of North-South freight traffic held by the Commission to be controlling and the costs actually used violate the

rule in *S.E.C.* v. *Chenery Corp.*, 332 U.S. 194 (1947).[13] Commission counsel now argue that because commuter deficits may be taken into account in determining rates, they should also be taken into account in making divisions of those rates (ICC J.S. p. 21). This theory was not advanced by the railroads in the proceedings before the Commission and did not constitute any part of the basis upon which the Commission decided the case. On the contrary, the Northern railroads took the position that "a change in divisions is not dependent on a change in rate levels," and admitted that the North sought "*disproportionate* divisions of a uniform structure of rates."[14]

As the Northern railroads recognized before the Commission, rate levels are no higher in the North than in the South. Rate levels have been the same since the Commission proceedings in which equal class rates were upheld by this Court in *New York* v. *United States*, 331 U.S. 284 (1947). The Northern railroads, having lost their preference in the form of lower rates, now seek to regain that preference in the form of inflated divisions.

This Court has recently recognized the difference between the issues involved in rate cases and those in divi-

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[13] "(A) simple but fundamental rule of administrative law . . . is . . . that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper the court is powerless to affirm the administrative action." (332 U.S. at 196). See also *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 168-169 (1962); and *N.L.R.B.* v. *Metropolitan Life Ins. Co.*, 380 U.S. 438, 443-444 (1965).

[14] Reply of Eastern Railroads to the Exceptions of Southern Governors' Conference, et al., dated November 30, 1963, p. 18 (emphasis in original).

sions cases.[15] As a result, the cases cited by appellants (ICC J.S. p. 21; B&O J.S. p. 28), such as *King* v. *United States*, 344 U.S. 254 (1952), with respect to the determination of rate levels only emphasize the violation of the rule in *Chenery, supra*.[16]

Finally, Commission counsel argue that since deficits represent "money lost," and since such losses must be recovered "if the railroads are to remain solvent," the Commission must consider these deficits in determining divisions (ICC J.S. p. 23). This argument rests on a theory of the general revenue needs of the Northern railroads,[17] and

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[15] This Court's decision in *Chicago & N.W.R. Co.*, relied upon below (B&O J.S. App. A, p. 22a), fully supports the decision of the district court (387 U.S. at 350):

> "[W]hile the Commission has sometimes acted to offset passenger deficits in freight rate cases, the issues are quite different when, in a divisions case it is argued that carriers in one part of the country should subsidize the passenger operations of carriers elsewhere."

[16] *King* v. *United States*, 344 U.S. 254, (1952), involved the prescription of rates—not divisions. And this Court recognized that the *King* case had nothing to do with facilities "solely related" to passenger service: "In Florida, however, the discontinuance of railroad passenger service would not permit the discontinuance of high-speed tracks and equipment because of the need for fast freight schedules to transport perishable fruits and vegetables from Florida" (344 U.S. at 265).

[17] The Jurisdictional Statement of the Northern railroads also makes it clear that they are concerned with "revenue needs" rather than the "costs of North-South traffic"; they refer again to their argument, which the district court rejected, that the costs of commuter deficits should be "treated as overhead, or constant costs, the allocation of which is required *because of the need for revenue* from the freight service to continue operations" (B&O J.S. p. 27) (emphasis supplied).

King v. *United States*, 344 U.S. 254 (1952), cited by the Northern railroads (B&O J.S. p. 28), had to do with whether higher freight rates were justified by revenue needs (344 U.S. at 267-268); it had nothing to do with the costs of any category of traffic.

in effect admits that the deficits arising from commuter services are unrelated to the relative costs of North-South traffic. The revenue needs question was considered by the Commission, which determined that there was no difference in the revenue needs of the railroads of the two territories (325 I.C.C. at 49):

> "Accordingly, we see no justification at this time for adding any special increment favoring one group of carriers over the other. We find that no affirmative reasons appear in this record which would warrant any adjustment of the divisions in question over and above the relative costs of service, either on the grounds of *greater revenue need* or otherwise." (emphasis added)[18]

It was argued before the district court, as it is now argued here, that the Commission charged the entire Northern suburban commuter deficit to freight traffic "as a matter of policy, and that is that there is a need for that revenue to continue operations." (B&O J.S. App. A, p. 21a) The district court rejected the argument as follows (B&O J.S. App. A, p. 21a):

> "The complete answer to this contention is that the Commission did no such thing. The revenue need issue was hotly contested before the Commission, each group contending that its needs were greater—the Northern railroads, on the basis of lower rates of return; the Southern railroads, on the basis of their growing service responsibilities to an expanding economy. The Commission rejected both contentions. . . ."

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[18] Having admitted that they are relying on "revenue needs," the Northern railroads argue that the district court ignored the Commission's finding permitting the allocation of "overhead" to relative costs. (B&O J.S. p. 27). But the passage they cite (325 I.C.C. at 49) refers only to overhead costs which are related to the costs of North-South freight traffic. The next two sentences of the Commission's report expressly reject the revenue needs argument.

Thus, the resurrection of the revenue needs question at this time is a clear violation of the *Chenery* rule, and amounts to a concession that the Commission's treatment of commuter deficits cannot be defended on the basis adopted by the Commission itself.

The district court cited switching costs and empty-return ratios as two other illustrations of the Commission's error in relying, without evidence, on unadjusted territorial average costs (B&O J.S. App. A, pp. 22a-23a). The district court held that the Commission's reliance on these averages was not supported by findings based upon substantial evidence in the record (B&O J.S. App. A, pp. 22a-24a, 31a). Commission counsel would brush these objections aside, not by pointing to evidence in the record to show that the averages do in fact measure the costs of North-South traffic, but by criticizing the Southern studies for a "variety of weaknesses" (ICC J.S. p. 20). But the court below was not passing on the strength or weakness of the Southern railroads' cost adjustments; it simply held that there was no evidence to support the use of higher costs in the North with respect to these cost elements (B&O J.S. App. A, pp. 30a-31a).[19]

Commission counsel object to the district court's references to the Commission's powers to obtain cost evidence, arguing that there was no need for the Commission to act because the unadjusted territorial averages, in their view, adequately measured the costs of handling North-South traffic (ICC J.S. p. 17). However, Commission counsel

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[19] The district court found that (B&O J.S. App. A, pp. 19a-20a): "The Commission did not assume any responsibility for the development of a more adequate record, and in several instances held that the absence of comparable evidence in the record itself [i.e. evidence as to Northern costs comparable to that presented by the Southern railroads as to their own costs] prevented adjustments in territorial averages."

can hardly object to the holding below that the Commission has ample power to obtain relevant evidence.

The point of the district court's conclusion is that the Commission's finding of higher costs in the North was not supported by evidence (B&O J.S. App. A, p. 29a). The burden was on the North to produce such evidence; but even where the North did not present adequate data, the Commission had ample power to require its production. The court below simply held that, the necessary evidence not having been obtained by any means, the inflation in Northern divisions was unsupported and unjustified.[20]

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[20] The Northern railroads also suggest that the district court erred in failing to reserve jurisdiction to enter further orders thought to be "proper" (B&O J.S. p. 32). However, they never asked the court below to reserve jurisdiction. Moreover, they agreed in the court below to re-settle all revenues accruing during this litigation in accordance with the pre-existing basis of divisions, in the event the Commission's orders were set aside. Such a refund simply reflects the inflation to which they have not shown they are entitled.

As to the loss of the inflation in future years, the Northern railroads say the Commission should have reserved jurisdiction because "the Court below found nothing to warrant any inference, that development of the more refined costs it deemed essential would at all warrant lower divisions for Northern lines than those prescribed in the orders under review. . . ." (B&O J.S. p. 32). On the one hand they attack the court below for second-guessing the Commission—which it did not do; on the other hand they suggest that the district court made a mistake in not speculating about what divisions *might* be warranted upon remand.

Furthermore, even after complying with their agreement to repay the difference between the prescribed divisions and the pre-existing divisions, the Northern railroads will still be the beneficiaries of a terminal factor in the pre-existing divisional scale which the Commission found to be excessive in the amount of $7,426,000 annually—an amount which, in the almost three years since the Commission's decision, has amounted to over $22 million (325

CONCLUSION

The district court has properly applied the standards of the Administrative Procedure Act to the Commission's orders at issue in this case. It has emphasized—not undermined—the Commission's responsibilities. The district court, in remanding the cause to the Commission, has not restricted the Commission in its use of Rail Form A costs or any other factor so long as their application under the standard adopted by the Commission is supported by evidence.[21] No new limits or standards have been imposed on the Commission's discretion. There is only the requirement that its orders be based upon findings which are supported by evidence.

This case has been remanded to the Commission for further proceedings consistent with the requirements of the Administrative Procedure Act. The United States, which is charged by statute with the responsibility for defending orders of the Commission, has not appealed this disposition of the case.

I.C.C. at 37, B&O J.S. App. A, p. 5a). The district court concluded that the Commission's order was not severable, and set aside the correction of the excessive terminal factor at the same time it set aside the Northern inflation (B&O J.S. App. A, p. 6a).

[21] Contrary to the interpretation of the Northern railroads the district court did not hold that the Commission must "start all over again" (B&O J.S. p. 31). On the contrary, while observing that evidence was becoming more and more vulnerable to the charge of staleness, the court specifically stated that its observation did *not* "indicate that it would necessarily be an abuse of discretion for the Commission not to re-open the investigation to receive later operating figures. . . ." (B&O J.S. App. A, p. 23a).

Accordingly, the judgment of the district court should be affirmed without further argument.

Respectfully submitted,

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Of Counsel.

January, 1968

APPENDIX A

Aberdeen and Rockfish Railroad Company;

The Alabama Great Southern Railroad Company;

Apalachicola Northern Railroad Company;

Atlanta and West Point Railroad Company;

Birmingham Southern Railroad Company;

Cape Fear Railways, Incorporated;

Carolina and Northwestern Railway Company;

Central of Georgia Railway Company;

Chattahoochee Valley Railway Company;

The Cincinnati, New Orleans and Texas Pacific Railway Company;

Clinchfield Railroad Company;

Columbus and Greenville Railway Company;

Durham and Southern Railway Company;

Florida East Coast Railway Company;

Frankfort and Cincinnati Railroad Company;

Georgia & Florida Railway Company;

Georgia, Ashburn, Sylvester and Camilla Railway Company;

Georgia Northern Railway Company;

Georgia Railway and Banking Company;

Georgia Southern and Florida Railway Company;

Gulf, Mobile & Ohio Railroad Company;

Illinois Central Railroad Company;

Interstate Railroad Company;
Laurinburg and Southern Railroad Company;
Louisiana and Arkansas Railway Company;
Louisiana Southern Railway Company;
Louisiana and Nashville Railroad Company;
Meridian and Bigbee Railroad Company;
New Orleans and Northeastern Railroad Company;
New Orleans Terminal Company;
Norfolk Southern Railway Company;
Piedmont and Northern Railway Company;
St. Louis-San Francisco Railway Company;
Savannah & Atlanta Railway Company;
Seaboard Coast Line Railroad Company;
Southern Railway Company;
Tennessee, Alabama and Georgia Railway Company;
Tennessee Central Railway Company;
Valdosta Southern Railroad;
Western Railway of Alabama.

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Nos. 13 and 15

IN THE

Supreme Court of the United States

OCTOBER TERM 1968

THE BALTIMORE AND OHIO RAILROAD COMPANY, *et al.*,
Appellants

vs.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*,
Appellees.

INTERSTATE COMMERCE COMMISSION,
Appellant

vs.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

MOTION TO AFFIRM

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January, 1968

Hence, the Court rejected the suggestion that the advantages of the North were a justification for discrimination against the South, and it ordered that discrimination removed by putting into effect a uniform class rate structure. This was finally done in 1952, and for the first time in this century, the South enjoyed a position of equality with the North with respect to the cost of rail transportation.

Although the decision in *New York* v. *United States* had made it clear that the South was entitled to this position of equality, the Northern interests refused to accept equality with the South. Having failed to convince the Court that the North was entitled to lower rates because of "natural advantages," these interests decided to pursue their aim of obtaining a preference for the North through precisely the opposite strategy — by seeking inflated divisions from North-South freight traffic to offset claimed Northern *disadvantages*.

During the period following the affirmance of the Commission's order in the *Class Rates* case and prior to the issuance of the orders of the Commission which are the subject of this litigation, revenues from North-South freight traffic were divided on an equal-factor basis — that is, both the Northern and the Southern railroads received a share of the revenues from that traffic based directly upon the amount of service they performed in handling it. This equal-factor basis of divisions was prescribed by the Commission itself to implement the principle of uniformity announced in the *Class Rates* case. *Official-Southern Divisions*, 287 I.C.C. 497, 533, 577-578 (1953). Under this basis, each group of railroads received an identical share of the joint rate on any shipment involving an equal haul in each territory. Where one group of railroads performed more service than the other, that

group received a larger share of the revenues, but the difference in divisions was directly related to the amount of service performed.

In 1956, however, only four years after the uniform class rate structure was put into effect, the Northern railroads filed a complaint before the Interstate Commerce Commission claiming that they are entitled to *more* than an equal share of the North-South freight revenues based upon the amount of service they perform because the costs of performing rail service are higher in the North than they are in the South. They asked the Commission to prescribe a basis of divisions with inflated Northern factors which would have accorded them 35 percent more than the Southern railroads for each unit of rail service performed.

As representatives of the interests of the people of the South, the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners intervened in the proceedings before the Commission. However, our participation in these proceedings was not designed to secure any special favor for the Southern public or for the Southern railroads. Quite the contrary, we took the position that the principle of uniformity requires that all sections of the country be treated *equally* — that, except where justified by the most imperative of special circumstances, each section should support its own transportation system.

The Northern railroads' complaint seeking an inflation in their divisions on the basis of claimed higher Northern costs raised two distinct groups of issues, each aspect of which was thoroughly contested in the proceedings before the Commission. The first group of issues to which most of the evidence and argument of the Southern railroads was directed, was whether costs on North-South freight traffic are actually higher in the North, as the

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Nos. 925 and 938

IN THE

Supreme Court of the United States

OCTOBER TERM 1967

THE BALTIMORE AND OHIO RAILROAD COMPANY, *et al.*,
Appellants

vs.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*,
Appellees.

INTERSTATE COMMERCE COMMISSION,
Appellant

vs.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

MOTION TO AFFIRM

The Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners, plaintiffs in the proceedings below and appellees in this Court, respectfully move that the judgment of the United States District Court for the Eastern District of Louisiana be affirmed.

QUESTIONS PRESENTED

1. Whether the district court invaded the province of the Interstate Commerce Commission in setting aside orders of the Commission prescribing inflated divisions for the Northern railroads on the ground that such orders were based upon cost conclusions that were not supported by reasoned findings and substantial evidence as required by the Administrative Procedure Act?

2. Whether the Commission acted lawfully in prescribing an inflation in the divisions of the Northern railroads on the basis of Rail Form A territorial average costs, without either findings or evidence to support the conclusion that such costs are the product of and reflect inherent territorial disadvantages from which the North suffers as compared to the South?

3. Whether the Commission can lawfully impose the burden of the higher transportation costs of one section of the country upon another section, even if such costs reflect inherent differences between the two sections, without finding that the section being subsidized cannot support its own transportation system and that the section being called upon for such subsidy can afford to provide it without undue harm to its economy?

STATEMENT

Twenty-one years ago, this Court handed down its historic decision in *New York* v. *United States*, 331 U.S. 284 (1947), upholding an order of the Interstate Commerce Commission which struck down as unlawfully discriminatory the basic railroad class rate structure that had impeded the growth of the South since before the turn of the century. Prior to that case, railroad rates had

consistently been higher in the South than in the North, and Southern shippers had been compelled to pay substantially higher charges to reach Northern markets than Northern shippers were paying to reach Southern markets, even where the distances involved were identical. The purported justification for this rate discrimination, which both the Commission and this Court rejected, was that the North has "natural advantages" over other sections of the country — such as a heavier "concentration of population" and "the preponderance of the nation's total natural resource of energy supply" — which made it "the logical location" for many industries (331 U.S. at 314). Because of these "natural advantages," it was contended that the North is entitled to lower rates than the South for the same amount and kind of rail service.

In rejecting this proffered justification for a discriminatory class rate structure, this Court acknowledged that the North did indeed enjoy certain immense advantages over other sections of the country. But it agreed with the Commission that these advantages were as much an effect of, as a cause for, the discriminatory rate structure (331 U.S. at 315):

> " . . . It is sufficient at this point to say that the record makes out a strong case for the inference that natural disadvantages alone are not responsible for the retarded development of the South and the West, that the discriminatory rate structure has also played a part. How much a part cannot be determined, for every effect is the result of many factors. But the inference of prejudice from the discriminatory rate structure is irresistible. If this discriminatory rate structure is not justified by territorial conditions, then its continued maintenance preserves not the natural advantages of one region but man-made trade barriers which have been imposed upon the country. . . ."

Northern railroads asserted, for the same amount and kind of rail service. The Southern railroads sought to show that the claim of higher Northern costs was based entirely upon *territorial average costs* that did not measure the costs of performing rail services of the same amount and kind in both territories, which, of course, is the only relevant comparison since North-South freight traffic is, by definition, the same traffic in both territories. We joined in and supported the position of the Southern railroads on this issue.

The second, and by far the most important group of issues from the standpoint of these appellees, related to the question of whether, even assuming the Northern railroads' claim of higher costs to be valid, the Commission should prescribe an inflated basis of divisions to offset such costs. Our position was that the Commission should not force the railroads, and hence, indirectly the public, of one section of the country to subsidize the transportation system of another section, without some showing of special circumstances that would justify and require shifting the burden of one section to another.

On February 3, 1965, and May 18, 1965, the Commission issued its orders in this case. The Commission did not give the Northern railroads the full 35 percent inflation which they requested; however, the orders involved here inflate the Northern railroads' divisions so that they receive, on the average, 17 percent more than the Southern railroads for the same amount and kind of service. These court proceedings were instituted to review the lawfulness of the Commission's prescription of this inflation.

The district court proceedings revolved principally about the question of whether the Commission's reports lawfully resolved the issues which had been presented to it. In granting the Northern railroads' request for an in-

flated basis of divisions, the Commission had discussed at length the contention that territorial average costs did not measure the costs of handling North-South freight traffic. But it had rejected that contention largely on the ground that there was no choice but to use territorial average costs, since no other cost data were available to it which had been prepared on a comparable basis in both territories. Moreover, the Commission had virtually ignored our contention that the North's divisions should not be inflated even if their costs of handling North-South traffic were somewhat higher than the South's. On this point, the Commission had said that "an adherence to uniformity as such, without a careful evaluation of the statutory criteria and the evidence of record" would not be proper (325 I.C.C. at 27). But the Commission had nowhere attempted to evaluate the evidence and arguments which we advanced to support a continuation of the principle of uniformity.

The district court found legal defects in the Commission's treatment of both these aspects of the case. It first pointed out that the Commission's use of territorial average costs was not supported by reasoned findings or substantial evidence as required by the Administrative Procedure Act (B. & O. J.S. App. 25a). The district court then went on to observe that the Commission had failed to follow similar statutory requirements in dealing with our contention that bare differences in cost, even if properly found to exist, should not automatically be reflected in interterritorial divisions (B.&O. J.S. App. 18a). Accordingly, the district court's opinion provides that "upon remand, the Commission should decide and dispose of this contention in accordance with the Administrative Procedure Act" (B. & O. J.S. App. 19a).

NO SUBSTANTIAL ISSUE IS PRESENTED FOR PLENARY CONSIDERATION BY THIS COURT.

The basic issue presented by these appeals is whether the district court was correct in holding that the Commission could not prescribe a basis of divisions on North-South freight traffic which would compel the South to subsidize the Northern railroads without supporting that action with reasoned findings supported by substantial evidence.

In dealing with this issue, it is important to keep in mind the fact that the action of the Commission in prescribing such an inflated basis of divisions is as novel as it is far-reaching. Indeed, the South is the only section of the country which has been called upon to support the transportation system of another section. The equal-factor divisions prescribed for application between the North and Southwest in *Official—Southwestern Divisions*, 287 I.C.C. 533 (1953), have never been challenged and are still in effect. The Commission also prescribed equal-factor divisions for application between the North and the Midwest in *Official—Western Trunk Lines Divisions*, 316 I.C.C. 351 (1962), and although the particular scale prescribed in that case was set aside as improperly constructed (*Atchison, Topeka & Santa Fe Ry. Co. v. United States*, 225 F.Supp. 584 (1965), it has since been replaced with another equal-factor scale by mutual agreement (see agreement attached to Joint Petition to Dismiss in Docket No. 34515, dated March 25, 1966), which agreement was formally approved by order of the Commission dated April 8, 1966.

The only inflated basis of interterritorial divisions now in effect other than the one at issue in this case was prescribed in the *Transcontinental Divisions* case for application between Mountain-Pacific territory and the Midwest where different rate levels are also in effect (*Akron,*

Canton & Youngstown R. Co., et al v. Atchison, Topeka & Santa Fe Ry. Co., et al., 321 I.C.C. 17 (1963)).[1] Since the inflation in the transcontinental divisions of the Mountain-Pacific railroads is specifically based upon and justified by higher rates in that territory, that inflation amounts to nothing more than an arrangement whereby the Mountain-Pacific railroads can retain the higher rates paid by the people of that territory — a fact which the Commission itself recognized and relied upon in prescribing the inflation (321 I.C.C. at 77). Hence, the South is the only section of the country being forced to subsidize the railroads of another section through inflated divisions unrelated to higher rates in effect in that section.

In setting aside the Commission's orders in this case, the district court did not reach the ultimate question of whether there are limits upon the statutory power of the Commission to force one section of the country to support another. However, the district court did quite properly take note of the fact that this would be the effect of the orders here. This Court should also keep this fact in the forefront of its consideration of this case, for the issue here is not simply whether the Commission has lawfully divided a sum of money between two groups of railroads, but, rather, whether it has made findings based upon substantial evidence, to justify orders which introduce the wholly unprecedented concept that the railroads of one section of the country should be supported by the people of another section. We submit that the correct resolution

[1] This was the order which was upheld by this Court in *Chicago & North Western Ry. Co.* v. *Atchison, Topeka & Santa Fe Ry. Co.* 387 U.S. 326 (1967). The divisions prescribed by the Commission between the North and Mountain-Pacific territory in that case, which were not brought before this Court, were based upon point-to-point percentages making it difficult to relate service performed to the divisions prescribed. However, the Northern railroads themselves have subsequently described these divisions as roughly equivalent to the equal-factor divisions in effect between the North and the South prior to the orders involved in this case.

of this issue is so clear that this case does not warrant plenary consideration.

I. THE DISTRICT COURT CORRECTLY SET ASIDE THE COMMISSION'S COST FINDINGS AS ARBITRARY AND UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

The main contention of both of the Jurisdictional Statements filed in this case is that the district court somehow invaded the province of the Interstate Commerce Commission and made that agency's performance of its task more difficult by holding that the Commission had acted arbitrarily and without the support of substantial evidence in using Rail Form A territorial average costs as equivalent to the costs of handling North-South freight traffic on several critical cost issues. Neither of the appellants actually seeks to demonstrate that there was substantial evidence to support the Commission's action, and neither suggests that this Court should itself review the record to determine whether such evidence exists. Instead, they seek a holding that the Commission was entitled to do what it did without regard to what was or was not in the record. We shall show that this contention is without merit; but, before doing so, the whole issue of cost measurement must be put in perspective.

The single most important fact about Rail Form A average costs is that these average costs tend to vary directly with the degree of industrialization in the areas served by the railroads for which costs are being computed — that is, the greater the degree of industrialization in any area, the higher the Rail Form A average costs of the railroads serving that area. The reason for this correlation between Rail Form A average costs and the degree of industrialization in an area is that, with few exceptions, it costs considerably more to handle manu-

factured goods than to handle raw materials. Special equipment must be used to handle many manufactured articles — equipment which is more expensive, which usually requires greater maintenance, and which almost invariably has a much higher than average empty return ratio because it is not suitable for any return haul. Raw materials, on the other hand, usually move in the least expensive equipment in multi-carload quantities which permit a considerable saving in switching expense per car. Moreover, a high degree of industrialization in an area also often forces the railroad serving that area to perform other expensive services, such as commuter passenger service, which increase the Rail Form A average costs of railroads serving the more industrialized areas.

The railroads serving the Northeastern portion of the United States handle far more manufactured traffic than any other group of railroads in the country. The concentration of basic industry, such as iron and steel, in the Northeast is well known. But the dominance of that section of the country is even greater with respect to the manufacture of durable consumer goods, such as automobiles. Nearly all of the automobile parts used throughout the country are manufactured in the North. Hence there is a very heavy movement of this important traffic both within the North and between the North and other sections of the country in which the Southern railroads do not participate. The South, on the other hand, is a deficit area with respect to most manufactured goods, so the movement of such goods within the South without the participation of the Northern railroads is much more limited.

The result of this substantial difference in the degree of industrialization and, therefore, in the amount of manufactured traffic moving, in the North and in the South is that the Rail Form A average costs of the Northern railroads are the highest of any railroads in the coun-

try and the average costs of the railroads serving the South are the lowest. (The Western railroads, serving an area less industrialized than the Northeast but more industrialized than the South, show average rail costs precisely in line with that degree of industrialization.) The following table graphically depicts this situation: [2]

	Per Capita Value Added by Manufacture (1956)	*Rail Form A Territorial Average Costs (1956)*
Official Territory	229	122
Western Territory	118	115
Southern Territory	100	100

This table shows a clear correlation between the degree of industrialization of an area and the Rail Form A average costs of the railroads that serve it. Of course, the correlation is not a perfect one, since other factors also influence Rail Form A average costs. In the North, for example, the inflating influence of manufactured traffic is partially offset by the greater amounts of coal traffic handled by the Northern railroads, since coal is one of the cheapest commodities to handle. And in the West, the inflating influence of manufactured traffic is only one of several factors (such as the necessity for crossing mountain ranges) which contribute to the higher cost level of those railroads. However, in each case, it is clear that the degree of industrialization of any section of the country is an important factor influencing the level of the Rail Form A average costs of its railroads.

Since the level of Rail Form A average costs is influenced so greatly by the degree of industrialization of the area served, such average costs do not precisely measure either the actual costs to a single railroad of carrying a single commodity or the relative costs of two

[2] Table based upon data set forth in V.S. No. 15, Exs. 1 and 5 and costs constructed from the Commission's Statement 2-58, which was used by the Commission here (see B.&O. J.S. App. 67a). The indexes were constructed by treating Southern figures as 100 and calculating percentage deviations for the North and the West.

groups of railroads in carrying the same commodity or commodities. No commodity will have cost characteristics precisely identical to the theoretical average commodity, even in a single territory; nor will the Rail Form A averages for any two groups of railroads be based upon the same amount and kind of service in both territories. Consequently, in any case in which the critical issue is the cost of service in handling a particular commodity or the relative cost of service in handling the same commodity in two territories, Rail Form A average costs do not necessarily measure the costs of the shipments at issue.

In this case, of course, the cost issue before the Commission was the relative costs of the Northern and Southern railroads in handling North-South freight traffic — a defined body of traffic which by definition consists of the same carloads of freight in both territories. Since about one-half of this traffic originates in the industrial North, it contains a higher percentage of the more costly to handle manufactured goods which predominate in that territory than the average traffic handled by the Southern railroads. On the other hand, since roughly one-half of the North-South traffic originates in the South, it is also true that such traffic contains a higher percentage of cheaper to handle raw materials than the average traffic handled by the Northern railroads.

Notwithstanding these obvious differences between North-South traffic and territorial average traffic in the North and the South, the Northern railroads sought to rely upon the unadjusted Rail Form A averages for those two territories as measuring the costs of North-South traffic and justifying an inflation in their divisions. The Southern railroads resisted this theory and sought to show that Rail Form A average costs reflect substantial differences in the kinds of service being performed in the

two territories. Where the service in the two territories is the same, as it is on North-South traffic which is the same traffic moving in both territories, the Southern railroads contended that the costs of the Northern railroads were no higher than Southern costs. And in support of this conclusion, the Southern railroads showed a number of instances in which the higher Rail Form A averages were the product of differences in the kinds of service performed in the two territories, such as the inclusion in the averages of commuter passenger deficits, the distortion of the Northern territorial average empty return ratios caused by the heavy movement of automobile parts in the North, the distortion in their own switching costs caused by heavy intraterritorial movements of raw materials in bulk, and so on.

The district court specifically relied upon these differences between North-South freight traffic and territorial average traffic in the North and South in setting aside the Commission's orders, pointing out that under the Commission's own standard, it could not ignore these differences and rely exclusively upon averages (B.&O. J.S. App. 25a):

> "Evidence of overall territorial averages surely can and should be considered, but as to specific important cost items the Commission should not wholly and exclusively rely on such averages. *United States v. Abilene and Southern R.R. Co.* 265 U.S. 274; *Atchison, Topeka and Santa Fe Ry. Co. v. United States*, 225 F. Supp. 584. The Commission stated its exclusive standard to be the relevant cost of handling the specific freight traffic to which the divisions apply. We are persuaded that the order is not based on substantial evidence nor supported by reasoned findings within the meaning of Sections 8(b) and 10 (e) of the Administrative Procedure Act because the use of territorial averages accounting for the Northern inflation has not been supported with find-

ings of evidence relating any such inflation to the North-South freight traffic."

When the issues now sought to be presented by the appellants in this case are considered against this background, it is apparent that the Commission's action in prescribing an inflation in the divisions of the Northern railroads based exclusively upon unadjusted Rail Form A averages is vitiated by serious legal defects and that the district court was eminently correct in setting that action aside. The dispute between the Northern and the Southern railroads brought directly into issue the accuracy of Rail Form A averages as a measure of the relative costs of the two groups of railroads in handling North-South traffic. Hence, the Commission had a plain duty to resolve that issue; but this was a duty which the Commission completely failed to perform. After making some minor adjustments in the Rail Form A averages, the Commission proceeded to reject each and every one of the Southern railroads' principal cost adjustments, not on the basis of any evidence that Rail Form A did accurately measure the relative costs with respect to the particular factor involved, but largely because no other data were available showing costs on a comparable basis in both territories,[3] or because the Southern railroads were unable to show the precise extent to which the Rail Form A averages distorted a particular cost factor.[4] The Commission thus simply *assumed* that Rail Form A averages

[3] For instances in which the evidence of the Southern railroads was rejected for a lack of "comparable" data for the North, see 325 I.C.C. at 69 (refrigerator car empty return ratios); 325 I.C.C. at 76 (switching costs); 325 I.C.C. at 60 (count of cars interchanged). See also 325 I.C.C. at 66, where the Commission reached a similar result due to an absence of "adequate" data (box car empty return ratios).

[4] The Commission relied upon this kind of consideration in rejecting the Southern railroads' adjustment of border interchange costs as an "estimate" (325 I.C.C. at 81) and insisting upon use of the territorial averages, which were 58% higher in the North, despite undisputed evidence that these averages were not applicable, simply because a precise showing of actual border interchange costs had not been made.

measure the costs of handling North-South freight traffic without making any findings on the material issues raised to challenge that assumption and without evidence to show that such averages were applicable. In setting this action aside, the district court did nothing more than it was absolutely required to do by the Administrative Procedure Act.

Section 8(b) of the Administrative Procedure Act provides that the Commission's decisions must "include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record . . ." (5 U.S.C. § 557(c)). Section 10(e) of that Act provides that Commission action shall be held unlawful and set aside where its findings are "unsupported by substantial evidence" and where found to be "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law" (5 U.S.C. § 706). This Court has repeatedly held that these requirements are to be strictly enforced. *Burlington Truck Lines, Inc.* v. *United States*, 371 U.S. 156 (1962); *Gilbertville Trucking Co.* v. *United States*, 371 U.S. 115, 130 (1962).

Although both appellants contend otherwise, the district court's decision enforcing these provisions of the Administrative Procedure Act will in no way impair the ability of the Commission to administer the Interstate Commerce Act. The Commission does not use, and could not rationally use, Rail Form A average costs as the automatic cost formula to resolve all of the cost issues which come before it. Quite the contrary, as appellants themselves admit (B.&O. J.S., p. 13), from the very inception of the Rail Form A cost formula, the Commission has recognized that "The ascertainment of the costs of transporting a particular commodity over a single railroad or group of roads, for instance, obviously requires more re-

finement in procedure . . .". (*Class Rate Investigation, 1939*, 262 I.C.C. 447, 693 (1945)). Hence, the Commission can and does adjust Rail Form A average costs in most of the cases in which a precise determination of cost of service is a vital issue.

Midwest Emery Freight System, Inc. v. *Baltimore & R. Co.*, 321 I.C.C. 637 (1964), is an excellent example of the typical approach of the Commission. In the *Midwest Emery* case, the Commission made numerous cost adjustments to determine the costs of the particular traffic involved in that case, including a radical adjustment in the empty return ratio (from the territorial average of 79 percent to 13.7 percent) on the basis of a special study submitted by the railroads of their actual experience in handling that traffic (321 I.C.C. at 650). In making this adjustment, the Commission specifically repudiated the claim that Rail Form A territorial averages automatically produce "reasonably accurate criteria of the ratio of the empty to the loaded movement of the cars utilized by the defendants in the instant service" (*ibid.*).

The Commission has repeatedly used the same approach in cases where the issue was the cost of handling a single commodity, including a number of divisions cases involving adjustments of the very cost factors which the Commission refused to adjust here. In *Louisville & Nashville R. Co.* v. *Southern Ry. Co.* 319 I.C.C. 639 (1963), for example, a case involving the divisions of coal rates, the Commission made a substantial adjustment of Rail Form A averages with respect to car costs. And in *Illinois Central R. Co. v. Great Northern R. Co.*, I.C.C. (decided August 7, 1967), involving divisions of calcined alumina rates, the Commission prescribed divisions based upon costs reflecting several adjustments, including an adjustment to give effect to the fact that the traffic at issue required "less than average engine minutes per car in origin and destination switching."

The only cases in which the Commission has intimated that Rail Form A average costs might constitute an acceptable measure of controverted costs are the relatively rare cases involving territory-wide rates or divisions. And even in this limited kind of case, the Commission has never gone so far as to hold that Rail Form A averages can be accepted automatically without supporting evidence showing their applicability to the traffic at issue. Hence, in virtually every one of the territory-wide cases, the Commission has made some adjustment in the averages, even while stating that because a wide and varied body of traffic was involved, it may not have had to go beyond Rail Form A averages to obtain a workable measure of the actual costs of the traffic involved. Indeed, the Commission recognized the principle that adjustments must be made in Rail Form A averages in this case, for it did make some such adjustments. Thus, with respect even to territory-wide cases, Commission counsel's contention that Rail Form A averages constitute an automatically applicable measure of the costs of particular traffic (I.C.C. J.S. p. 12, note 13) is contrary to what the Commission itself has been doing and what it did in this very case. In view of this established practice of the Commission, it is apparent that the approach now urged for territory-wide cases by Commission counsel is as unnecessary to the administration of the Interstate Commerce Act as it is unsound.[5]

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[5] Although it is true that North-South traffic has widespread origins and destinations throughout both of these territories and, consequently, uses most of the rail facilities in the two territories, it does not follow at all that the average costs of all traffic handled by the Northern and Southern railroads is equivalent to their costs in handling North-South traffic. In the first place, it is plain that some rail facilities which affect the overall territorial averages have no bearing at all upon the costs of handling North-South freight traffic; the many items which the Commission itself acknowledged as being solely related to the Northern suburban passenger deficit are a clear example of this kind of facility. More importantly, even though North-South traffic uses most of the

Certainly, there is no conceptual difference between finding the actual costs of a wide and varied body of traffic and finding the actual costs of handling a particular commodity. The Commission, therefore, plainly could have used the same cost approach here that it used in *Midwest Emery, Louisville & Nashville and Illinois Central.* Nor would this approach have placed an undue burden upon the Commission. Although this case involves a much larger volume of traffic than was involved in any of those cases, the cost issues raised here are actually no broader or more difficult. The only difference is that in those cases the Commission resolved the cost issues on the basis of the evidence of record and here it ignored the evidence and accepted unsupported averages.

All three of those cases, of course, involved a situation in which the railroads voluntarily came forward with data as to their specific costs in handling particular traffic. But this fact cannot conceivably be regarded as distinguishing the present case, for in *Interstate Commerce Commission* v. *New York, New Haven & Hartford R. Co.*, 372 U.S. 744 (1963), this Court expressly held that carriers have a duty to bring forward such information (372 U.S. at 760, note 12):

> "Of course, when such an issue is raised, each carrier should bring forward the data relating to its own costs that are required for the resolution of the issue."

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facilities in the North and the South, expensive facilities as well as cheap ones, it cannot be assumed that this use of facilities occurs in the same proportion with respect to North-South traffic that it occurs with respect to the average of all traffic. Plainly, the single most important determining factor in the territorial average costs of a group of railroads is the degree to which it must use expensive facilities, (such as special purpose box cars) or perform expensive services (such as switching cars in single-car lots), and just as plainly there need be no connection between the degree to which this need arises on average traffic and on any particular segment of traffic, regardless of how widespread the origins and destinations of that traffic may be.

Hence, it is irrelevant whether carriers volunteer specific cost data; if they do not, the Commission has ample authority to require it. And the Commission has exercised that authority on numerous occasions by requiring the parties to produce special data on the traffic involved to permit a more precise determination of costs.

In *Boston and Maine R. Co.* v. *United States*, 162 F. Supp. 289 (D. Mass. 1958), for example, the court set aside a Commission order for failure to resolve cost issues in the determination of freight car rentals where the Commission possessed ample power "to turn the matter over to its accounting staff for investigation." On appeal by other parties, the Commission declined to defend its action and advised the Supreme Court of its readiness to "proceed in accordance with the terms of the remand" (358 U.S. 68, 71 (1958)). The Commission thereupon required the submission of adequate and comparable data from all railroads (Orders in I.C.C. Docket Nos. 31358 and 33145, *Railroad Freight Car per Diem Charges*).

We recognize, of course, that the mere fact that the Commission has been following this procedure voluntarily does not necessarily mean that it can be compelled to do so. But the many cases in which the Commission has adjusted cost averages on the basis of evidence and required evidence to make specific cost findings certainly show that Commission counsel are groping when they claim that such an approach to cost issues is unworkable. Plainly it is not. There can be no real doubt, therefore, that the Commission could have adopted such an approach here, rather than let this important case be determined by averages that have no real relation to its issues.

We submit that the district court was entirely correct in holding that, under the circumstances of this case, the Commission was required to compel the submission of adequate and comparable data, for nothing less would

satisfy the long-established principle that an administrative agency has an affirmative duty to see that a record is made which is adequate to permit it to assess and determine all of the public interest issues which arise out of the proceedings before it. Cf. *Udall v. FPC*, 387 U.S. 428 (1967). Commission counsel seek to make it appear that the district court went beyond this principle and required the Commission to embark "upon an independent investigation to determine whether the parties might be overlooking or concealing some relevant evidence" (I.C.C. J.S. p. 17). However, the district court held no such thing, but, instead, made it clear that the Commission was free to decide for itself how it would discharge its responsibility "to require the development of adequate and comparable cost data" (B.&O. J.S. App. 29a).

The Commission is well aware that this process need involve no independent effort on the part of its staff. In other proceedings, where the Commission has found the record to be inadequate, it has recognized this fact. Thus, in *Increased LTL, AQ and TL Rates To, From and Between New England Territory*, I.C.C. Docket No. 34454, where the Commission did not consider the data based on the various cost studies to be probative of the cost picture for New England carriers for New England operations, the Commission issued a series of special orders requiring that the carriers produce the data which it desired. When they failed to do so, the Commission denied them the rate increase which they sought (329 I.C.C. 244 (1966)). The Commission has thus demonstrated that it has ample power to discharge its responsibility to make certain that all relevant facts are disclosed in the record upon which it is to act.

There is nothing whatever inconsistent with this view of the Commission's responsibility in dealing with the issues of relative cost of service in any of this Court's

prior decisions. Certainly, neither *New York* v. *United States,* 331 U.S. 284 (1947) nor *Chicago & North Western Ry. Co.* v. *Atchison, Topeka & Santa Fe Ry. Co.,* 387 U.S. 326 (1967), relied upon by Commission counsel (I.C.C. J.S. p. 11), supports the view that Rail Form A average costs may be used to support a finding as to the costs of any particular body of traffic without independent evidence that such averages are actually applicable.

In *New York* v. *United States,* the issue before the Commission was much broader than the costs of any particular body of traffic, since the whole basic class rate structure was involved, and the principal claim of discrimination in that case was not in the handling of a particular body of traffic that had moved but in the fact that the higher class rates in the South had *prevented* traffic from moving (331 U.S. at 307-308). Hence, the issue in that case was not the costs of a particular body of traffic but the general rail costs of the territories involved, for which Rail Form A averages are much more suitable. To be sure, the averages still should have been adjusted to rule out any distorting effect of different traffic consists in the two territories, but this Court expressly found these effects had been eliminated (331 U.S. at 317). This finding clearly distinguishes the present case from *New York* v. *United States,* for it means that in that case, the record did affirmatively show that average costs were appropriate for the purpose for which they were used.

The *Chicago & North Western* case involved a precisely similar situation, for there too the Court found and expressly relied upon independent evidence in the record supporting the applicability of the Rail Form A averages to the traffic at issue. The cost issues in *Chicago & North Western* related to the Commission's use of territorial average empty return ratios and maintenance of

way and structures expense. As to the former, this Court expressly pointed out that the "Midwestern carriers . . . had come forward with specific empty-return data" (387 U.S. at 355). As to the latter, the Court upheld the Commission's finding against an attack based upon the contention that the Commission had relied upon erroneous factual premises. The Court itself reviewed the record and necessarily found the factual premises not to be erroneous (387 U.S. at 355-356).

The approach used by this Court in reviewing the record in *New York* v. *United States* and in *Chicago & North Western* is precisely the approach used by the district court here. The Commission's action in each case has been judged on the basis of the facts in the particular record upon which it was based. This approach imposes no unusual burden upon the Commission, for it requires only that the Commission comply with the Administrative Procedure Act and support its action with reasoned findings based upon substantial evidence.[6] And the existence of this kind of judicial review vindicates, rather than impugns, the integrity of the Rail Form A cost formula, despite Commission counsel's efforts to make it appear otherwise (I.C.C. J.S. pp. 10-13), for without such review, the formula might become a weapon to subvert the very principle which it was created to serve.

[6] Commission counsel are clearly wrong when they urge that there is more fairness in cost determinations based upon Rail Form A average costs than there would be in determinations based upon special studies, simply because "Rail Form A data is readily available, and does not include the biases which special studies conducted by the contesting parties might understandably reflect" (I.C.C. J.S. p. 12). The fact is, of course, that Rail Form A itself has substantial biases against any under-industrialized section. If the Commission can use Rail Form A averages to inflate the divisions of railroads of one section of the country without any evidence that they apply to the traffic involved, the more highly industrialized sections of the country are certain to gain a substantial advantage over the South. We think that this fact alone is enough to require the Commission to decide these cases on the basis of the evidence of record.

That, of course, is precisely what would have happened here, but for the decision of the district court. The Commission's Cost Section was created and Rail Form A devised at the urging of these very appellees to destroy the myth that the North was entitled to preferential class rates. Rail Form A was properly applied in that case and accomplished that purpose. But now the Commission would permit the formula to destroy the very good which it made possible by accepting an uncritical application of the averages produced by the formula to a situation in which such averages have no factual basis. Rail Form A was never intended to have such application.

II. THE COMMISSION COMMITTED REPEATED VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT IN DEALING WITH THE QUESTION OF WHETHER THE CLAIMED HIGHER NORTHERN RAIL COSTS ARE THE PRODUCT OF INHERENT TERRITORIAL DISADVANTAGES.

Since the cost of handling North-South freight traffic was not properly shown to be any higher in the North than in the South, the district court was clearly correct in setting aside the inflation prescribed in the Northern railroads' divisions on the sole basis of such unsupported cost conclusions. However, the correctness of the district court's judgment does not depend upon this aspect of its opinion. For even if the costs of the Northern railroads had been shown to be somewhat higher than those of the Southern railroads, neither the evidence of record nor any findings in the Commission's report support the Commission's action in prescribing divisions based upon such higher costs.

If it is assumed that the Northern railroads actually do experience higher costs for like service in handling North-South freight traffic, there are at least three pos-

sible reasons that might explain these higher costs. They are:

(1) That for reasons of greater efficiency, the Southern railroads are able to perform rail service cheaper than the Northern railroads under substantially identical conditions in the two territories;

(2) That differences in economic conditions in the two territories, specifically higher wage and tax levels unrelated to any difference in levels of productivity in the North, make costs higher in the North even though the two groups of railroads are equally efficient, and even though all other conditions affecting transportation costs in the two territories are substantially identical; and,

(3) That there are inherent differences in transportation conditions in the two territories that make the costs of rail service higher in the North without regard to the relative efficiency of the two groups of railroads, or to the economic conditions prevailing in either territory at any particular moment.

Throughout the proceedings before the Interstate Commerce Commission, these appellees have taken the position that the only cost differences that should be reflected in interterritorial divisions are those in the third category above—that is, cost differences related to inherent differences in transportation conditions.

Section 15(6) of the Interstate Commerce Act (49 U.S.C. §15(6)) does not authorize the Commission to prescribe divisions based upon relative cost of service without regard to the reasons underlying cost differences or the consequences of prescribing divisions based upon such differences. Although the section clearly permits the Commission to consider costs, it also specifically directs the Commission's attention "to the efficiency with which the carriers concerned are operated" and to "the im-

portance to the public of the transportation services of such carriers." Thus, in any case in which inflated divisions are sought on the basis of claimed higher costs, the plain duty of the Commission under Section 15(6) is to consider the reasons for such higher costs and the consequences to the public of basing divisions upon such costs.

We recognize, of course, that Section 15(6) does not say that the Commission may never prescribe divisions based upon costs that are inflated by inefficiency or divisions that would have an adverse impact upon the economy of one section of the country. However, the plain purpose of the section is to limit the situations in which that can be done to those involving a showing of special circumstances and to require the Commission carefully to consider and explain the consequences of such action. Here, the record contains no showing which even attempts to justify inflated divisions based upon cost differences in the first category above — that is, those growing out of differing levels of efficiency. Consequently, we contended before the Commission that it must examine any cost differences found to exist and determine whether such differences were the product of differing levels of efficiency. Similarly, we contended that, on the record in this case, the "importance to the public" criterion of Section 15(6) is inconsistent with the prescription of inflated divisions based upon cost differences in the second category above — that is, those growing out of different economic conditions in two sections of the country — since such an inflation could only perpetuate the difference in economic conditions upon which it was based. In this connection, we relied upon the decision of this Court in *New York* v. *United States*. As the Court said in that case, if a discrimination "is not justified by territorial conditions, then its continued maintenance preserves not the natural advantages of one region but man-made trade barriers which have been imposed upon the country" (331 U.S. at 315).

It is now substantially undisputed that the Commission did not lawfully dispose of the issues raised by our contention that the claimed higher Northern costs were not the product of inherent territorial disadvantages. The Commission simply assumed these issues away, saying, "other factors being equal, cost differences generally are the product of and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories" (325 I.C.C. at 27).

In setting aside the Commission's orders, the district court pointed out that this portion of the Commission's report was so vague that the parties could not even agree as to what the Commission had held. It then went on to observe (B. & O. J.S. App. 18a-19a):

> "Surely, the Commission report should be so phrased that there be no room for such a dispute as this. We have read the language carefully and we have some hesitation in saying which interpretation is correct. The question of whether a showing of inherent disadvantages is prerequisite to an increase in territorial divisions is, at least in the first instance, a question for the Commission. If, as petitioners read the report, the Commission has held that such a showing is necessary, then this Court need only consider whether in view of such a test, the requirements of reasoned findings and substantial evidence of Sections 8(b) and 10(e) of the Administrative Procedure Act have been met. If, on the other hand, as defendants contend, the Commission has made no holding on the question of inherent disadvantages, the Court must consider whether the Commission's failure to resolve the material issue raised with respect to that question can be reconciled with the express requirement of Section 8(b). We are considering not a restriction upon the statutory powers of the Commission to make divisions, but whether the Commission followed requirements of the Administrative Procedure Act. The Administrative Pro-

cedure Act requires findings on material issues of law. *N.L.R.B. v. Hearst Publications*, 322 U.S. 111 (1944). If, as plaintiffs assert, the Commission has held that a showing of inherent disadvantages is a pre-requisite to an increase in territorial divisions, then the Commission's conclusion (that higher Northern costs reflect inherent territorial disadvantages) is subject to attack because there are no findings as to what these inherent territorial disadvantages consisted of."

The district court's holding is clearly correct. The Commission had a plain duty, arising both from the issues presented to it by the parties and from the provisions of Section 15(6), to determine whether the cost differences which it found to exist were the product of inherent territorial differences between the North and the South. The Commission's perfunctory assumption that all cost differences reflect inherent territorial differences hardly satisfied that duty. Indeed, although counsel for the Commission seek to take some advantage of this assumption here (I.C.C. J.S. p.24, note 24), the district court was told, as its opinion points out (B. & O. J.S. App. 18a), "that the Commission made no finding on this question at all and were simply commenting on Interveners' contention." [7]

Moreover, as the district court found, the Commission did not make the findings necessary to support the conclusion that the North suffers from inherent disadvantages. The Commission did not find that all other factors that affect costs other than inherent territorial differences are in fact equal. Quite the contrary, it implicitly recognized that there are major inefficiencies in the Northern

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[7] Commission counsel's characterization of the district court's discussion of this issue as "quixotic" is neither accurate nor fair. The district court responded quite directly and succinctly to the issues presented in the briefs filed before it. In order to make it appear otherwise, Commission counsel have now changed their position and seek to obscure the plain representations made to the district court (Compare Brief of I.C.C. before the district court, pp. 79-80, with I.C.C. J.S., p. 24, note 24).

railroad system in the form of overcapacity that had to be and were being eliminated. And the Commission made no finding at all as to the relative economic conditions in the two territories, even though the Northern railroads pointed to such differences as the major reason for their claimed higher costs. This treatment of the question of whether the claimed higher Northern costs are the product of inherent territorial disadvantages clearly failed to satisfy the requirements of either Section 15(6) or the Administrative Procedure Act.

In the first place, the Commission's conclusion improperly ignored the undisputed evidence of record that the Northern costs of record were substantially higher than they need be, or will be in the very near future, because of overcapacity in the Northern rail system. The Northern railroads have in effect admitted that their rail system suffers from overcapacity to a greater extent than that of any other part of the country. In a series of important control and merger applications, they have repeatedly urged the Commission to allow them to effect major consolidations which would permit elimination of many duplicate facilities and produce vast savings. See, e.g., *Chesapeake & Ohio R. Co. — Control — Baltimore & Ohio R. Co.*, 317 I.C.C. 261 (1962); *Norfolk & Western Ry. Co. and New York C. & St. L. R. Co. — Merger*, 324 I.C.C. 1 (1964); *Pennsylvania R. Co. — Merger — New York Central R. Co.*, 327 I.C.C. 475 (1966); *Norfolk & Western Ry. Co. — Merger — Chesapeake & Ohio R. Co.*, I.C.C. Finance Docket No. 23832, now pending. These applications, aimed to bring about a complete realignment of the Northern railroads into two systems, have each been expressly predicated upon the view that maintenance of the existing rail system in the North would be wasteful in view of permanent changes that have rendered large parts of this system virtually useless.

The existence of substantial overcapacity in the Northern railroad system was recognized in the *Penn-Central Merger* case (*Pennsylvania R. Co.—Merger—New York Central R. Co.*, 327 I.C.C. 475 (1966)), where the Commission relied explicitly upon Northern railroad overcapacity as a ground for approving that merger (327 I.C.C. at 512):

> "The Eastern District has, at this time, an oversupply of rail facilities inasmuch as the total volume of rail traffic in the district does not adequately support the existing railroad plant regardless of how the traffic may be apportioned or diverted from one railroad to another." [8]

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[8] The examiners' Recommended Report in the *Penn-Central Merger* case was even more explicit in its recognition of the cause of the Northern railroads' problems (*Proposed Merger of Pennsylvania and New York Central Railroads*, (F.D. 21989, p. 198)):

> "We believe that one of the primary explanations for this trend [the massive decline of rail traffic in the North] lies in the changing structure and location of industry in the Eastern District and the nation as a whole or the 'industrial mix'. Historically, the Eastern District has been noted for its heavy industry, and the fact that it has supplied the nation with steel and other basic items which have previously moved by rail from Pittsburgh and other eastern industrial points to the western, northern and southern extremities of the nation. The growth of major population centers throughout the nation, however, which are able to support the necessary high fixed investment of heavy industry has caused a certain degree of 'decentralization' of industry. This, in many instances, has eliminated, or at least restricted, eastern producers from such markets and thereby curtailed the use of rail service to some undocumented extent.
>
> "Of equal and possibly of more importance, areas such as New England have lost a substantial portion of heavy industry which has been replaced to a major extent by light industrial production such as electronics and electronic components. As light industry generally requires less transportation for its output as well as lower material per employee, such manufacturing is not the best source of rail traffic."

In its decision the Commission expressly embraced these findings and made them its own, ordering this part of the Examiners' report "bound in printed form in the permanent series of Interstate Commerce Commission reports" (327 I.C.C. at 481).

In upholding the Penn-Central merger and permitting its prompt consummation, this Court also pointed to and relied upon this purpose of the merger to bring about "the rationalization and elimination of some of the dual facilities and services in various areas and in various respects." *Penn-Central and N & W Inclusion Cases*, — U.S. — (decided January 15, 1968).

Largely as a result of the elimination of overcapacity, the Commission found that effectuation of the Penn-Central merger would eventually result in savings in excess of $80 million a year (327 I.C.C. at 501). The Norfolk & Western-Nickel Plate-Wabash merger was found to produce savings of $29 million a year (324 I.C.C. at 80). The C&O - B&O control arrangement was found to produce savings of $44 million a year, with the possibility of substantial additional savings when those two roads are eventually merged (317 I.C.C. at 277). The N&W - C&O merger would produce further savings of $36 million a year, with the possibility of still further savings in the amount of $12 million a year from the inclusion of other railroads.

The record in this case was closed prior to the approval of any of these consolidations, and it does not therefore reflect the elimination either of the overcapacity that has already been achieved through mergers that have since been consummated or any of the other overcapacity currently being considered by the Commission in other Northern merger proceedings.[9] However, the record does

[9] In view of this fact, the district court was clearly correct in suggesting that, upon remand, a reopening of the record for additional evidence "might well be warranted" (B.&O. J.S. App. 32a). The court did not hold that the staleness of the record was a ground for setting aside the Commission's orders, but only that, since the case must go back anyway, the record ought to be brought up to date to reflect the significant changes that have occurred. Commission counsel's contention that this suggestion "might result in the Commission's never being able to decide such cases on the basis of sufficiently recent data" (I.C.C. J.S., p. 19, note 18) only emphasizes the unsupported extremes to which counsel have gone in an effort to substance to this appeal.

reflect the existence of overcapacity in the North, and these appellees repeatedly urged the Commission to take this overcapacity into account in determining the reasons for any higher rail costs which it might find to exist in the North.

The Commission brushed the entire problem of Northern overcapacity aside because it found that *some* overcapacity exists in the Southern rail system, and because the savings to be realized from mergers were not immediately available, saying (325 I.C.C. at 17-18):

> "It is true the savings expected from proposed mergers and consolidations are not reflected in the cost studies of record. However, the southern lines themselves have noted that mergers are now going forward in all territories, including the South. If and when such proposed mergers are ultimately approved and finally consummated in both groups the savings produced thereby will be *then* reflected in the respective unit costs" (emphasis supplied).

This reasoning totally misses the point insofar as the question of whether the claimed higher Northern rail costs are the product of inherent territorial disadvantages. The existence of overcapacity in the railroad system of the North produces higher transportation costs in that territory, and this is flatly inconsistent with the Commission's conclusion that any higher costs found to exist are automatically attributable to inherent disadvantages in transportation conditions. This is so regardless of *when* the savings possible from the elimination of such overcapacity are to be realized. The critical fact is that a vast potential for savings exists and that this potential is much greater in the North than in the South. This fact alone is sufficient to undercut any conclusion that the Northern railroads' present problems are due to inherent disadvantages.

The failure of the Commission to give effect to its

own recognition that the Northern railroads' costs are inflated by substantial overcapacity renders its actions unlawful under both the Administrative Procedure Act and Section 15(6) of the Interstate Commerce Act. This failure left the Commission's action without the support of reasoned findings based upon substantial evidence as required by the former Act and without any effective consideration of the statutory criterion of relative efficiency as specified in Section 15(6). Moreover, the Commission's arbitrary action in disregarding Northern railroad overcapacity leaves the South in a position where it must support this kind of inefficiency. The very existence of a right to inflated revenues based upon overcapacity will tend to discourage its elimination. Thus, to that extent, the South will be forced to get along with less of a railroad system than it needs in order that the North may preserve more than it can economically use. The Commission's reports contain no answer to the critical questions posed by reliance upon costs inflated by overcapacity: Why should the North, as a railroad rate territory, be entitled to maintain, partly at the expense of the South, a rail transportation system for more extensive than that which the South can afford to support for itself? Why should the South be forced to subsidize the uneconomic consequences of attempting to maintain facilities that are partly unneeded in the North? And why should the people of the entire country be deprived of the benefits that flow from a unified national economy unhampered by artificial barriers that prevent the most efficient allocation of transportation resources?

The Commission's insistence upon treating the claimed higher Northern costs as reflecting inherent territorial disadvantages without even considering these questions was clearly arbitrary. But the arbitrary character of the Commission's treatment of the question of whether the claimed higher Northern rail costs are

the product of inherent territorial disadvantages extended beyond even this patently improper refusal to give effect to its own findings with respect to overcapacity. The Commission also refused to give effect to the fact that the Northern railroads themselves attributed their claimed higher costs, not to inherent territorial disadvantages in the North, but to different economic conditions prevailing in that section of the country.

Throughout these proceedings, the Northern railroads have stressed the higher wage and tax levels in the North as the reason for their claims of higher cost of service. Indeed, the same contention is advanced in the Northern railroads' Jurisdictional Statement here (B. & O. J.S., p. 22, note 12). Assuming this to be so, how is it possible to square higher costs caused by higher wage and tax levels with the Commission's conclusion that such higher costs "are the product of and reflect" inherent territorial disadvantages?

Differences in wages and tax levels are significant in rail costs only if the higher wages and taxes in the North are not offset by correspondingly greater productivity for capital and workers in the North. The record indicates that Northern wages and taxes are offset here by the substantially greater traffic density of the Northern railroads (V.S. No. 36, Ex. 1, p. 21). But even if this is not the case, the necessary effect of the prescribed inflation in the Northern railroads divisions is to force the South to subsidize higher wages and taxes for the North. We submit that such a subsidy is clearly inconsistent with the public interest.

If there is one thing clear from this Court's decision in *New York* v. *United States*, it is that differences in wage and tax levels not related to differing levels of productivity are not to be used as a justification for imposing administrative regulations that perpetuate differences be-

tween two sections of the country. Such regulations would constitute a classic trade barrier and relegate the less prosperous sections of the country to a permanently subordinate position. The higher Northern costs claimed here cannot therefore properly be regarded as the product of the inherent territorial disadvantage under the Northern railroads' own theory as to the reason for such higher costs.

In *New York* v. *United States,* the Interstate Commerce Commission found that there were no inherent differences in rail transportation conditions in the North and South, and this Court reached the same conclusion itself on the basis of a review of the record in that case (331 U. S. at 315). In departing from this conclusion here, on the basis of a record which contains no new evidence on this subject, and where no party even contended that such inherent territorial differences exist, the Commission has clearly acted arbitrarily. The district court's judgment requiring that, on remand, this matter be determined in accordance with reasoned findings based upon substantial evidence is therefore correct and should be sustained.

III. THE COMMISSION'S ACTION IN PRESCRIBING AN INFLATION IN THE NORTHERN RAILROADS' DIVISIONS VIOLATES THE ADMINISTRATIVE PROCEDURE ACT EVEN IF ITS CONCLUSION THAT THE NORTH SUFFERS FROM INHERENT TERRITORIAL DISADVANTAGES IS CORRECT.

The orders involved in this case are also unlawful under the Administrative Procedure Act on the further ground that the Commission failed to make findings which would justify the imposition of the burden of inherent Northern disadvantages upon the South, even if its conclusion that such disadvantages exist is accepted. As pointed out above, these appellees contended through-

out these proceedings that the burden of any inherent disadvantages found to exist in the North should be borne by the North, through higher Northern rates, rather than by the South, through inflated Northern divisions of uniform rates. When the Commission's examiners ignored this contention, we took specific exception to this aspect of their recommended report (Southern Governors' Exc. pp. 44-55). Thus, our Exception No. 4 took issue with the examiners' recommendation of an inflation for the Northern railroads on the ground that, as recommended by the examiners, "such an inflation would amount to an imposition of a part of the Northern transportation burden upon the Southern public without any finding that the North is incapable of supporting its own transportation system" (Southern Governors' Exc. pp. 44-45). Despite this specific exception, the Commission adopted the same tactic used by its examiners and simply ignored both our exception and the basic problem to which it was directed. *There is not a single word in the Commission's report which was directed to, or in any way responds to, our exception.*

The failure of the Commission to consider or even to attempt to explain why the North should not be compelled to support its own transportation system is an especially important legal defect in its orders here. Prior to this case, the Commission's own decisions had uniformly followed a principal of primary local responsibility, as originally announced in *New England Divisions*, 126 I.C.C. 579, 599 (1927). There the Commission said:

> "The dangers in (the) . . . assumption that deficiencies in local earnings must inevitably be made up on interchange business at the expense of connecting lines are obvious. Communities and the roads which serve them might too readily arrive at the conclusion that they are 'unable' to increase local rates and, in disregard of the principle of self-help, unduly rely upon others to carry this burden."

On the basis of this principle of primary local responsibility and the numerous cases which followed and applied it, we asked the Commission to adhere to the same principle here, or at least to explain to us why it could not do so. When the Commission did neither, but simply ignored the whole matter, it effectively attempted to change its whole approach to divisions cases without any explanation at all. The district court was plainly correct in holding that this was improper under this Court's decision in *Secretary of Agriculture* v. *United States*, 347 U.S. 645 (1949). As the court below pointed out (B. & O. J.S. App. 27a):

> ". . . for many years prior to this case the Commission has consistently followed the view that the primary responsibility for meeting the cost and revenue needs of the railroads of any territory lies with the people and the industry of that territory. *New England Divisions*, 126 I.C.C. 579, 599 (1927); *Divisions of Rates, Official and Southern Territories*, 234 I.C.C. 175, 190 (1939); *Official-Southern Divisions*, 287 I.C.C. 497, 523 (1953); *Akron, Canton & Youngstown R. Co.* v. *Atchison, T. & S.F. Ry. Co.*, 321 I.C.C. 17, 51 (1963). In this very case, prior to re-opening, the Commission held that the primary division of revenues accruing from this traffic were to be made on an equal-factor scale. We recognize that the Commission is not perpetually bound by their 1953 holding, but we do believe that the Commission has special responsibilities in a case of this magnitude when it departs from its prior finding (*Sec'y of Agriculture* v. *United States*, 347 U.S. 645."

This holding of the district court is clearly correct. Section 8(b) of the Administrative Procedure Act plainly condemns the action of the Commission in at least two separate respects. First, Section 8(b) requires that the Commission rule upon each exception presented to it:

> "Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be

> afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions . . . (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions. . . . *The record shall show the ruling upon each such . . . exception presented.*" (Emphasis supplied) (5 U.S.C. §1007(b))

The Commission was thus under a plain duty to make a ruling upon our Exception No. 4 and this it failed to do.[10] Secondly, Section 8(b) requires that the Commission support its action with reasoned findings. There is nothing which faintly resembles such findings in the reports here.

Furthermore, the Commission's action cannot stand under Section 10(e) of the Administrative Procedure Act, for there is absolutely no evidence in the record in this case to support the Commission's decision to compel the South to subsidize the rail transportation system of the North. Instead, the record in this case affirmatively shows that the South is in no position to assume a part of the burden of supporting the Northern railroads. The Commission's preoccupation with "Economic Trends" reflected in percentage of growth (325 I.C.C. at 12-16) seems to have closed its eyes completely to the fact that the South is still by far the poorest section of the entire country, measured by almost any economic indicator that one might choose, and that the North is by far the richest. Indeed, despite the phenomenal growth that has occurred in the South since the removal of the discriminatory class rates, our position relative to that of the North has changed very little.

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[10] The view expressed by the courts is buttressed by the statement made by Representative Walter, as sponsor of the bill, when he explained the Administrative Procedure Act to the House of Representatives:

> "The record must show the official rulings of the agency upon each such finding, conclusion, or exception presented . . ." (92 Cong. Rec. 5653 (1946)).

The situation as it existed under the old class rate structure was summarized by this Court in its opinion in *New York* v. *United States* (331 U.S. at 310-313). There the Court first pointed out that as of 1939, "the great advance in the industrialization of Official Territory over the other territories need not be labored, for it is obvious," an observation the Court supported with the following data (331 U.S. at 310):

Territory	*Land Area 1940*	*Gainful Workers 1930*	*Value of Manufactured Products 1939*	*Value added by Manufacture, 1939*
Official	13.5	51.1	67.8	71.4
Southern	13.3	16.8	10.0	9.4
Western Trunk Line	20.9	13.5	9.9	8.7
Southwestern	14.2	9.3	4.5	3.3
Mountain Pacific	38.1	9.3	7.8	7.2
Total	100.0	100.0	100.0	100.0

The Court went on to show, again by a table setting forth the significant data, that the situation as of 1939 was no temporary phenomenon and, indeed, was getting worse when measured in absolute terms (331 U.S. at 311):

	Actual increase in total gainful workers 1910 to 1930	*Actual increase in value of products in all industries from 1909 to 1939*	*Actual increase in value added by manufacture in all manufacturing industries from 1909 to 1939*
Official	6,230,273	$23,561,190,000	$11,284,350,000
Southern	652,755	4,229,396,000	1,662,336,000
Western Trunk Line	904,986	3,117,079,000	1,284,798,000
Southwestern	1,011,151	1,942,378,000	580,388,000
Mountain-Pacific	1,863,419	3,320,930,000	1,341,785,000

The Court also discussed the significance of economic trends within the country in the following terms (331-313):

"The value added by manufacture in all industries from 1849 to 1939 is shown for all territories by the chart on the following page.

"From this chart it is apparent that Official Territory has maintained its commanding lead in spite of recent marked increases elsewhere, especially in the South. Similarly, for the period 1929 to 1939 the number of wage earners in manufacturing industries in the entire country decreased 11 per cent; in official territory, 12 per cent; while in the South there was an increase of 5 per cent. For the same period, values of manufactured products increased 1 per cent in the South, while they decreased 21 per cent for the entire country and 25 per cent in Official Territory. From 1930 to 1940, the number of gainfully occupied workers in manufacturing in Official Territory decreased from 70.5 per cent to 69.4 per cent of the nation's total, while in the South there was an increase from 10 per cent to 11.9 per cent. A number of manufacturing activities have increased more rapidly in the South than in Official Territory, though the reverse has been true in other industries. But in spite of the growth in industrial activities in the South and West (which appellants stress heavily), the percentage comparisons are not particularly revealing because of the great disparity between the bases on which they are computed.

"The fact remains that economic development in the South and West has lagged and still lags behind Official Territory. In 1940 the average annual dollar income per person employed in Official Territory was $1,988; in Southern $940; in Southwestern $1,177; in Western Trunk-Line $1,411. Official has 69 per cent of all workers engaged in manufacturing in the United States and 29 per cent of all workers in extractive industries. It has, for example, a high concentration in the manufacture of

steel and copper products, though less than 4 per cent of the iron ore reserves, and no reserves of metallic copper. The South and West furnish raw materials to Official and buy finished products back. They are also dependent to a great extent on the markets for their products in Official which has over 48 per cent of the population of the country, 76 per cent of the national market for industrial machinery and raw materials, 64 per cent for all goods and sources (sic), 62 per cent for consumer luxuries, and 53 per cent for consumer necessities."

The changes in this situation shown in this record do not even begin to bring about an equalization between the North and the South of the conditions described above. The 849 per cent increases shown in "Value Added by Manufacture" in the South between the year 1935 and 1956 (V.S. No. 15, Ex. No. 5) actually gives the South only 11.7 per cent of the "Value Added by Manufacture" in the country as a whole. This can be compared to the 9.4 per cent recited by the Court for the South in 1939 and the 71.4 per cent figure recited for North in the same year. The per capita statistics set out in the record (V.S. No. 15, Ex. No. 11) are to the same effect. In every category shown, the South still lags far behind the rest of the country in wealth as well as in its level of economic activity.

The Commission's orders in this case would effectively nullify the gains realized by the South as a result of the establishment of the principle of uniformity in *New York v. United States*. Although the orders here operate *directly* only upon the revenues of the railroads and not upon rates, an inflation in the Northern railroads' divisions on North-South freight traffic will inevitably have an impact not merely upon the Southern railroads' revenues but also upon the transportation system and, consequently the whole economy of the South. Because the earnings of the Southern railroads have consistently been

found by the Commission to be inadequate,[11] any action which would further reduce those rates of return for the benefit of the Northern railroads would necessarily result either in a diminution of rail services in the South, or in an increase in the rates which Southern shippers must pay for such services, or both.

It is obvious that the Southern railroads cannot spend money for maintenance and expansion of their services unless they have the money to spend. Consequently, if the Southern railroads have no excess revenues to spend for this purpose in their current earnings, a substantial decrease in those earnings would inevitably have an impact upon the railroads' operations.

The only alternative to a substantial diminution in the quality of rail service available to the people of the South would be a substantial increase in rates. Any substantial rate increase would obviously put these shippers at an even more serious disadvantage in their efforts to compete with shippers located closer to the center of population.

The extent of this unfairness becomes even more ap-

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[11] The Commission has consistently stated in its own proceedings that the rates of return of the Southern railroads are inadequate. In *Increased Freight Rates, 1951*, 284 I.C.C. 589, 612 (1952) the Commission found rates of return of these railroads to be substandard, even though they were then substantially higher than they have been in recent years, saying:

> "Judged by any standard shown of record, the rates of return earned or prospectively to be earned by the railroads by the districts and regions specified in our former reports in this case, are substandard."

And only last year, in *Increased Freight Rates, 1967*, 329 I.C.C. 854 (1967), the Commission reiterated this finding (329 I.C.C. at 872) in holding that the Southern railroads were entitled to another general freight increase designed to generate the revenues necessary to permit them to maintain their current level of service.

parent when it is realized that the Northern railroads' primary duty is to serve the competitors of Southern industry. It is common knowledge that most of the buying power of the country is concentrated in the North and that, notwithstanding the substantial geographical disadvantage which must be overcome, industries located in other parts of the country must seek to reach that market. The Commission itself recognized this situation in its report in the *Class Rates* proceeding (262 I.C.C. at 696):

> "Official territory is the greatest consuming territory in the country, and is the market that nearly all manufacturers desire to reach, particularly where they have a surplus of their products to sell. In shipping to official territory, manufacturers in the other territories not only have the disadvantage of location, but are subjected to an additional burden in those instances where they must pay class rates on a much higher level than their competitors in official territory. This situation reacts to the disadvantage of manufacturers in the other territories, and to the advantage of those in Official Territory, tends to restrict the growth and expansion of the manufacturers in the other territories, and to some extent, to prevent the establishment of new manufacturing plants in those territories."

Moreover, the alternative of a rate increase is particularly ominous here since revenues lost to the Northern railroads through their inflated divisions might be made up, in part at least, from an increase in intrastate rates within the South — rates which are of vital importance both to the growth of an independent Southern economy and in their effect upon the overall ability of Southern shippers to compete in the markets of the North. Over the protest of some of the appellees (see e.g. *King* v. *United States*, 344 U.S. 254), the Commission has successfully asserted the power under Section 13 of the

Interstate Commerce Act to take into account the entire financial condition of the railroads, rather than restricting itself to those aspects related to intrastate commerce, in passing upon the adequacy of intrastate rates.[12] Under this rule, any loss of revenues in this interterritorial divisions case may later be used by the Commission as a basis for compelling intrastate rate increases. Hence, in future Section 13 proceedings the very rates of return which the Commission has here depressed to meet the burden of claimed higher transportation costs in the North may have to be augmented by increases in intrastate rates.

The basic unfairness of imposing the burden of higher Northern transportation costs upon the South is apparent where the economy of the South is demonstrably and dramatically weaker than that of the North, as the record here unquestionably shows that of the South to be. The inevitable effect of any divisional structure that accords higher divisions to the Northern railroads would be to improve the rail transportation system of the North at the expense of the Southern public, for any transfer of divisional revenues to meet the needs of

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[12] The Commission has repeatedly utilized Section 13 orders based upon this theory as a source of additional revenues for the Southern railroads. Indeed, as a result of such proceedings or the threat of such proceedings, intrastate rate increases have been effected in each one of the States represented here during the period covered by the rate of return date set out above. See, e.g., *Louisiana Intrastate Rates and Charges*, 284 I.C.C. 467 (1952); *Alabama Intrastate Express Rates and Charges*, 288 I.C.C. 423 (1953); *Mississippi Intrastate Freight Rates and Charges*, 291 I.C.C. 39 (1953); *Louisiana Intrastate Freight Rates and Charges*, 291 I.C.C. 279 (1954); *North Carolina Intrastate Freight Rates and Charges*, 293 I.C.C. 541 (1954); *Tennessee Intrastate Freight Rates and Charges*, 294 I.C.C. 633 (1955); *South Carolina Intrastate Freight Rates and Charges*, 296 I.C.C. 159 (1955); *Alabama Intrastate Rates and Charges on Coal, Lumber, and Scrap Iron*, 297 I.C.C. 241 (1955); *Louisiana Intrastate Passenger Fares*, 305 I.C.C. 137 (1958); *Louisiana Intrastate Freight Rates and Charges*, 306 I.C.C. 301 (1959).

the Northern railroads could not fail to have an adverse impact upon rail transportation in the South, either through increased freight rates or through a diminution in the availability of rail services, facilities and equipment, or both. Consequently, a transfer of divisional revenues to the Northern railroads would bear heavily upon the Southern public regardless of the reasons that might be offered to support it.

The record shows that the Southern people are fighting a long uphill struggle in their efforts to raise their standard of living to that already enjoyed in other parts of the country. In such a situation the South cannot properly be expected to make a disproportionate contribution to the maintenance of the rail system in the North. The South has many needs of its own which must be met, and we are striving mightily to meet them despite the handicap of a still woefully inadequate industrial base. There is simply nothing whatever in the record to justify a further shackling of the efforts of our people by requiring them to subsidize the rail transportation system of the North.

The undisputed facts show no basis for the Commission's action in imposing the burden of the allegedly higher Northern transportation costs upon the Southern people. That action is therefore unlawful and should be set aside under Section 10(e) of the Administrative Procedure Act.

CONCLUSION

When the claims being pressed by the Northern railroads in this case are considered against the background of the historical context out of which they arose, it is plain that what is involved here is simply another effort to keep the South in a permanent position of economic inferiority. Whether the fashionable justification is in-

herent Northern *disadvantages,* as here, or inherent Northern *advantages,* as in the *Class Rates* case, and whether Northern rail costs are argued to be higher than those in the South or lower, the result is always the same. Thurman Arnold summed it up almost thirty years ago in a speech delivered August 22, 1941 at Hot Springs, Arkansas:

> "The industrial East has been the Mother Country. The South and West have been the colonies. The colonies have furnished the Mother Country with raw material. The Mother Country has been exploiting the colonies by selling them manufactured necessities at artificially controlled prices . . . How this all happened is a complicated process. Big business has treated the West and South primarily as a source of raw materials, not as a place to manufacture and sell finished products at competitive prices.
>
> "This is the age-old principle of colonial empires. It is dictated by the necessity of keeping up dividends in the Mother Country against cheaper local competition in the colonies. The methods of maintaining control of industrial markets in the South and West are based on the power of tightly organized cartels to control supply, transportation and distribution in such a way as to put new competing enterprise in the colonies under a continuing handicap."

In refusing to permit the Interstate Commerce Commission to promote this kind of policy without reasoned findings based upon substantial evidence as required by the Administrative Procedure Act, the district court has done nothing more than to guarantee the South the minimal protections of the law against this threat. The rightful province of the Commission has in no sense been invaded, for the Commission is still free to decide the case as it sees fit so long as it observes legal requirements.

For the foregoing reasons, the judgment of the United States District Court for the Eastern District of Louisiana should be affirmed.

Respectfully submitted,

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January, 1968

Supreme Court of the United States

October Term, 1962

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,

Appellants

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees

On Appeal From the United States District Court for the Eastern District of Louisiana, New Orleans Division

APPELLANTS' BRIEF OPPOSING MOTIONS TO AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 925.

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,

Appellants,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

APPELLANTS' BRIEF OPPOSING MOTIONS TO AFFIRM.

REPLY TO THE MOTION OF SOUTHERN RAILROADS, APPELLEES.

At the outset, the action of the court below should be placed in its proper perspective. As pointed out in Appellants' Jurisdictional Statement, to develop the relative service costs of their respective territories in handling this traffic, both sides utilized the territorial Rail Form A costs. The Southern lines then modified those costs to include 12 adjustments. The Commission accepted five of those adjustments and rejected the others. It made a definitive analysis of each adjustment and it concluded that the

Form A average costs with the adjustments accepted reliably reflected the costs of the North-South traffic. The District Court reversed the Commission, disagreeing with that body's findings concerning the weight and significance to be accorded the cost evidence.

The District Court's action is in the teeth of this Court's recent decision in *Chicago & N. W. Ry. Co. v. Atchison, T. & S. F. Ry. Co.*, 387 U.S. 326, 87 S. Ct. 1585 (1967) where, in discussing a similar attack on the cost issues the Court said:

> "The presentation and discussion of evidence on cost issues constituted a dominant part of the lengthy administrative hearings, and the issues were thoroughly explored and contested before the Commission. Its factual findings and treatment of accounting problems concerned matters relating entirely to the special and complex peculiarities of the railroad industry. Our previous description of the Commission's disposition of these matters is sufficient to show that its conclusions had reasoned foundation and were within the area of its expert judgment. Baltimore & O. R. Co. v. United States, 298 U.S. 349, 359; New York v. United States, 331 U.S. 284, 328, 335, 349."

The above language is entirely apposite here. So is the holding in *Baltimore & O. R. Co. v. United States*, 298 U.S. 349 (1936) that "The Commission alone is authorized to decide upon weight of evidence or significance of facts" (p. 359).

Contrary to the contentions of the Appellees, the decision below rests upon grounds which if accepted are, to use Appellees' own words, "far-reaching and ominous" (Motion, p. 6). This affirmatively appears both from the opinion of the court below and from the arguments with which Appellees attempt to justify it.

In a decisive passage in its opinion, on which Appellees heavily rely, the court below held that territorial average costs "cannot appropriately be accepted without further evidence for mechanical application to particular segments of traffic in a divisions case." (J.S. 24a). As we shall show below, the Commission's order does not rest upon any "mechanical application" of Form A costs and its reliance upon those costs as to the particular segment of traffic involved was supported by substantial evidence. It is clear that the District Court weighed the evidence *de novo* and substituted its own inferences or conclusions for those drawn by the Commission. If its decision is allowed to stand it will serve as a precedent for continued interference with the Commission's determination of cost accounting problems.[1]

I. The Southern lines say that Appellants seek to use "unadjusted territorial average costs" (Motion, 5) without any evidence that they measure the cost of controverted elements of the North-South traffic, and they quote from the opinion below that territorial average costs cannot be

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1. After stating that this case has been remanded to the Commission for further proceedings consistent with the requirements of the Administrative Procedure Act, Southern railroads say on page 23 of their motion: "The United States, which is charged by statute with the responsibility for defending orders of the Commission, has not appealed this disposition of the case." At page 5, Southern roads again bring this matter to the attention of the Court. In the court below the United States urged that the order of the Commission should be sustained. Lest the Court be misled into believing that the United States has changed its position and now agrees with the decision below, Appellants desire to state that they have been informed by the Attorney General that the reason that the Department of Justice did not file a Jurisdictional Statement was that it could make no special contribution to the defense of the order involved and that the order could be adequately defended by counsel for the Interstate Commerce Commission.

accepted "without further evidence for mechanical application to particular segments of traffic" (Motion, 8).

The fact that the Commission adopted five of the adjustments tendered by Southern lines, and the exhaustive analysis of these and the remaining controverted adjustments (taking up 26 pages of an appendix to its report) indicate how far removed its action was from a "mechanical application" of the Form A territorial costs.

There is abundant evidence to support the use of the Form A costs as adjusted by the Commission. At the outset, the order of investigation itself involved all traffic (except, by common consent, coal and coke) between all stations in the whole of Official Territory and all stations in the whole of Southern Territory and over all the railroads of each territory. It was truly a case involving territory-wide traffic between the North and the South. The record showed the North-South traffic of Northern and Southern lines combined to constitute 10% of their combined traffic (V.S. 36, Ex. 5). This contrasted with much smaller portions of total traffic in other cases in which the use of territorial averages had been approved, such as *Class Rate Investigation, 1939,* 262 I.C.C. 447 (1945), affirmed, *New York v. United States,* 331 U.S. 284 (1947), wherein the traffic moving under the rates involved constituted only 4.1% of the total traffic of the railroads (262 I.C.C. at 479).[2]

The record also establishes that the interterritorial traffic involved is an inseparable part of the whole and possesses no transportation characteristics which are distinguishable from those of traffic generally, and that the method of railroad operation is such that the use of average

2. Appellees seek to escape the force of this comparison by suggesting that the Commission was concerned in the *Class Rate* case with finding territorial average costs of all traffic. As this Court pointed out, however, the orders involved "affect class rates and class rates alone" and that ". . . this proceeding pertains only to class rates, which move but a small percentage of the traffic"; 331 U.S. at 330 and 343.

territorial costs was appropriate to the traffic involved in this case (V.S. 8).[3] This evidence showed, *inter alia*, that in a test week North-South traffic moved in 45% of all the trains operated by the Eastern lines, and the witness concluded that it would be found, over a longer period, that every train operated by an Eastern line would participate in the transportation of Southern traffic. "The obvious conclusion to be drawn is that Southern traffic shares in the same service provided on traffic generally within Official Territory and is not restricted to any particular trains or categories of service" (V.S. 8, p. 9).

The evidence also shows that the Southern lines basically used the Form A territorial costs and that some 89.45% of the total North-South costs attributed by them to the traffic involved were unadjusted Form A territorial averages (V.S. 40, 40A). That the territorial costs were representative as to the North-South traffic was strongly indicated by that fact.

Again, the record contains comprehensive evidence by Northern lines with respect to each element of cost as to which Southern lines sought to adjust the Form A costs (E.g., V.S. 73, 76, 77 & 80, §§ A-J; Part printed in the Joint Appendix at pp. 609-617, 623-661, see J.S. 3, N. 3).

The evidence also shows that Southern lines have employed Form A territorial average unit costs as appropriate to measure transportation costs of far less scope than that involved in the present case (V.S. 80, Sec. H; J.A. 656-660). Sufficient examples of such use by Southern lines were supplied to illustrate how such territorial costs are used by Southern lines "as a matter of established practice month in and month out before the Commission" (J.A. 656).

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3. Southern lines characterized this evidence as a "train utilization study" (Motion, 11, footnote 11). This evidence was much broader in scope, showing how railroad facilities and services are planned and operated so as to transport all freight in a similar manner irrespective of ultimate point of origin or destination.

With the foregoing evidence before it, and after a detailed consideration of each of the cost adjustments sought by the Southern lines, the expert body concluded that, with the adjustments adopted, the Form A costs were adequate and reasonably accurate and reliable to reflect the costs attributable to the traffic at issue. All of these facts having been before the Commission, it cannot be said that its conclusion lacked support in substantial evidence. The contrary holding of the District Court can only mean that it disagreed with the Commission's appraisal of the significance of these facts. The Commission accepted them as showing that the Form A costs are reliable for use here, as to the traffic involved; the District Court held that greater refinement was necessary. That, however, was not its function.

As to findings, if the adjusted Form A costs used by the Commission are representative of the North-South traffic, as the Commission found, then the higher costs relate to that traffic. These are the costs to the railroads involved of performing their transportation services. They do not pay one scale of wages (their largest item of expense) on North-South traffic and another and different scale on other business. They handle North-South traffic along with all other, an indiscriminate part of the whole. Passenger deficits—here considered upon Southern lines' insistence—are not incurred for any freight traffic, but are spread over all, as part of the constant or overhead expense, for both Northern and Southern lines. The Commission's findings that the costs were reasonably accurate and reliable for determining the cost to the railroads on the traffic involved, plus the 26 pages of cost analysis and conclusions on disputed cost items were all the cost findings that were required of the Commission.

On p. 9 of their Motion, Southern lines say that the lower court was "well aware" that the entire "inflation" in the Northern lines' territorial averages stems from a few services as to which the averages are higher in the North than in the South. Any such "awareness" could derive only from Southern lines' assertions to that effect. The Interstate Commerce Commission made no such finding. Necessarily, the higher Northern costs are the result of the whole complex of conditions under which they operate and the whole complex of conditions under which the Southern lines operate. See *New York v. United States*, *supra*, at pp. 348-349.[4]

Southern lines say (7) that nothing in the decision of the District Court precludes the Commission from relying on Rail Form A as appropriately adjusted, or justifies the concern that the integrity of Rail Form A and other cost formulas is under attack.

In support of this statement, those lines argue that the District Court recognized explicitly that Rail Form A was "devised for the express purpose of measuring territorial average cost and has been widely used as an acceptable means of comparing relative transportation costs" and that it is entitled to full weight when the issue is one "that it is designed to cover." This statement actually shows

4. Southern lines attempt to overcome the important fact that Northern lines' wage levels are higher than theirs by several representations which, upon plenary consideration, Northern lines would show to be inaccurate. It may here be noted that these Appellees state (Footnote, pp. 9 and 10) that Northern lines' higher wages occur in the "executive and professional categories . . ." The evidence shows that they apply in other categories as well (e.g., maintenance of way and structures and maintenance of equipment, V.S. 80, Ex. F-2, pp. 1 and 2, and V.S. 80, F-3, pp. 1 and 2; J.A. 644-8 and 651-2), and also that the "executive and professional" category includes such employees as clerks, stenographers, accountants, elevator operators, patrolmen and watchmen, freight claim agents, janitors, etc. (V.S. 80, Ex. F-2, p. 1; J.A. 646-647).

that the court would severely circumscribe the use of the formula. Upon plenary consideration, Appellants would show that the lower court was mistaken in its conception of the purpose of the formula and in ascribing to it so limited a use.

Moreover under the lower court's decision, it is the reviewing court which would decide whether the formula figures were "appropriately adjusted." Here they were adjusted by the Interstate Commerce Commission and the resulting figures were considered by that body as reliably representing the cost of the North-South traffic. If the District Court can substitute its judgment for that of the Commission and require special studies for greater refinement, the value of the Commission's cost formulas will manifestly be seriously impaired and, moreover, complex questions relating to transportation costs will be decided by the many District Courts which have jurisdiction to review orders of the Commission, rather than by the body which Congress has charged with the administration of the National Transportation Policy and the regulation of carriers subject to its control.

On p. 13 of their motion, the Southern railroads make some comments respecting this case as compared with *Chicago & N.W. R. Co. v. A.T.&S.F. R. Co.*, 387 U.S. 326 (1967). Their purported distinction of that from the instant case is no distinction at all. And it is of the utmost significance that they in no way deny that in that case, as here, although the basis of the Commission's action was the relative costs of the parties reflecting their respective operations as to the traffic involved, the Commission relied almost exclusively upon the Form A average costs of handling all traffic in these territories in reaching its conclusions. No reference whatever is made by the Appellees to that fact or to the statement (quoted in our Jurisdictional

Statement, p. 20) by their co-Appellees, the Southern Governors' Conference, et al., that ". . . there, as here, virtually every objection to reliance upon such territorial averages was brushed aside without either findings or evidence to support such action." In that very recent case this Court held that the evidence, the same kind as is involved in the case at bar, was sufficient to support the inter-territorial divisions order involved. And the Appellees in no way challenge that fact.

II. The remainder of the Motion to Affirm is concerned largely with Southern lines' argument concerning passenger deficits. On the whole, those arguments are clearly met in the Jurisdictional Statement (pp. 25-30). There remains little that warrants comment at this time.

It is argued on p. 16 of the motion that only the deficits attributable to common costs may be assigned to the freight service where the deficit results from commutation operations; yet under the commission's decision the Appellees would have the entire deficit—that resulting from both common and solely related costs—assigned to freight services where the deficit results from intercity passenger service. The Appellees state (16) that the operation of commuter trains requires equipment and facilities which have no relation to freight service, citing, *inter alia,* terminals and yards. But it is just as clear that intercity passenger service requires "equipment and facilities which have no relation at all to freight service." It requires *inter alia,* passenger locomotives, passenger cars, coach yards and passenger terminals. Yet, in the one case (commuter service) the deficit resulting from the expenses pertaining to these "solely related" facilities would be excluded, while in the other case (intercity service) it would remain included. The injustice of adopting this selective approach, which would be so beneficial to Southern lines, is manifest.

In the first paragraph on p. 18 of the motion, it is stated that Commission counsel now argue that because commuter deficits may be taken into account in determining rates, they should also be taken into account in making divisions of those rates, and Appellees go on to state that this theory was not advanced by the railroads in the proceedings before the Commission and that the Northern roads there took the position that a change in divisions is not dependent on a change in rate levels. It was Northern lines' initial position before the Commission that passenger deficits should be completely excluded and only freight costs considered (Jurisdictional Statement, 25), but that if the Commission did consider passenger deficits it should consider all of them and not only those which were of greatest significance to the Southern lines. It is of obvious relevance to the consideration of such deficits in prescribing divisions that they are considered in prescribing rates, and reference to that fact in no way changes the grounds of the Commission's decision. The statement attributed to Northern railroads that a change in divisions is not dependent upon a change in rate levels had nothing to do with the matter of passenger deficits. It related to the entirely different question as to whether a change in class rates must entail a change in divisions, which obviously it need not.

It is stated in the middle paragraph on p. 18 of the motion that rate levels are no higher in the North than in the South and that they have been the same since the *Class Rate* case which was upheld in *New York v. United States,* 331 U.S. 284 (1947). Without saying so, the Southern lines are here referring only to class rates. It is true that the class rates are the same in both territories. These rates move only about 1% of all carload tonnage in the Eastern United States. *Eastern Central Motor Carriers Asso. v.*

B. & O. R. Co., 314 I.C.C. 5, 17 (1961). The rate levels upon which the great volume of the traffic actually moves have become higher in the North than those in the South. *Official-Southern Divisions*, 287 I.C.C. 497, 523 (1953). *Increased Freight Rates, E.W. and S. Territories, 1956*, 300 I.C.C. 633, 689 (1957).

In footnote 15 on p. 19 of their Motion, Appellees quote from *C.&N.W.* to the effect that the issues are different when, in a divisions case, it is argued that carriers in one part of the country should subsidize passenger operations elsewhere. Appellants showed in their Jurisdictional Statement that the consideration given passenger deficits by the Commission had the effect of increasing Southern lines' divisions over what they would have been otherwise, that it was at the insistence of those lines that the Commission included passenger deficits at all, and that the inclusion of passenger deficits may be said to have resulted in Northern lines subsidizing Southern lines. No answer was made to that argument.[5]

5. In Footnote 16 on p. 19, of their Motion, the Appellees assert that this Court recognized that *King v. U.S.*, 344 U.S. 254, had "nothing to do" with the facilities "solely related" to passenger service, and they then quote a single sentence from that decision in support of the assertion. A reading of the case will show that the Court did not limit the Commission's consideration of passenger deficits to those which resulted from common costs. Indeed, it said that if the passenger service cannot bear "its direct costs and its share of the joint costs" the Commission has felt it necessary to take the passenger deficit into account in fixing freight rates; 344 U.S. at 261. The Commission's action in doing so was approved. The Commission's theory with respect to considering passenger deficits in determining freight rates is set forth in detail in *Increased Freight Rates, 1948*, 276 I.C.C. 9, pp. 32-39.

REPLY TO THE MOTION OF APPELLEES, SOUTHERN GOVERNOR'S CONFERENCE, ET AL.

This motion contains so large a number of misleading statements that it cannot be dealt with adequately in a brief which must be prepared with the dispatch now required.

The "Statement" in the Southern Governors' motion (pp. 2-3), while recognizing that the Commission's order in *Class Rate Investigation, 1939, supra,* related only to the "class rate structure", proceeds to state that:

> "Prior to that case, railroad rates had consistently been higher in the South than in the North and Southern shippers had been compelled to pay substantially higher charges to reach Northern markets than Northern shippers were paying to reach Southern markets, even where the distances involved were identical."

That this broad generalization is not even substantially correct will be apparent from the Commission's report in the case cited at pages 593-600, and 601-607. See also the comparisons of the average interterritorial rate levels in 1957, 1958, and 1959 here of record, which show substantially lower rate levels on northbound than on southbound traffic (V.S. 75, p. 3; J.A. 619).

Particularly objectionable is the Southern Governors' erroneous and irresponsible statement at page 4 to the effect that the "Northern interests", having failed to convince this Court that the North was entitled to lower rates because of natural advantages, "refused to accept" the equality with the South upheld in *New York v. United States, supra,* and "decided to pursue their aim of obtain-

ing a preference for the North . . . by seeking inflated divisions from North-South freight traffic . . ."[6]

Since it was only *Northern lines* that sought rehearing in the Commission's proceeding which resulted in the divisions order under review, Southern Governors' indiscriminate use of the term "Northern interests", as to both rate structure and divisions, clearly charges that Northern lines resisted the prescription of uniform class rates, that they refused to accept the equality ordered, and that their effort to secure divisions reflecting relative costs of service was pursuant to a deliberate purpose of "obtaining preference for the North". Nothing could be further from the truth than these charges.

The Northern lines accepted the Commission's decision in the *Class Rate* case. They did not intervene, or otherwise participate, in "the suits by or on behalf of northern and New England States and western railroads to set aside these orders, . . ."[7]

That Appellees should here descend to the level of charging Northern lines—in seeking to obtain divisions reflecting their higher costs—to be motivated by a purpose "to keep the South in a permanent position of economic inferiority", contrary to their statutory duties under the Act, and without a shred of evidence to support such charges, is a cogent commentary on the complete lack of merit in their contentions.

Again, Southern Governors' motion (p. 6) states that "the Commission's orders inflate the Northern railroads' divisions so that they receive, on the average, 17 percent more than the Southern railroads for the same amount and kind of service." The stipulation of the parties embodied in Paragraph 3(4) of the pretrial order states:

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6. An equally offensive and wholly erroneous accusation appears at page 18 of the Motion of Southern railroads.

7. The quoted language is from *New York v. United States*, 331 U.S. at 288.

"Overall, the divisions and revenues of the Southern railroads are reduced approximately 3%. Many divisions of Northern railroads were reduced by the Commission's order." (J.A. 3)

Appellants will endeavor to deal in summary fashion with the principal points set forth in this motion:

1. As to the Need for Findings That Higher Costs Result From Inherent Disadvantages.

Section 15(6) of the Interstate Commerce Act, which empowers the Commission to prescribe divisions and requires that it give due consideration to specified elements along with all other pertinent facts, imposes no such restriction upon the Commission's use of relative costs as these Appellees ask the Court to impose. And no judicial construction of Section 15(6) supports their construction.

The Appellees are incorrect in assuming that the Commission must find that higher costs reflect inherent disadvantages before giving effect to them. The Commission said: "Relying on *New York v. United States,* 331 U.S. 284, 315 (1947), the interveners also take the position that natural disadvantages must be found in the North before we may increase the divisions of the northern railroads." (J.S. 70a) This, of course, was a statement of the Appellees' contention. The Commission answered it by stating, in essence, that other factors being equal, cost differences are the product of, and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories.[8]

8. The Commission then cited *Louisville & N. R. Co. v. Southern Ry. Co.,* 319 I.C.C. 639, at pages 646-47. At the cited pages, the Commission, consistent with its conclusion here, said, after describing contentions concerning operating conditions:

"While an appraisal of the evidence regarding physical operations indicates that both the complainant and the defendant operate in

The factor of special importance here, of course, is efficiency of operation. And the Commission found that both groups of carriers are being operated efficiently and that neither group should be considered as more or less efficient than the other (J.S. 58a).

Moreover, Appellees' reliance on *New York v. United States* on this point is misplaced. There the Court reviewed a decision of the Commission which ordered that class rates over a large part of the country be equalized. The Commission's orders were designed to eliminate regional discriminations in class rates and involved only rate discrimination. Divisions were not in issue. The Commission's authority to reach such regional discrimination was based upon § 3(1) of the Interstate Commerce Act, 49 U.S.C.A. § 3(1), which, *inter alia,* condemns discrimination between regions, districts or territories. There had been a wide disparity in the level of the class rates in the territories involved. The Commission was required by § 3(1) of the act to remove that disparity unless it could find that the differences in class rate levels were justified by transportation conditions pertaining to such rates in the several territories. It is significant that the Commission, in order to determine this fact relied primarily on cost evidence. As the Court noted, at pages 315-316:

> "The Commission found that conditions peculiar to the respective territories did not justify the differences in the territorial class-rate structures. In reach-

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mountainous terrain, there is no need to determine whether such transportation conditions are more favorable or onerous to one than to the other. The nature of the physical transportation circumstances is concededly reflected in the cost of operations. In this respect, the cost data hereinafter discussed form a sounder basis for a determination of the issue raised than any conclusions to be drawn from the numerous factual statements regarding operating conditions."

This decision was affirmed at 380 U.S. 526.

ing that conclusion it first inquired whether the differences in the costs of furnishing the railroad service in the several rate territories justified the existing differences in the levels and patterns of the class rate scales."

Thus, the case of *New York v. United States* actually stands for the proposition that costs are a fair, if not the primary means, of determining differences in territorial conditions. The fact that the Commission and this Court considered cost of service extremely important in determining territorial conditions affecting transportation is further apparent from pages 348-9 of the Court's decision:

> "Revenue needs, like costs of rendering the transportation service, are germane to the question whether differences in territorial rate structures are justified by territorial conditions. They are amongst the standards written into § 15a; they reflect the totality of conditions under which the carriers in the respective territories operate."

The Commission's findings under the heading "Importance to the Public" (J.S. 69a-70a), and its above-quoted finding regarding efficiency of operation were all the findings it was required to make with respect to this contention of these Appellees.

2. That the Commission May Not Impose the Burden of Higher Costs of One Section of the Country on Another, Even if They Result From Inherent Territorial Disadvantages.

On page 9 of their motion, these Appellees infer that the Commission introduced "the wholly unprecedented concept that the railroads of one section of the country should be supported by the people of another section." The Com-

mission did no such thing. Its decision rests on the completely reasonable basis of fixing divisions with relation to relative costs. Divisions, of course, are a matter between railroads, and a change therein does not change the rates paid by shippers. And in paying the rates involved, the shippers are simply paying for services rendered by the railroads, both Northern and Southern. In no sense is there involved a situation in which the railroads of one section are supported or subsidized by the people of another.

No "principal of primary local responsibility" such as these Appellees suggest has governed the prescription of divisions in the North-South cases or otherwise. The authority of the Commission to prescribe disparate divisions of interterritorial rates for the carrier groups concerned, when found by it to be just, reasonable, and equitable, is settled beyond question. *New England Divisions Case,* 261 U.S. 184 (1923), and *Baltimore & O. R. Co. v. United States,* 298 U.S. 349, 370 (1936).

Indeed, in some of the past North-South divisions cases the Commission prescribed divisional factors which, on Florida citrus, were as much as 85% higher, mile for mile, for the Southern lines than for the Northern lines and on traffic in general, 25% higher for Southern than for Northern lines. *Atlantic Coast Line R. Co. v. Arcade & A. R. Corp.,* 194 I.C.C. 729, 761-2 (1933), and *Divisions of Rates, Official and Southern Territories,* 234 I.C.C. 175, 192 (1939). In the first of these cases Commissioner Eastman's dissent pointed out that ". . . the majority are obliged to lean heavily on . . . the fact that while both sets of lines are bad off financially, the southern lines appear to be worse off than the northern." (762) The Commission's order was sustained in *Baltimore & O. R. Co. v. United States,* 298 U.S. 349 (1936). In neither of these instances was the Com-

mission's order regarded as compelling Official territory or its people to subsidize the carriers of the South.

The statement of the lower court in the instant proceeding, which is quoted on p. 37 of these Appellees' Motion, to the effect that the Commission is not perpetually bound by their 1953 holding, which prescribed an equal factor scale, but that the Commission has "special responsibilities in a case of this magnitude when it departs from its prior finding," completely overlooks the change in controlling facts, i.e., that whereas the Commission believed when prescribing equal factors that the costs of both groups of lines were and would remain equal, the evidence in this case shows that those of Northern lines proved to be higher when the record in the present case was made.

That no further findings with respect to this point were required of the Commission is clear. *N.L.R.B. v. Wichita Television Corporation*, 277 F.2d 579, 585; *Minneapolis & St. Louis R. Co. v. U.S.*, 361 U.S. 173, 193-4 (1959).

3. That Uniform Divisions Were Prescribed to Implement the Principle of Uniformity.

At p. 4 of their Motion, Southern Governors state:

> "This equal-factor basis of divisions was prescribed by the Commission itself to implement the principle of uniformity announced in the *Class Rate* case. *Official-Southern Divisions*, 287 I.C.C. 497, 533, 577-578 (1953)."

No reference to this subject appears at the pages cited by Appellees; in fact some of the pages do not even pertain to that case. While the Commission referred to the *Class Rate* scale in deciding upon the contour of the divisional scale prescribed in 1953, its report makes clear that in fixing the level of the divisions as between the Northern and

Southern groups it was guided by all the evidence of record, and particularly the cost evidence. This is made clear by its conclusions on pp. 524-527 of the report, and especially by the statements on p. 526 relating to the Commission's judgment that it considered it to be the safest assumption for the future that neither group would have a lower basis of operating costs than the other and that there are no other relevant circumstances of sufficient importance to justify higher divisional factors for one group than the other. This language clearly indicates that except for the Commission's finding that certain items of expense of Northern lines might be regarded as transient it would have prescribed divisions higher for Northern lines than for Southern on the basis of the cost evidence.

4. That "The Single Most Important Fact About Rail Form A Average Costs Is that These Average Costs Tend to Vary Directly With the Degree of Industrialization in the Areas Served by the Railroads for Which Costs Are Being Computed . . ."

This idea, for which Appellees cite no evidence, and as to which there is none, is basic to a large part of Appellee's argument. The record does show that as the South became more industrialized with relation to the North than it had been in the past, the transportation costs of the Southern railroads became relatively lower than those of the Northern railroads. The relatively greater increase in industrialization in the South in recent years is set forth in the Commission's report under "Economic Trends" (J. S. 50a-52a). The relation of Northern to Southern freight service costs is shown in the table appearing at J.S. 61a. This shows that at 500 miles, for example, the Official Territory costs were 11% higher than the Southern costs in 1948 and 20% higher than Southern costs in 1956 and 1957.

This shows that no reliance can be placed upon the Appellees' dictum that "the greater the degree of industrialization in any area, the higher the Rail Form A average costs of the railroads serving that area." (Motion, p. 10)

5. That the Commission Rejected Southern Lines' Adjustments Largely Because No Other Data Were Available Showing Costs on a Comparable Basis in Both Territories.

This is incorrect. In Footnote 3 on page 15 of the Motion, Appellees refer to what they call "instances" in which Southern railroads' evidence was rejected for lack of "comparable" data for the North, and they refer to empty return ratios, switching, and count of cars. A reference to the Commission's report will show that each of these proposed cost adjustments was rejected by the Commission for reasons independent of the existence or non-existence of comparable data for Northern lines. As to some of the items, the Commission referred to the absence of comparable data. But other reasons for rejecting the proposed adjustments were stated by the Commission in Appendix B to its report.

6. That the Form A Costs Used in Certain Recent Division Cases Were Adjusted.

On page 17 of their Motion to Affirm, these Appellees state that the Commission adjusts Rail Form A average costs in most of the cases in which "a precise determination of costs of service is a vital issue". As examples of such cases, they cite *Louisville & Nashville R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639 (1963) and *Illinois Central R. Co. v. Great Northern R. Co.*, I.C.C. No. 34699 (unreported. Recommended report and order of Oct. 27, 1966 adopted,

with inconsequential changes on July 31, 1967). As to the first of these two divisions cases, they state that the Commission made a substantial adjustment of Rail Form A averages with respect to car costs. This reference to but one adjustment is in contrast with the fact that the Commission made five adjustments in the present case. And the Court will remember that the L&N case dealt with only one commodity moving between limited points on only two railroads, in contrast with the vast scope of the present case. Also in connection with that case, it is interesting to note that while there the Commission adjusted Rail Form A averages with respect to "car costs", in the present case, the Southern lines suggested, as a substitute for the Form A car costs of the Northern and Southern railroads, the car costs of all the railroads in the United States, on all the traffic of the country (J.S. 114a).

The second case, *Illinois Central v. Great Northern,* also involved a single commodity moving between points on only two railroads and the adjustment cited by the Appellees was again only one, "to give effect to the fact that the traffic at issue required 'less than average engine minutes per car in origin and destination switching' ". In the present case, the Commission found that "territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic moving to and coming from terminals in all parts of both territories." It also found that the special switching studies in the South "have weaknesses, both in the sample and in the studies themselves" (J.S. 140a).

7. That the Chicago & North Western Case Was One in Which the Court Found Independent Evidence in the Record Supporting the Applicability of the Rail Form A Averages to the Traffic at Issue.

This statement (on page 22 of the Motion) should be contrasted with the statement by these same Intervenors in their brief as *amici curiae* in *Chicago & North Western,* which is quoted in Appellants' Jurisdictional Statement at pages 19-20.

8. That the Northern Railroads Suffer From Overcapacity to a Greater Extent Than the Southern Railroads.

This statement (e.g., on p. 29 of their Motion) has no support in the evidence whatever. The claims of Northern lines' alleged overcapacity are founded primarily upon generalizations concerning merger activity in the North. However, there is like merger activity in the South. The Commission has approved the mergers of the Central of Georgia and the Southern Railway, and of the Seaboard Airline and the Atlantic Coast Line, the latter, of course, being already in control of the Louisville & Nashville. A proposal for the merger of the Illinois Central and the Gulf, Mobile & Ohio is now going forward.

The Commission stated (J.S. 58a) that "... the southern lines themselves have noted that mergers are now going forward in all territories, including the South. If and when such proposed mergers are ultimately approved and finally consummated in both groups the savings produced thereby will be then reflected in the respective unit costs. The economies hoped to be effected thereby and the savings expected are not ascertainable for future operation to the degree required for any specific adjustment here of the cost studies of record."

9. That the Commission's Orders Would Nullify the Gains Realized by the South and Cause Rate Increases Within the South.

The suggestion that the Commission's decision in the present case would result either in a substantial diminution in the quality of rail service within the South or a "substantial increase in rates", and all the speculative consequences thereof which are alleged in the Motion, are hollow in the extreme. The Commission's estimate of the amount of the revenue reduction to the Southern lines as a result of the order here under review ($7,948,000.00, J.S. 99a) is only 62/100 of 1% of the freight revenue of the Southern lines ($1,280,900,000.00, J.A. 516) for the year in which the Commission's calculations were made (1956). After an appropriate adjustment for income taxes, therefore, it would appear that the reduced revenue might be somewhere in the neighborhood of 4/10 of 1% of the gross freight revenue of Southern lines. It is difficult to understand, therefore, how Appellees could be envisaging "a substantial increase in rates" as a consequence of this divisions order. The Commission considered these Appellees' contentions and found that the prescribed divisions "can result in no unlawful injury to the South" (265 I.C.C. at 27-28; 69a-70a).

IN THE EVENT OF REMAND THE PRESCRIBED DIVISIONS SHOULD BE PERMITTED TO CONTINUE IN EFFECT SUBJECT TO READJUSTMENT AS NECESSARY TO PROTECT ALL PARTIES.

In footnote 20 at page 22 of their motion to affirm, the Southern lines suggest that Northern lines, not having specifically asked the Court below to retain jurisdiction to require equitable resettlements in the event of a further order of the Commission upon remand, should for that

reason be denied that relief here. As an offset to the revenue losses Northern lines would thereby suffer from an unprotected remand, Southern lines suggest that under the pre-existing equal-factor divisions the Northern lines would still have the benefit of a terminal factor "which the Commission found to be excessive in the amount of $7,426,000 annually . . ." But this conclusion assumes the correctness of Southern lines' contention that the Commission upon rehearing separately found that the divisional scale it prescribed in 1953 "was invalid because of an excessive terminal element of 37 integers in the initial mileage block", a contention which the Court below specifically rejected (5a-6a).[9]

It is entirely possible that if the Commission should be required to give further consideration to this matter, such further consideration would result in the prescription for Northern lines of similar or substantially similar divisions to those here involved. But the Commission would lack authority under Section 15(6) to make a new divisions order retroactive so as to protect Northern lines for the large revenue losses they would suffer for the period from April 20, 1965, until a new order could become effective for the future following the remand proceeding.

It is respectfully submitted that this Court, in the event of remand to the Commission for further findings, should, therefore, employ the procedure it adopted in *Sec'y of Agriculture v. United States,* 347 U.S. 645 (1954), in which it vacated the District Court's order and remanded the cause to the Commission for more explicit findings, but without invalidating the Commission's order or enjoining its enforcement, thus leaving the unloading charges fixed

9. At page 34, Southern Governors' Motion suggests that the higher wages and taxes in the North are offset by its greater traffic density. But this assumption is not soundly based. *Divisions of Freight Rates,* 148 I.C.C. 457, 473.

by the Commission's order in effect pending completion of the remand proceedings. Such a procedure here would protect the interests of all parties by assuring the application of such divisions as the Commission might ultimately prescribe to all traffic moving subsequent to April 20, 1965.

CONCLUSION.

The Commission's decision of February 3, 1965 was the culmination of almost six years of an administrative process designed to assure equitable divisions for both the Northern and Southern lines. Appellees would have these six years of labor which the parties and the Commission devoted to this case nullified without full consideration by this Court, by the affirmance of a decision, the central fact of which is that the lower court substituted its judgment for that of the Commission on the complex administrative question of transportation costs. The authority of a court to decide such questions has been repeatedly denied by this Court, and as recently as in 1967 in *Chicago & N.W. R. Co., supra.*

The importance of this case to Northern lines cannot be overstressed. The affirmance sought would force them to begin all over again with administrative proceedings that would doubtless consume additional years, with no opportunity to preserve the increases awarded them in 1965. It would require the payment by them of over $25 million to the Southern lines and the loss of some $8 million annually until the issuance of a new order by the Commission. In view of these facts and of the important questions presented in the Jurisdictional Statements, it is respectfully submitted that the summary affirmance sought by the Appellees should be denied and the case set down for plenary consideration by this Court.

Respectfully submitted,

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No. 13 Consolidated with No. 15

IN THE

Supreme Court of the United States

October Term, 1968

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,

Appellants

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.,

Appellees

On Appeal From the United States District Court for the Eastern District of Louisiana, New Orleans Division

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No. 925 — Consolidated with No. 938

IN THE

Supreme Court of the United States

OCTOBER TERM 1967

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,

Appellants

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

BRIEF FOR APPELLANTS

OPINIONS BELOW

The opinion of the District Court (A. 325) is reported at 270 F. Supp. 695. The initial report of the Interstate Commerce Commission (A. 18) and its supplemental report (A. 176) are published at 325 I.C.C. 1 and 325 I.C.C. 449, respectively.

JURISDICTION

The final decree of the District Court was entered on August 22, 1967 (A. 357). These Appellants filed their notice of appeal in the District Court on October 2, 1967 (A. 5, 367). On March 4, 1968 this Court noted probable jurisdiction and consolidated this appeal and the appeal of the Interstate Commerce Commission (No. 938) from the same judgment (390 U.S. 940). The jurisdiction of this Court rests on 28 U.S.C. §§ 1253 and 2101(b). *New England Divisions Case,* 261 U.S. 184 (1923); *Baltimore & O. R. Co. v. United States,* 298 U.S. 349 (1936); *Chicago & N.W. R. Co. v. A., T. & S. F. R. Co.,* 387 U.S. 326 (1967).

STATUTES INVOLVED

Sections 1(4) and 15(6) of the Interstate Commerce Act (49 U.S.C. §§ 1(4) and 15(6)) and Sections 8(b) and 10(e) of the Administrative Procedure Act (5 U.S.C. §§ 557(c) and 706) are set forth in Appendix A of this brief.

Section 15(6) of the Interstate Commerce Act, which implements a general duty imposed upon common carriers by railroad in Section 1(4) of the Act, provides as follows:

> "Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers. • • •. In so prescribing and

determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge."

QUESTIONS PRESENTED

The District Court set aside orders (herein termed "order") entered by the Interstate Commerce Commission in proceedings held pursuant to Section 15(6) of the Interstate Commerce Act. The order found existing divisions of joint railroad rates for the carriage of all freight (other than coal and coke and certain trailer-on-flatcar traffic, excluded by the parties) between Official Territory and Southern Territory, to be unjust, unreasonable, and inequitable and prescribed new divisions which the Commission found would be just, reasonable, and equitable for the future.[1] Over 200 railroads, respondents in the principal proceeding, were involved, but the case was tried by the parties and decided by the Commission as a controversy between two contending groups of rail carriers—Eastern (or Northern) railroads and Southern railroads. Having found all other elements requiring consideration to be in balance as between the two groups, the Commission prescribed the new divisons with reference to the relative costs of the services involved to the Northern and Southern lines. The District Court set aside the said order and remanded the cause to the Commission for further proceedings.

The questions presented are these:

1. Whether the District Court disregarded established standards of judicial review by rejecting as insufficiently

1. Official Territory is comprised of the area lying generally east of the Mississippi River and north of the Ohio River, and certain points in Virginia. Southern Territory lies generally east of the Mississippi River and south of Official Territory.

A joint rate is one that extends over the lines of two or more carriers, and is established by the participating carriers either by agreement or pursuant to an order of the Commission. *St. Louis Southwestern Ry. Co. v. United States*, 245 U.S. 136, 139-140, note 2; *Chicago & N.W. Ry. Co. v. A., T. & S. F. Ry. Co.*, 387 U.S. 326, 331. The joint rate paid by the shipper is divided among the participating carriers, and the shares of the rate received by them are known as "divisions." *St. Louis Southwestern Ry. Co. v. United States, supra; New England Divisions Case*, 261 U.S. 184, 187.

refined the relative costs that the Commission found, on substantial evidence, to be adequate and reasonably accurate and reliable for the purpose of establishing new divisions, and by holding that the Commission was obligated as a matter of law to develop more refined cost data described by the District Court as the "actual cost of handling the specific traffic at issue."

2. Whether when the Commission, for the purpose of prescribing just, reasonable and equitable divisions of joint rates, makes findings of relative costs on a fully-distributed basis and includes therein a pro rata share of passenger service deficits, it is required as a matter of law in determining such relative costs to consider only passenger expenses which would remain to be borne by freight service if passenger operations were discontinued, and whether there was any error prejudicial to the Southern railroads in the Commission's treatment of passenger service deficits.

3. Whether the District Court improperly equated such overhead costs as are an integral part of fully-distributed costs with general revenue needs and as a consequence erred in holding that the Commission having adopted a relative cost basis for determining fair divisions, acted without findings and substantial evidence in relying upon relative costs which reflected an appropriate proportion of the deficits from all passenger operations including suburban service.

4. Whether the District Court erred in remanding the cause to the Commission without retaining jurisdiction to require equitable resettlements of revenues received by the parties from interterritorial freight rates in the event of a further order of the Commission on remand.

STATEMENT

I. Proceedings Before the Commission.

The Appellants are the railroads which operate in Official Territory, here called Northern lines. They intervened as defendants in the action brought by the Southern lines to set aside an order of the Interstate Commerce Commission which prescribed just and reasonable divisions of freight rates having application on virtually all freight moving between the North and the South. The Southern lines, Appellees here and Plaintiffs in the Court below, are joined in their attack on the validity of the Commission's order by the Southeastern Association of Railroad and Utilities Commissioners and the Southern Governors' Conference (herein collectively termed "the Conferences").

Twenty-one years ago, on July 17, 1947, the Northern lines began their efforts before the Interstate Commerce Commission to obtain divisions of the freight rates applying between Official and Southern territories which would give recognition to relative costs of service. On that date Northern lines filed a petition for further hearing in I.C.C. Docket No. 24160, *Divisions of Rates, Official and Southern Territories*, 234 I.C.C. 175 (1939). There the Commission had prescribed divisional factors for Southern lines that were 25% higher on general traffic, and from 31% to 72% higher on Florida vegetables than the factors prescribed for the Northern lines; and in *Atlantic Coast Line R. Co. v. Arcade & A.R. Corp.*, 194 I.C.C. 729 (1933), 198 I.C.C. 375 (1934), the Commission had prescribed divisions of rates on Florida citrus fruit which were from 47% to 85% higher for Southern than for Northern lines.

In consequence of the petition of July 17, 1947 the Commission instituted the investigation in which—seventeen years later and after an initial major decision—the order here under review was entered. The proceeding is

entitled *Official-Southern Divisions*, I.C.C. Docket No. 29885. In its original decision (287 I.C.C. 497, January 12, 1953), the Commission concluded that if it were to give controlling weight to the 1946 and 1948 Rail Form A cost studies of the Northern lines the relatively higher divisions sought by those lines would have been justified. But it did not accept them at face value because it believed that certain important items of expense in the years involved might reasonably be regarded as transient. Upon appraisal of the Form A cost data for the years studied and the facts of record it considered it to be the safest assumption for the future that neither group of railroads would have an appreciably lower basis of operating costs than the other, and that no other relevant circumstances of importance justified higher divisional factors for one group than the other (p. 526).

Accordingly, the divisional scale prescribed in the 1953 decision accorded the Southern and Northern lines equal divisions for equal mileage hauls north and south of the dividing points.

In 1959 the case was reopened by the Commission upon petition of the Northern lines for modification of the 1953 order to give recognition, principally, to Northern lines' higher costs of service, which the experience of the intervening years had confirmed.

In the period from September 1959 to February 1961 evidence was taken in the form of verified statements and exhibits, with oral hearings for cross-examination. Eighty verified statements were received, many of them voluminous. There were thirty exhibits independent of the verified statements, and the hearings for cross-examination produced approximately 2700 pages of testimony. All of this evidence made up what the Court below called "this massive record" (A. 348). Lengthy briefs were filed by the parties, and then followed the report of the two Hearing Examiners recommending divisional factors for Northern lines higher than those for Southern lines. Exceptions to the report and replies thereto were filed by both groups

of parties and the case was argued orally before the Commission.

In its decision, dated February 3, 1965, the Commission found the Northern lines' cost of performing the service involved to be relatively higher than that of the Southern lines (A. 78). It found other factors to be substantially equal, and predicated its ultimate conclusion upon its determination of the relative costs of performing the service. Hence it prescribed divisional scales which are higher for equal distances for Northern lines than for the Southern lines to the extent that the Northern lines' costs were found to be higher.

Ten of the eleven Commissioners joined in the Commission's report and one dissented, in part. The dissenting Commissioner agreed that the Northern lines should have higher divisions than Southern lines, but he objected to the amount of the increase awarded (A. 86). It is stipulated by the parties that overall the divisions and revenues of the Southern lines from the traffic involved were reduced approximately 3% (A. 200-201). While generally the divisions of Northern lines were increased, the difference in the construction of the new scales as compared with the old resulted in the reduction of many divisions of Northern lines, with corresponding increases in the divisions of Southern lines (A. 201).

II. Review of Commission's Findings.

The report now before the Court shows that the case was considered thoroughly by the Commission. The details of the findings will be reserved for such discussion as may be required in connection with particular points, but a brief summary of the report would seem desirable at this point.

Beginning at A. 25 the Commission described the traffic studies submitted by the parties, studies which are designed to show the characteristics of the traffic which moves under the rates to be divided. It is the traffic study which fur-

nishes the data (such as type of equipment, weight thereof, tons, ton-miles, cars, car-miles, number of interchanges, etc.) to which unit costs are applied. The Commission agreed with a high appraisal which Southern lines put on their own traffic study [2] (A. 24-25), and it used that study in its determination of the relative service costs (A. 48).

After finding that the evidence contained typical and ample representations of the roads involved, covering typical movements for a normal annual period, and that the detailing of the divisions on particular traffic, reflecting the rates involved, permits an appropriate consideration of individual carriers, the Commission went on to review economic trends (A. 31-35). The facts found with respect to economic trends and rates of return appeared to indicate a

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2. The Southern lines' characterization of their traffic study from p. 187 of their brief before the Commission is as follows:

> "The Southern lines' traffic study accurately measures the transportation characteristics of the precise traffic against which the Docket 29885 equal factor divisions were prescribed to apply, and against which any prescribed change in those divisions would hereafter apply. The Southern lines' traffic study, presented by Witness W. W. Wolford, provides the most current data available with respect to the normal annual movement of Official-Southern traffic and supplies all the traffic data required for the Commission's determination of just, reasonable and equitable divisions.
>
> "The utilization of modern data processing equipment and techniques has permitted the Southern lines to develop the most complete information pertaining to the movement of Official-Southern traffic ever presented to the Commission. This information shows the services performed and revenue received by each carrier participating in the movement of the precise traffic at issue. It measures the participation of Class I and Class II railroads individually and as groups, in each territory, and shows the relative importance of Official-Southern revenues and ton-miles to the railroad groups and individual carriers (V.S. 36, Exs. 4 and 5). The distribution of revenue by mileage blocks north and south of the gateways is shown (V.S. 11, Ex. 2). [A. 600-712] Other information provided by the Southern lines' traffic study includes the volume and consist of Official-Southern traffic, average hauls, distribution by gateways, states of origin and destination, and similar information (V.S. 11 and V.S. 11A)."

greater revenue need on the part of Northern than of Southern lines. But the Commission found no warrant for adjustment of the divisions from those based upon the relative costs of service (A. 78-79).[3]

The Commission next found that both groups are being operated efficiently (A. 37-39) and then reviewed the subject of relative cost of service. It began this discussion by quoting the statement made when prescribing the then existing divisions (those prescribed in the 1953 report) that:

> "'. . . it is to be the safest assumption for the future upon the facts before us that neither contesting group will have an appreciably lower basis of operating costs than the other, . . .'" (A. 39).

The Commission stated, with reference to the case now on appeal, that the basic formula used by both Southern and Northern lines was Rail Form A, a formula devised by the Commission's Cost Finding Section and entitled "Formula for Use in Determining Rail Freight Service Costs." It first considered the Northern lines' contention that the costs north of the dividing points should be ascertained on the basis of the costs of the Eastern District roads alone, rather than including with those costs those of the railroads of the Pocahontas Region. Had this point been resolved in favor of Northern lines, the prescribed divisions would have been substantially higher than those fixed by the Commission (A. 47). But the Commission decided the issue in favor of the Southern lines (A. 42).

At (A. 46) the Commission noted that:

> "The southern lines urge that it is settled law that relative service costs are the decisive measure in determining just and reasonable divisions . . ."

---

3. In fixing higher divisions for Southern lines in the earlier cases, the Commission had relied heavily upon their then greater revenue needs. See, *e.g., Baltimore & O. R. Co. v. U.S.*, 298 U.S. 349, 361 (1936).

The basic unit costs used by both Northern and Southern lines were shown to be the Form A average costs for Southern and official territories for the year 1956, with Southern lines advocating 12 adjustments therein. Each of these adjustments was analyzed in great detail in Appendix B to the Commission's report, wherein the Commission accepted five of Southern lines' adjustments and rejected the others (A. 87-129). In the following table from the report (A. 48-50), the Commission set forth its restatement of the costs:

"

Restated Costs

All traffic	*Official territory*	*Southern region*
Revenue as settled	$221,430,341	$274,656,425
Percent	44.64	55.36
Fully distributed costs—unadjusted	169,617,543	194,306,309
Percent	46.61	53.39
Adjustments:		
Exclude platform costs	—2,254,075	—453,673
Way and thru train separation	—2,283,259	—3,595,230
Switching and terminal Companies	—163,473	+1,039,610
Include short line (class II railroads) costs	—37,725	+529,347
Train tonnage—Pocahontas region	+867,319	0
Total adjustment (net)	—3,871,213	—2,479,946
Fully distributed costs—adjusted	$165,746,330	$191,826,363
Percent	46.35318	53.64682

"

Thus the Commission's restatement of the costs showed that whereas the lines north of the dividing points received 44.64% of the revenue on the traffic involved, they incurred over 46.35% of the cost of performing the service. The great extent to which the evidence that produced these results was evidence of the Southern lines was noted by the Commission (A. 48):

> "Our restatement is based on official territory (eastern district plus Pocahontas region) costs north of the breakpoints, for reasons previously discussed, [the "alternative urged by the southern lines,"; A. 42] and is at the fully distributed level,[4] as advocated by both groups, on all traffic. Apart from the adjustments rejected in appendix B, our restatement is based on the southern lines' cost computation, as applied to their traffic studies, which, we find, more reliably and accurately reflect the movement of the traffic in question."

After reviewing contentions of the Conferences, the Commission found that there were no differences in the importance to the public as between the contending groups of railroads (A. 50-51).

The Commission next discussed a major issue, which related to the points over which the rates should be divided. In its first 1953 decision the Commission had found that the divisions should apply to and from actual points of interchange between Northern and Southern lines rather than at so-called territorial borders. On petition of Southern lines urging that this conclusion would cause a loss of $6 million annually to them the Commission reinstated the territorial boundaries as the dividing points, 289 I.C.C. 4, 7-8. In the present case the Northern lines strongly urged that the dividing points should be at the actual points of interchange; but the Commission concluded this major issue

4. "As found appropriate in *Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, 660, sustained in *Carolina & N. W. Ry. Co. v. United States*, 230 F. Supp. 581 (W.D.N.C. 1964)."

against them (A. 52-56). It likewise decided in favor of Southern lines the issue as to whether or not a 15% minimum division which had been applied in the past should be continued (A. 64).

Beginning at A. 75, the Commission set forth its general discussion and conclusions. It stated that both on the basis of precedent and the position of the parties in the present litigation, relative service costs constitute a prime factor in determining the fair and equitable share of joint revenue to be received by the carriers involved. At A. 78 it stated:

> "Our restatement of the costs, which are reasonably accurate and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis, shows that the cost level in 1956, the year both groups used in the final cost analysis, is somewhat higher in the North than in the South for like services. A consideration of all factors indicates that this situation will most likely continue in the immediate future."

The Commission then pointed out that both groups of carriers also relied upon revenue needs in claiming that they should have a greater share of the joint revenue than accorded by the present divisions. At A. 78 the Commission stated that in every divisions case evidence relating to revenue need is material because Section 15(6) of the Interstate Commerce Act requires that due consideration be given, among other things, "to the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation." Then it stated, at A. 78, that:

> "We are thereby authorized 'to take into account and give due weight to revenues from all transportation service, the operating expenses and taxes chargeable to the same and the amounts available as compensation for the use of all carrier property,' as well as 'the reve-

nues, expenses, taxes and returns attributable to the service covered by the divisions under consideration.' *Baltimore & O. R. Co. v. United States,* 298 U.S. 349, 360, 370 (1936). We are free to give such evidence the weight which the particular circumstances appear to justify.''

Immediately thereafter the Commission stated that in this case it had considered evidence relating to the cost and other factors ''concerning the public interest in maintaining all essential parts of the transportation system.'' It found (A. 79) that no factor offered a concrete basis on which to find that either group is entitled to a share of the joint rates larger than that which would result from divisions prescribed on the basis of relative costs. It stated that:

''. . . our prescription of divisions based on relative costs includes allowances for overhead and return, and in our judgment reflects a due proportion of the burden of maintaining the financial integrity and credit of the carriers involved. *Cf. New England Divisions,* 66 I.C.C. 196, 199.'' (A. 79)

At A. 79, the Commission concluded:

''. . . weighing the cost evidence of record in the same balance and similarly considering it, without particular solicitude, we are of the opinion and find that it affords a reasonable basis for the exercise of a practical judgment. Stated in another manner, everything else being substantially equal, the relative costs of the parties reflecting their respective operations as to this traffic can properly serve here as a guide for the determination of just, reasonable, and equitable divisions. *Cf. Louisville & N. R. Co. v. Southern Ry. Co.,* 319 I.C.C. 639, at pages 657-658.[5]

5. Affd., *Carolina & Northwestern Ry. Co. v. U.S.,* 234 F. Supp. 112 (W.D., N.C., 1964); Aff'd 380 U.S. 526.

Since the evidence in the test year showed that the Northern lines received 44.64% of the revenue and incurred over 46.35% of the costs, the Commission found it:

> ". . . clear that an adjustment in the divisions is required to compensate the respective groups according to their expenditures in the joint effort of handling this interterritorial traffic. To the extent that the present divisions do not meet this test, they are unjust, unreasonable, and inequitable." (A. 80)

The Southern lines had asked the Commission to prescribe scales of divisional factors based upon costs, using the method adopted in *Louisville & Nashville R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, and they pointed out that, to the extent that the Examiners were found to be correct in their rejection of specific aspects of the Southern lines' cost evidence, the cost evidence as thus modified would provide the basis for constructing the divisional scales (Southern lines' exceptions, A. 1361-1363). The Commission agreed; and after accepting five of Southern lines' proposed adjustments and rejecting others, it prescribed the new divisions on the basis of Southern lines' cost evidence as thus modified, citing *Louisville & Nashville* (A. 48-49, 63, 79-80).[6]

The Commission found that based on Southern lines' traffic study for 1956 the prescribed scales would increase Northern lines' revenue divisions by $7,948,004, and decrease Southern lines' divisions correspondingly (A. 80). The formal ultimate findings condemning the present divisions as unjust, unreasonable, and inequitable, and prescribing just, reasonable, and equitable divisions for the future appear at A. 81-83.

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6. Because of a special situation, the Commission deviated from the prescribed scales to give a more favorable basis to the Norfolk Southern Railroad, a Southern line, and upon petition of that line it gave it an even more favorable basis in the supplemental report on further consideration (A. 176). Otherwise, the conclusions in the February 3, 1965 report were affirmed in the supplemental report, which was dated May 18, 1965.

III. Proceedings in the Court Below.

On March 31, 1965, the Southern lines filed suit in the United States District Court for the Eastern District of Louisiana, New Orleans Division, praying that the order of the Commission prescribing the new divisions be enjoined and set aside. Contemporaneously, plaintiffs filed an application for an interlocutory injunction and, if needed, a temporary restraining order. This resulted in the granting of a temporary restraining order, but following hearing before the three judges on plaintiffs' application for interlocutory injunction, the temporary restraining order was dissolved and the application for interlocutory injunction was denied subject to conditions for refunding the money involved to Southern lines in the event they should be successful in permanently setting the order aside. As a consequence the newly prescribed divisions became applicable as of April 20, 1965, the effective date of the Commission's order (A. 131-132).

The District Court disregarded the findings of the Commission concerning the adequacy, reasonable accuracy and reliability of the data on the relative costs of handling the traffic involved on which the Commission had relied and held such data insufficiently refined to support the Commission's order, and for this reason it found the order to lack the support of substantial evidence and adequate findings. It held that the Commission was obligated to develop, or to require the parties to develop, more refined cost data described by the Court as the "actual costs of handling the specific traffic at issue." (A. 354) It decreed that the Commission's order be set aside and that the cause be remanded to the Commission for further proceedings.

In its opinion, the court below—with apparent lack of appreciation of the years of work necessary to prepare traffic and cost studies of the completeness of those here of record, to say nothing of the more refined cost data envisioned by it—suggested (without purporting to require)

that a new traffic study as well as a new study of costs which would meet the views of the court as to the "actual costs" of handling the specific traffic might well be warranted (A. 356).

Under the protective conditions attached to the District Court's denial of an interlocutory injunction, which are carried forward by its order staying decree (A. 169-171, 359), Northern lines would be obligated, in the event the Commission's order is permanently set aside, to resettle their accounts with Southern lines on all shipments made on and after April 20, 1965, with interest. As of April 20, 1968, this represented a principal amount of some $25,000,000 to be paid Southern lines by Northern lines.

SUMMARY OF ARGUMENT.

I.

The Southern lines contended before the Commission that relative service costs are the decisive measure in determining just and reasonable divisions. They urged the Commission to determine such costs on the basis of the territorial costs for Official and Southern territories, respectively, as developed by the Commission's Cost Finding Section's Rail Form A formula as modified by 12 adjustments which they proposed.

After a comprehensive examination and discussion of each of the proposed adjustments, the Commission adopted 5 of them and rejected the remaining 7. The unit costs as thus derived from the Southern lines' evidence were applied by the Commission to the Southern lines' traffic study, which they said accurately measured the transportation characteristics of the precise traffic involved.

The Commission found that the costs as thus restated by it are "reasonably accurate and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis . . ." (A. 78).

The Southern lines asked the Commission to base the divisions to be prescribed on their cost evidence as modified to the extent that any of their proposed adjustments were rejected. The Commission did precisely that.

Upon suit by Southern lines, the District Court held that the costs upon which the Commission acted should have been more refined and that the Commission was obliged to require the development of what the Court described as the actual costs of handling the specific traffic at issue, rather than to rely on territorial average costs.

The District Court thus substituted its judgment for that of the Commission on the purely administrative and complex factual question as to the representative character

of the cost evidence. In so doing, it acted contrary to numerous decisions of this Court with respect to the judicial review of cost evidence, e.g., *Illinois Commerce Commission v. United States,* 292 U.S. 474, 481 (1934); *New York v. United States,* 331 U.S. 284, 328, 331, 335 and note 33 (1947); *Chicago & N.W. R. Co. v. A., T. & S.F. R. Co.,* 387 U.S. 326, 356 (1967).

If allowed to stand, the Court's decision would seriously interfere with the Commission's use of cost formulae widely employed by the Commission and parties appearing before it in daily practice. The District Court's decision also rests on an assumption as to the function of the reviewing court which, if applied generally, would mean that the technical problems involved in determining transportation costs would not be determined uniformly by the expert judgment of the agency charged with the administration of the National Transportation Policy, but by the varied views of the numerous District Courts which have jurisdiction to review Commission orders.

Finally the decision of the court below requires a cash payment of $25 million, plus interest, by the railroads in the northeastern part of the country, which include some of the most necessitous carriers of the nation, to the Southern lines, and an immediate reduction in Northern lines' divisions to the extent of approximately $8 million a year, at least until the Commission could undertake a new investigation in a futile search for "actual costs," which would consume additional years of litigation.

II.

The action and conclusions of the District Court are directly contrary to this Court's recent decision in *Chicago & N.W. Ry. Co. v. A., T. & S.F. Ry. Co., supra,* which involved an I.C.C. order prescribing divisions of joint rates between Mid-western and Transcontinental (far-western) railroads. Indeed, the cases are so similar that Appellees, the Southern Governors' Conference, et al. (which have

been allied with the Southern railroads throughout this litigation) filed a brief as *amici curiae* in *Chicago & N.W. R. Co.* and stated that the Commission's cost findings in the case here on appeal reflect the same approach used by the Commission in the *Chicago & N.W.* case, and that there, as here, although the asserted basis of the Commission's action was the relative cost of performing the service involved "the Commission relied almost exclusively upon the average costs of handling all traffic in these territories in reaching its conclusions." And there, as here, virtually every objection to reliance upon such territorial averages was brushed aside without either findings or evidence to support such action."

This Court held in *Chicago & N.W. R. Co., supra,* that the Commission's "factual findings and treatment of accounting problems concerned matters relating entirely to the special and complex peculiarities of the railroad industry" and that the Commission's conclusions "had reasoned foundation and were within the area of its expert judgment" (p. 356).

The present phase of the litigation over divisions on north-south traffic has been before the Commission and the Courts for about 11½ years, and the initial phase thereof began about 21 years ago. This Court's reference, in *Chicago & N.W. R. Co., supra,* at 356, to the long time which elapsed from the time the complaints in that case were first filed and its indication of the necessity of bringing the litigation to an end (p. 356) are applicable with equal force in the present case.

III.

The District Court enunciated its difference of opinion with the Commission as to the significance of the cost evidence in terms of lack of substantial evidence and findings. There is abundant evidence, reviewed hereinafter, to show that the use of territorial unit costs (with such modifications as the Commission allowed) as applied to

a traffic study showing with precision transportation characteristics of the traffic involved was justified in this case, which deals with all traffic, other than coal and coke and certain trailer-on-flatcar traffic between every station in Official territory and every station in Southern territory over all Northern and all Southern railroads.

Moreover, the insistence of the Court below that the Commission determine the "actual costs" of "the specific traffic" sets up a standard that is illusory and impractical. Of necessity, the cost of any shipment or category of shipments represents an apportionment of expenses incurred in providing and maintaining facilities and conducting operations. The practical impossibility of securing "actual costs" as to any category of traffic was recognized in *New York v. United States,* 331 U.S. 284, 328, 335 and note 33.

IV.

In their opening cost evidence, the Northern lines excluded the entire amount of the deficit from passenger operations incurred by the Northern and Southern railroads, respectively. Southern lines objected to this and contended that Northern lines' study of the cost of the service involved was defective in computing constant costs without consideration of passenger deficits.

Although the inclusion of passenger deficits was to Southern lines' advantage, Northern lines did not object to such inclusion, but did object to Southern lines' contention that the Commission should cull out of the passenger deficits that part thereof which is attributable to commutation service, of which there is relatively little in the South. Southern lines contended that the commutation service is almost entirely rendered on facilities that are not used in the rendition of any service other than commutation but that intercity passenger service almost entirely uses facilities that are used also for freight and that, on this basis, the deficit incurred in the performance of commutation

service should be excluded but the remaining passenger deficit included, in computing the cost of the North-South freight service.

The Commission found that while some elements of the cost of rendering commutation service are incurred solely in connection with that service the facilities on the whole could not be considered solely related to suburban service and treated entirely apart from freight and intercity passenger service. It concluded that the suburban deficits should not be excluded from the constant costs and it included a pro rata portion of the entire passenger deficit for both Northern and Southern lines, basing its figures upon the cost evidence submitted by Southern lines before the exclusion of suburban deficits.

The Court below found that the Commission erred in including suburban deficits because it said there was neither findings nor evidence to relate such deficits to the Commission's standard for decision, i.e., the relative cost of performing the North-South freight service involved. The fact is, of course, that it is in the very nature of overhead, or constant costs, that they are not incurred in the performance of the service to which they are apportioned. *New York v. United States,* 331 U.S. 284, 316 (1947). But the District Court dismissed the Northern lines' point that these costs are treated as overhead, or constant costs, the allocation of which is required because of the need for revenue from freight service to continue passenger operations. It said that the Commission did not so treat them since it rejected contentions of both groups of railroads for divisions over and above the cost of service on the ground of revenue needs.

The District Court plainly erred in this holding. The Commission stated that its prescription of divisions based upon relative costs included allowances for overhead and return thus reflecting a due proportion of the burden of maintaining the financial integrity and credit of the carriers and that accordingly it found no justification for add-

ing "any special increment" favoring one group of carriers over the other. Included in the allowance for overhead, of course, were the passenger deficit figures for Northern and Southern lines.

The Court's holding that the Commission could consider only those expenses of performing commutation service which are common to freight and passenger has no basis in the decisions of the Commission or of this Court. *Increased Freight Rates, 1948,* 276 I.C.C. 9, 32-39 (1949); *King v. United States,* 344 U.S. 254, 260 (1952).

It is important to note that the Northern lines' entire passenger revenues exceeded the expenses that are solely related to the performance of passenger service as a whole and that they experienced a deficit on passenger operations only when a portion of the expenses that are common to freight and passenger was assigned to the passenger service, but that the Southern lines' passenger revenues are exceeded by the costs solely related to the performance of passenger service alone. In the calculation of the cost of the North-South freight service, therefore, the net result of the Commission's action was to allocate to the Southern lines a deficiency of solely related passenger expenses under passenger revenue as well as the additional deficit resulting from the allocation of common expenses to the passenger service, while the passenger deficit included for the Northern lines resulted from the apportionment of common expenses alone. Overall, therefore, the lower Court's view that it was proper to apportion to the freight service involved only that part of the passenger deficit which resulted from the allocation of common expenses was actually met as to Northern lines but not as to the Southern lines.

The District Court quoted from this Court's decision in *Chicago & N.W. R. Co., supra,* to the effect that while the Commission has sometimes offset passenger deficits in freight rate cases, the issues are different when, in a divisions case, it is argued that carriers in one part of the country should subsidize the passenger operations of car-

riers elsewhere, but that in the light of the fact that the passenger deficits were of negligible relevance to the Commission's decision there were no errors that would justify setting aside the order there involved.

Had the Commission not considered passenger deficits, the Northern lines' divisions would have been relatively greater than those prescribed for them by the Commission. The inclusion of passenger deficits, therefore, may be said to have resulted in Northern lines subsidizing Southern lines. There clearly was no error prejudicial to the Southern lines in the Commission's consideration of passenger deficits. As to those lines it was of "negligible relevance" (C. & N.W., pp. 350-351) except that its consideration gave them more than a million dollars annually above that which they would have obtained if passenger deficits had not been included in the constant costs.

ARGUMENT.

1. The Decision of the District Court Exceeds the Bounds of Permissible Judicial Review.

After a comprehensive review of the evidence (A. 49-50, 87-129) the Commission found that Southern lines' evidence of territorial unit costs, with the adjustments adopted by the Commission, "adequately reflect the costs attributable to the traffic at issue" (A. 49-50) and are "reasonably accurate and reliable for the purposes of determining the relative contribution by the groups on a cost-of-service basis . . . ." (A. 78). The District Court, however, substituted its judgment for that of the Commission and declared that the costs relied upon were not sufficiently refined to sustain the order prescribing the divisions. The Court stated this conclusion in terms of lack of substantial evidence and of findings, but this asserted deficiency relates only to the difference between the Court's views and those of the Commission as to the adequacy of the costs used.

In so deciding, the Court below acted directly contrary to pronouncements of this Court with respect to the judicial review of cost evidence. Typical of this is *Illinois Commerce Commission v. United States*, 292 U.S. 474, 481 (1934):

> "Whether or not the cost study was representative, whether the study should have been more refined, and whether it should have been supplemented as appellants desired, are questions of fact, the determination of which is within the competence of the Commission. The Commission reached its conclusion after full hearing and thorough consideration of all questions presented. As the record affords a sufficient basis for the Commission's determination, it is not subject to review in the courts . . . ."

See also *B. & O. R. Co. v. United States,* 298 U.S. 349, 359 (1936) involving a divisions order, and *New York v. United States,* 331 U.S. 284, at 328, 331, 335, and note 33 (1947), where this Court was considering the Commission's initial reliance on Form A costs in *Class Rate Investigation, 1939,* 262 I.C.C. 447 (1945).

This rule was recently invoked in an opinion of this Court dealing with divisions of freight rates. In *Chicago & N.W. R. Co. v. A., T. & S.F. R. Co.,* 387 U.S. 326 (1967), it was stated (356):

> "The presentation and discussion of evidence on cost issues constituted a dominant part of the lengthy administrative hearings, and the issues were thoroughly explored and contested before the Commission. Its factual findings and treatment of accounting problems concerned matters relating entirely to the special and complex peculiarities of the railroad industry. Our previous description of the Commission's disposition of these matters is sufficient to show that its conclusions had reasoned foundation and were within the area of its expert judgment. *B.&O. R. Co. v. United States,* 298 U.S. 349, 359; *New York v. United States,* 331 U.S. 284, 328, 335, 349."[7]

Indeed, the facts with relation to the cost evidence in that case and in the present case are so alike that the decision therein constitutes a precedent of unusual significance for the disposition of the present appeals.

2. The Decision Below Misconstrues and Is Inconsistent With This Court's Recent Decision in Chicago & N.W. R. Co.

It is particularly surprising that the District Court decided as it did when it had the benefit of this Court's decision in *Chicago & N.W. R. Co. v. A., T.&S.F. R. Co.,*

7. *Chicago & N.W.* was cited and followed on this point in *Permian Basin Area Rate Cases,* No. 90, et al. October Term 1967 (U.S.) (Vol. 36 Law Week, No. 42, p. 4358, May 1, 1968).

387 U.S. 326 (1967) which was handed down only about one month before the decision of the District Court here on appeal and which held that cost evidence, admittedly substantially the same as that upon which the Commission acted in the present case, was sufficient to sustain the order there involved and within the area of the Commission's expert discretion. Indeed, the District Court could have decided this case by simply citing *Chicago & N.W.*

That the District Court misapplied and misconstrued the decision in *Chicago & N.W. R. Co.* would seem beyond dispute. There, in sustaining an order by which the Commission prescribed interterritorial divisions between Midwestern and Mountain-Pacific railroads, this Court considered and rejected contentions similar to those successfully advanced, through the same principal counsel, by Southern lines in the present proceeding. The District Court in the present case referred to *Chicago & N.W. R. Co.*, and stated that:

> "There, the Commission based its cost findings on a special cost study and analysis prepared by the Mountain-Pacific carriers and made certain adjustments which it considered more accurately reflected the true costs of the traffic involved. These adjustments (3) were derived from Rail Form A. The Supreme Court held that the attack on the legal validity of these adjustments to costs were unsubstantial. Here, of course, the entire inflation is pegged on relative costs derived from Rail Form A." (A. 349-350)

Thus, the District Court construed *Chicago & N.W. R. Co.* as involving Form A costs only to the extent of three adjustments. The fact is that there, as here, the basic cost study upon which the Commission relied was predicated upon Form A territorial averages, with certain adjustments advocated by Appellees (Mountain-Pacific lines) being allowed by the Commission and others rejected. This is clear

from the Commission's decision which was sustained in that case. *Akron, C.&Y.R. Co. v. Atchison, T.&S.F. R. Co.*, 321 I.C.C. 17, 29-53; 322 I.C.C. 491, 492-499. Indeed, the Commission concluded in that case that ". . . for a large and varied body of traffic as here at issue, territorial average costs will be the substantial equivalent of specific costs" (322 I.C.C. at 50). The cost study prepared by the Mountain Pacific carriers to which the Court referred in *Chicago & N.W. R. Co.* at p. 352 was basically the Form A territorial averages with adjustments, just as the Southern lines' cost evidence in the present case consisted of the Form A territorial average costs, with adjustments. In that case (as pointed out on pp. 352-356) and in the present case the Commission allowed some of the adjustments and rejected others.

The cost issues in *Chicago & N.W. R. Co.* and those involved here are indeed so similar in character that the intervenors in the instant case—Southern Governors' Conference and Southeastern Association of Railroad and Utilities Commissioners—obtained leave to file a brief as *amici curiae* in the appeal in *Chicago & N.W. R. Co.* in order to present to this Court their contention that the cost issues in that case should not be decided by the Supreme Court, lest such a decision govern the decision of the District Court in the instant case. They stated in their *amici* brief of April 5, 1967, to this Court:

> "However, the Commission's cost findings in the *Official-Southern* case reflect the very same approach that it used in the *Transcontinental* case. There, as here, although the asserted basis of its action was 'the relative costs of the parties reflecting their respective operations as to this traffic' (325 I.C.C. at 50; see also 325 I.C.C. at 26, 56), the Commission relied almost exclusively upon the average costs of handling all traffic in these territories in reaching its conclusions. And there, as here, virtually every objection to reliance upon such territorial averages was brushed aside

without either findings or evidence to support such action." (pp. 2-3)

Likewise, the Mountain-Pacific lines in their memorandum of August 16, 1967, in support of a motion to the California District Court to clarify a passage in its decision (which was reversed in *C.&N.W.*) relating to the cost issues, stated, at page 14:

> "The decision in the *Official-Southern Divisions* case is especially relevant here since that case, like this one, involved the use by the Commission of Rail Form A territorial averages to measure the actual costs of handling particular traffic."

It is clear, therefore, that the basic cost evidence upon which the Commission relied in *C.&N.W.*—and not just a few adjustments therein—was made up of territorial unit costs based upon Rail Form A, and that the District Court in the present case misconstrued *C.&N.W.* in its attempted distinction thereof. In contrast to the District Court's substitution of its judgment for that of the Commission on the representative nature of those costs and the need for greater refinement, the Supreme Court in *C.&N.W.* applied the usual rule of judicial review by accepting the Commission's judgment on accounting problems which the Court said "concerned matters relating entirely to the special and complex peculiarities of the railroad industry." (387 U.S. 326, 356).

After holding in *Chicago & N.W. R. Co.* that these cost matters were within the area of the Commission's expert judgment, this Court pointed out that:

> "Thirteen years have elapsed since the complaints in this case were first filed. The appellees' attacks on the legal validity of the Commission's findings on cost are so insubstantial that no useful purpose would be served by further proceedings in the District Court. We conclude that there was no legal infirmity in the Commission's cost findings."

The initial phase of the present case began on July 17, 1947, almost 21 years ago, and the reopening of the case which inaugurated the present phase of the same litigation began with Northern lines' petition of November 2, 1956, about 11½ years ago. The lapse of time to which the Court adverted in *Chicago & N.W. R. Co.*, therefore, is a consideration which applies with at least as much force in the present case. It is respectfully submitted that the Court should conclude, as it did in *Chicago & N.W.*, that the cost findings were in the area of the Commission's expert judgment and without legal infirmity and it should finally bring this litigation to an end.[8]

3. The Commission's Order Is Sustained by Substantial Evidence and Adequate Findings.

In their motion to affirm, the Southern lines argued that Appellants seek to use "unadjusted territorial average costs" (Motion, 5) without any evidence that they measure the cost of controverted elements of the North-South traffic, and they quote from the opinion below that territorial average costs cannot be accepted "without further evidence for mechanical application to particular segments of traffic" (Motion, 8).

The fact that the Commission adopted five of the adjustments tendered by Southern lines, and the exhaustive analysis of these and the remaining controverted adjustments (taking up 26 pages of an appendix to its report) indicate how far removed its action was from a "mechanical application" of the Form A territorial costs.

8: Referring to the lapse of almost eight years from the time at which the administrative proceedings began, this Court in the recent decision in *Permian Basin Area Rate Cases*, No. 90, et al., October Term 1967 (—— U.S. ——) (Vol. 36 Law Week, No. 42, p. 4358, May 1, 1968) also pointed out that very extended additional proceedings would doubtless be necessary to review questions relating, *inter alia*, to cost determinations and, following *C. & N.W.*, held that the factual findings and accounting problems concerned administrative matters, that no useful purpose would be served by further proceedings in the court of appeals, and that there was no legal infirmity in the Commission's findings (Law Week, p. 4358-9, May 1, 1968).

There is abundant evidence to support the use of the Form A costs as adjusted by the Commission. It should first be noted that, as the Commission stated in *Class Rate Investigation, 1939,* 262 I.C.C. 447 (1945), at p. 693:

> "There are different degrees of refinement in costs depending upon the purposes for which the costs are intended. The ascertainment of the costs of transporting a particular commodity over a single railroad or a group of roads, for instance, obviously requires more refinement in procedure than the calculation of relative costs for transporting all traffic, or important and well-defined segments of traffic, by territorial groups of carriers."

This case involved "the relative costs for transporting . . . important and well-defined segments of traffic, by territorial groups of carriers." The order of investigation itself put in issue the divisions of rates on all traffic (except, by common consent, coal and coke) between all stations in the whole of Official Territory and all stations in the whole of Southern Territory and over all the railroads of each territory. It was truly a case involving territory-wide traffic between the North and the South. The record showed that the North-South traffic of Northern and Southern lines constituted 10% of their combined traffic (V.S. 36; Ex. 5) (A. 796). This contrasted with much smaller portions of total traffic in other cases in which the use of territorial averages had been approved, such as *Class Rate Investigation, 1939, supra,* wherein the traffic moving under the rates involved constituted only 4.1% of the total traffic of the railroads (262 I.C.C. at 479).[9] The *Class Rate* decision was affirmed

9. Appellees have sought to escape the force of this comparison by suggesting that the Commission was concerned in the *Class Rate* case with finding territorial average costs of all traffic. As this Court pointed out, however, the orders involved "affect class rates and class rates alone" and that ". . . this proceeding pertains only to class rates, which move but a small percentage of the traffic"; 331 U.S. at 330 and 343.

in *New York v. United States*, 331 U.S. 284 (1947) after due consideration of the data based upon Form A territorial costs and the conclusions of the Commission with respect thereto (315-332).

The record also establishes that the interterritorial traffic involved is an inseparable part of the whole and possesses no transportation characteristics which are distinguishable from those of traffic generally, and that the method of railroad operation is such that the use of average territorial costs was appropriate to the traffic involved in this case (V.S. 8; A. 575). This evidence showed, *inter alia*, that in a test week North-South traffic moved in 45% of all the trains operated by the Eastern lines, and the witness concluded that it would be found, over a longer period, that every train operated by an Eastern line would participate in the transportation of Southern traffic. "The obvious conclusion to be drawn is that Southern traffic shares in the same service provided on traffic generally within Official Territory and is not restricted to any particular trains or categories of service" (V.S. 8, p. 9; A. 547).

The Southern lines themselves used the Form A territorial costs as the basis for their own cost study. In fact, approximately 89.45% of the total North-South costs attributed by the Southern lines to the traffic involved were unadjusted Form A territorial averages (computed from V.S. 40, 40A; A. 867, 875). This fact strongly suggests that the Form A average territorial costs were representative for the North-South traffic and that the adjustments proposed by the Southern lines were simply *ad hoc* restatements that were the result of the exigencies of their litigating position rather than of any genuine infirmity in territorial average costs.

The evidence also shows that Southern lines have employed Form A territorial average unit costs as appropriate to determine the cost of transportation of far narrower scope than that involved in the present case (V.S. 80, Sec. H; A. 953-957). Sufficient examples were supplied to illus-

trate how such territorial costs are used by Southern lines "as a matter of established practice month in and month out before the Commission" (A. 953).[10]

Again, the record contains comprehensive evidence to support the Commission's conclusions with respect to the seven adjustments which had been sought by the Southern lines and rejected by the Commission (e.g., V.S. 73, 76 and 80; A. 893-904, 911-931, 933-974).

After a detailed consideration of each of the cost adjustments sought by the Southern lines, the expert body concluded that, with the adjustments adopted, the Form A costs were adequate and reasonably accurate and reliable to reflect the costs attributable to the traffic at issue. All of these facts having been before the Commission, it cannot be said that its conclusion lacked support in substantial evidence. The contrary holding of the District Court can only mean that it disagreed with the Commission's appraisal of the significance of these facts. The Commission accepted them as showing that the Form A costs are reliable for use here; the District Court held that greater refinement was necessary. That was not its function.

Moreover, the insistence of the Court below (A. 354) that the Commission determine the "actual costs" of

10. Indeed, one of the principal Southern lines, the Illinois Central, employed such costs (with minor adjustments) in a current divisions case, *Illinois Central R. Co. v. Great Northern Ry. Co.*, I.C.C. No. 34699 (unreported, recommended report and order of October 27, 1966 adopted, with inconsequential changes, by Division 2 of the Commission on July 31, 1967). There it was stated that the defendant criticized the Illinois Central's use of Rail Form A as not tending to disclose the cost of handling the traffic in issue because, it urged, the formula is designed to portray broad, territorial costs. The case involved but one commodity. The Illinois Central was sustained. It was stated in the report that costs determined in a similar manner have been relied upon in other divisions cases involving a single commodity, citing a case involving two other prominent Southern railroads—each of which relied upon Form A costs with certain adjustments—(*Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, sustained in *Carolina & Northwestern Ry. Co. v. United States*, 234 F. Supp. 112 (W.D., N.C. 1964), affd, per curiam, 380 U.S. 526 (1965)).

"the specific traffic" involved sets up a standard that is illusory and impractical. Any given category of shipments uses terminals in common with other shipments, is handled by the same switching crews, moves over track and in trains maintained and operated for all traffic and in cars and by locomotives that are repaired in central shops. Of necessity, any shipment's cost is an apportionment of expenses incurred in providing and maintaining facilities and conducting operations.[11]

For many years before the establishment of the Cost Finding Section of the Commission and the development of Rail Form A the Commission had great difficulty in obtaining reliable costs for use both in divisions cases and other proceedings under the Interstate Commerce Act.[12]

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11. The practical impossibility of securing "actual rail costs" is recognized in *New York v. United States,* 331 U.S. 284, 328, 335, and note 33.

12. Thus, in *Divisions of Freight Rates,* 148 I.C.C. 457 (1928) the Commission stated (p. 477): "The greatest obstacle in securing a satisfactory record has been the difficulty of determining relative costs of service as far as the traffic in question is concerned." In the initial report in the instant proceeding, *Official-Southern Divisions,* 287 I.C.C. 497, at pages 506-507 (1953), the Commission, referring to a previous report in No. 24160, *Divisions of Rates, Official and Southern Territories,* 234 I.C.C. 175 (1939) stated:

"At page 188 of the 1939 report we said:

> 'Some of the speculation and controversy necessarily arising in considering averages of this kind could be avoided if it were possible to separate terminal and line-haul elements of expense by some satisfactory method. The two contending groups agree that no such method has yet been determined, but in their statistical evidence they have presented some exhibits in which separations of this kind have been made more or less arbitrarily for purposes of illustration.'

"Shortly afterward we established a cost finding section which is now a part of our Bureau of Accounts and Cost Fnding, having as one of its objects the development of improved methods for determining transportation costs. After exhaustive investigation that section constructed what has come to be known as Rail Form A, a formula for determining railroad freight

At that time the Commission was to some degree at the mercy of litigants who made showings of costs on diverse bases always designed to support the particular position the litigants might then be taking.

The purpose of the organization of the Cost Finding Section and the development of Rail Form A was to arm the Commission with methods and directions for determining costs that were reasonably designed in accordance with generally uniform standards, and not simply contrived for some *ad hoc* litigating purpose.

The decision below threatens to impair these widely accepted methods that the Commission has independently developed for the determination of costs and to throw the subject back to the partisan presentations by the litigants.

This is not to say that the formula should not permit of necessary adjustments in appropriate cases. But it is the Commission, rather than the District Court, that should make the determination whether the adjustment is proper and appropriate to the case. It is that body which has the staff and the background of knowledge and experience necessary to make the judgments involved on adjustments proffered by litigants who have much to gain by their adoption.

Form A classifies the expenses of the railroads and reduces them to a unit basis by dividing the various classes of expenses by appropriate statistics, such as cars originated, tons, ton-miles, etc. This produces a cost per ton for some services, and costs per car-mile, per ton-mile or for other service units for other services, depending upon which unit is most appropriate. These unit costs are then applied to the units of service involved in the particular traffic, here the North-South traffic, which units are ascertained by making a traffic study. This application of the unit costs to the number of service units involved results in the appor-

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service costs, including a separation of the line-haul and terminal elements and a differentiation in respect of load and tare weights per car. The basic formula is described in *Class Rate Investigation, 1939*, 262 I.C.C. 447, 571-88."

tionment of the railroads' unit costs to the exact units of service involved in the case at hand.

The basic principle of the Rail Form A formula is perhaps best described at page 81 of Senate Document No. 63, 78th Cong., 1st Sess., under the title "Rail Freight Service Cost Studies in the Various Rate Territories of the United States," (as taken from the statement of Dr. Ford K. Edwards, the Commission's head cost analyst and its chief witness in No. 28300, *Class Rate Investigation, 1939*, 262 I.C.C. 447, 571 and footnote 78):

> "The cost study is fundamentally based on the principle that the performance of transportation service requires the production of a number of homogeneous service units, such as gross ton-miles, car-miles, consignments billed, cars given an interchange switch, etc. The unit cost for such units are based solely on those expenses which vary directly with the performance of the unit in question. Expenses which were unaffected by the performance of service units, i.e., the constant or indirect costs, are set apart for a separate treatment. The cost study determines the quantity of service units of each kind consumed in rendering the service. This is based on the length of haul, net weight of load, tare weight of car, percent of empty return and whether carload or less than carload. The number of service units thus accumulated are then priced out at the territorial average unit cost per service unit. The aggregate of the costs thus determined constitutes the total out-of-pocket or assignable cost. The fact that unlike commodities are handled does not affect the accumulation of the quantities of homogeneous service units that are consumed in the rendition of the service. A gross ton-mile is a gross ton-mile whether it is made up of fertilizer, logs, cotton, or electric refrigerators. A car interchanged is a car interchanged regardless of whether it is furniture or coal. Hence, it cannot be said that the averages are produced by wholly unlike things

as the comparisons in cost are fundamentally limited to a comparison of the quantities of like service units. In short, the costs are a yardstick of the quantities of homogeneous service units required of the carriers in performing transportation services on various classes of equipment, various weights of loads with various percents of empty return, and various lengths of haul. The cost study is a measure of the relative work performed by the carriers in performing a given amount of transportation service. It evaluates in cents per hundredweight the influence of the transportation conditions insofar as they affect the cost of performing the service."

The costs developed under this formula were considered at length by this Court in *New York v. United States,* 331 U.S. 284, 315-340.

A particularly damaging aspect of the District Court's decision, obviously growing out of its unfamiliarity with matters of common carrier costs and administrative requirements, is the substantial extent to which the principle of its holding would cripple the ability of the Commission to administer the Interstate Commerce Act in proceedings in which cost data are customarily presented. The Court below has held that Form A territorial unit costs, as modified by the adoption of five adjustments advocated by Southern lines, did not constitute substantial evidence of the cost of the service involved in this case, which deals with transportation of virtually all commodities, over all railroads, between every station in the North and every station in the South.

This holding leaves nothing to the discretion of the administrative body. The Court below thus holds as a matter of law that territorial unit costs applied to the specific service units of a particular traffic cannot be accepted by the Commission, without further evidence, in arriving at its "opinon" (49 U.S.C., § 15(6)) that existing divisions are unreasonable and that the divisions prescribed

will be fair and equitable. But since the instant record contains such further evidence (A. 541-582) which the Court below noted (A. 343, n. 12) but disregarded, and since it likewise disregarded the adjustments of the Form A costs which Southern lines proposed and the Commission accepted and incorporated into the unit costs it employed and relied upon, the holding becomes a virtually absolute condemnation of the use or acceptance of relative costs for particular traffic—albeit important segments of traffic by territorial groups of carriers—based largely on the application of regional unit costs to the service units of such specific traffic. This holding is central to the court's decision.

In terms the opinion of the court below on this point refers to "a divisions case" (A. 348), but the principle announced is broad enough to relate to other types of issues before the Commission and to other types of carriers. Thus, the Rail Form A formula is but one of the formulas developed by the Commission's Cost Section for the determination of costs of common carriers subject to its regulation; others including Highway Form B and Barge Form C. The Cost Section has prepared numerous studies of regional cost data for both rail and motor common carriers.[13] The wide use and acceptance of these studies is indicated by the Commission in its Annual Report to the Congress for 1961, at page 153, and in that for 1967, at page 108.

Were the decision of the Court below to stand as to the legal inadequacy of rail costs ascertained by the application of territorial unit costs to the specific service units of the vast interterritorial traffic here involved, the same principle would apply with greater force where the particular traffic was of lesser volume and scope. It would also condemn the use of the system average costs of a single carrier as applied to particular traffic movements over that line although (contrary to the assumption of the District Court, which regarded Form A as being designed to develop territorial

13. See, for example, I.C.C. Annual Reports: 1949, p. 76; 1950, pp. 71-72; 1955, pp. 71-72; 1957, p. 107.

costs only) this is a use made of the Form A formula regularly before the Commission. The District Court's decision would also apply to the use of costs developed by the Commission's Cost Section for other types of carriers in determining costs of their particular traffic. The limitations that would thus be imposed upon the use of Form A either as applied to regional figures or the system figures of individual carriers is a limitation which would seriously hamper the Commission in the administration of the Interstate Commerce Act and the parties who appear before it. And in doing so it would put for nought the long established rule that "the Commission alone is authorized to decide upon weight of evidence or significance of facts." *B.&O. R. Co. v. U.S.*, 298 U.S. 349, 359 (1936).

4. A Review of the Individual Cost Adjustments Considered in the Lower Court's Opinion Shows That It Went Far Beyond the Permissible Limits of Court Review and That the Commission's Conclusions Regarding Them Were Supported by Findings and Substantial Evidence.

Extended discussion of each of the cost adjustments proffered by the Southern lines and rejected by the Commission is here unnecessary. But an indication of the serious error into which the District Court fell in failing to follow such precedents as *Illinois Commerce Commission v. United States, supra,* may be gained by reference to several of those proposed adjustments which were specifically the subject of the Court's findings.[14]

14. The District Court stated (A. 335) that it is uncontroverted that most elements of costs are no higher on Northern than on Southern railroads and that (A. 343) seven items account for the "entire inflation" of Northern costs over those of Southern lines. In fact, these statements were controverted (Brief for Intervening Defendant Railroads, p. 50, fn. 9). They are shown to be erroneous, for example, by the evidence showing higher wages on Northern than on Southern lines. Wages constitute the largest item of railroad expense. If Northern lines had the same wage levels as Southern lines, their total wage costs in 1956 would have been almost $58,000,000 less than they actually were (V.S. 80, Sec. F; A. 938-939).

The first which may be noticed is the Court's finding that the Commission's use of territorial averages for switching costs "rather than the specific costs" incurred with respect to North-South traffic, is not supported by reasoned findings or substantial evidence (A. 355). The adjustment of switching costs proposed by Southern lines purportedly was made to eliminate the effect of volume switching, i.e., the switching of multiple cars in a single unit, it being the Southern lines' contention that they had relatively more such cars moving within the South than the Northern lines had moving within the North, and that consequently the effect thereof should be excluded in determining the switching minutes (and, therefore, cost) applicable to the interterritorial traffic involved.

The Commission found that: "Territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of the traffic moving to and coming from terminals in all parts of both territories" (A. 121), that the depressing effect of the switching of volume movements would be largely offsetting as between the two territories (A. 121), that the Southern lines' studies of switching within the South had weaknesses, both in the sample and in the studies themselves (A. 121) [15] and that Southern lines' switching adjustment within the North was not made on a basis comparable to that which they used within the South (A. 121). For these reasons the Commission concluded that Rail Form A territorial average switching costs measure the relative switching costs of the Official-Southern traffic more accurately than the switching costs computed by the Southern lines (A. 121).

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15. The evidence offered by the Southern lines with respect to switching within the South was based on a study of but 41 cars, out of a total North-South movement of 967,000 cars. The Southern lines' sampling expert declined to characterize the 41 car sample as representative (A. 999-1000). Moreover, the sample did not consist only of North-South traffic, and there were other defects in the study (A. 113-122).

The presence of "reasoned findings" and of substantial evidence in support of the Commission's conclusions concerning the Southern lines' proposed switching adjustment and the use of territorial average costs is clear (A. 113-121). The District Court's conclusion to the contrary is based purely upon the substitution of its judgment for that of the Commission on the question of whether the territorial switching minutes are representative for use here or whether they should be more refined (A. 347-349).

The Southern lines' adjustment for empty return ratios on boxcars was also specially mentioned by the District Court as illustrative of what the Court called the Commission's general approach (A. 346). Without discussing the Commission's analysis of this complex matter or making any review of the evidence, the Court quoted from the opinion of the single dissenting Commissioner (who agreed that Northern lines should have an increase in divisions, but not as much as the Commission allowed), and announced, as a conclusion of law, that the use of territorial average empty return ratios rather than the "actual empty return ratios for the North-South traffic in issue" was unsupported by reasoned findings and not based upon substantial evidence (A. 355).

The Commission discussed the empty return ratio adjustment fully (A. 101-110). The proposed adjustment with respect to boxcars was made by Southern lines in three steps. The Commission found, with respect to the first step, that the adjustment was "not adequately supported" and was, at best, "merely illustrative", that the adjustment for the second step "is in error" and that the third adjustment was "purely an unsupported assumption" (A. 108). Its conclusion was that ". . . the empty return ratios for both boxcars and refrigerator cars developed by the special studies of the southern lines are not as sound an estimate of the empty return incurred by the official-southern traffic as are the 7-day study territorial empty return ratios. The latter reflect the compilation of actual

data reported by the railroads on a comparable basis in each territory under an order of this Commission."[16]

It is manifest that the Commission made reasoned findings in support of the empty ratios which it used.

The third adjustment to which the District Court specifically adverted was that regarding deficits from commutation service. This will be discussed below (*infra*, p. 44 ff.).

It is interesting to note that in the case before the Commission, when it came to their proposed adjustment of car costs, the Southern lines abruptly departed from the position which they had emphatically maintained, namely, that the costs should be more refined than territorial averages in order to bring them closer to the North-South traffic involved in the proceeding. As to car costs, they advocated the use of the average car costs for all railroads in the United States in substitution for the territorial car costs of the Northern and Southern railroads. After making extensive findings (A. 94-101) the Commission rejected this proposed adjustment (A. 100-101).[17]

While the Court below did not separately discuss the remaining adjustments made by Southern lines which the Commission rejected, the Commission made all necessary reasoned findings supporting its rejection of them: namely, (1) count of cars interchanged, originated, and terminated (A. 91-94); (2) constant cost of transit commodities (A. 124-128); and (3) equalization of gateway interchanges (A. 128-129).

From the foregoing it will be seen again that the District Court simply disagreed with the Commission on the question of whether the territorial unit costs, as restated

16. A substantially similar conclusion of the Commission in connection with its rejection of a proposed adjustment of empty return ratios was noted and sustained by this Court in *Chicago & N.W. R. Co., supra*, at 352-353, 355.

17. The use of Form A territorial car service costs and the rejection of adjusted car costs was sustained by this Court in *Chicago & N.W. R. Co., supra*, (at 354).

by the Commission, were representative for use as a guide for the determination of the relative contribution by the respective groups of carriers in the transportation of North-South traffic.

The Court, in Conclusion No. 3 (A. 354) found that the Commission took no independent action to require "the development of more refined cost data" (A. 335), and it concluded that the Commission has a duty to use its powers to obtain cost evidence where such evidence is necessary to assure an adequate record (A. 354). The Commission, to whom is committed the duty of decision on this matter, found the cost evidence upon which it acted to be adequate, reasonably accurate, and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis (A. 49-50, 78). This conclusion was sustained by substantial evidence; the Commission had no duty to require the development of other evidence to supplant that which it found satisfactory. Such a duty could not be created by the lower court's substituting its judgment for that of the Commission as to the necessary degree of refinement in the cost evidence. *Illinois Commerce Commission v. United States, supra.*[18]

18. In Conclusion No. 7 (A. 355) the Court stated that the "typical evidence rule" requires evidence typical in character and ample in quantity with respect to the divisions and services performed under the particular rate being divided, and that the Commission must consider evidence of actual services performed on the particular traffic involved. By Southern lines own representation (see footnote 2 on p. 9, *supra*) in which the Commission concurred, the evidence on which the Commission acted accurately measured the transportation characteristics of the percise traffic involved. The Commission did not disregard the typical evidence rule, but found the evidence to be representative (A. 31). The District Court made its own appraisal of the evidence and disregarded the inferences and conclusions that the Commission drew from the facts. In those circumstances the District Court's invocation of the phrase "typical evidence rule" cannot obscure the fact that the Court simply substituted its own opinions on the weight and significance of the evidence for those of the Commission. This is not permissible under the established rules of judicial review.

5. There Was No Error in the Commission's Treatment of Passenger Service Deficits.

As is almost universally true on American railroads, the passenger revenues of the Northern and Southern lines are less than the expenses attributable to their passenger service. The excess of the expenses over the revenues is called the passenger deficit. The fully-distributed costs under Rail Form A include, in addition to the out-of-pocket costs (which latter are represented by 80% of the operating expenses, rents and taxes, plus a return of 4% after Federal income taxes on half of the value of the road property and the total value of the equipment) the remaining 20% of the operating expenses, rents and taxes, the passenger and less-than-carload operating deficits and a 4% return, after Federal income taxes, on the remaining half of the road property. These amounts that are necessary to bring out-of-pocket costs up to a fully-distributed cost level are distributed to the traffic in question on a pro rata ton and ton-mile basis. "In effect, the fully-distributed costs as thus computed, consist of the out-of-pocket costs plus an allowance which closely approximates the weighted average contribution per net ton-mile made by all traffic to the constant costs or overhead burden." [19]

In their initial evidence before the Commission, the Northern lines excluded passenger deficits of both Northern and Southern railroads from their fully distributed cost computations. But in their brief before the Commission (118; A. 1052-1053), the Southern lines stated:

"The Northern lines' fully distributed cost applications do not include passenger and less-carload

19. pp. 3, 4, *Rail Carload Cost Scales by Territories,* Interstate Commerce Commission, Bureau of Accounts, Cost Finding and Valuation, Statement No. 2-58. This was the statement used by the Southern lines in computing cost of service upon which, as adjusted, the Commission relied (A. 48). See also, *New York v. United States,* 331 U.S. 284, 315-332.

deficits or the return on property devoted to such services (V.S. 3, p. 8; Tr. R. 769-70), whereas the Cost Finding Section's applications of fully distributed costs include passenger and less-carload deficits, with an allowance for a 4 percent return on the property devoted to those services (V.S. 40, p. 12)."

Southern lines continued, at p. 120 of their brief (A. 1053):

"Accordingly, the Northern lines' study is defective in computing constant costs without consideration of passenger deficits, contrary to the practice of the Cost Finding Section."

Thus, it was the Southern lines that introduced the matter of including the passenger deficits in the costs to be considered in this case. They regarded these deficits as an essential element of the constant—or overhead—costs.[20]

Although the inclusion of passenger deficits was to the advantage of Southern lines, the position of the Northern lines was that while they had no objection to the allocation

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20. The record does not show the exact difference that would result from the elimination of the total passenger deficit figures that were allocated to the costs of the Northern and Southern lines respectively. The basic source of the cost data used by Southern lines is I.C.C. Bureau of Accounts, Cost Finding and Valuation Statement No. 2-58 (A. 48). On page 6 of that statement the passenger service deficits, including return, were shown to be the following percentages of the carload fully-distributed cost: Eastern District 11%, Pocahontas Region 6%, Southern Region 12%.

Official Territory is made up of the Eastern District plus the Pocahontas Region. Necessarily, therefore, the percentage for Official Territory would be less than 11%. However, the application of even the 11% figure to the total Official Territory costs shown by Southern lines (V.S. 40, Ex. B, p. 3, corrected) and the 12% figure to the Southern costs shown on that page would change the percentages of total costs North of the gateways from 46.61% to 46.89%, and South of the gateways from 53.39% to 53.11%. This increase North of the gateways of slightly over one-quarter of 1% would, if it were reflected in the cost scales, increase Northern lines' share of the North-South revenues ($496,086,766, A. 48) by slightly over $1,389,000 annually.

of passenger deficits as part of the constant costs of performing the service involved, they did object to the selective approach advanced by the Southern lines under which Northern lines' deficits from suburban operation would be excluded, while all of the Southern passenger deficits (except the suburban deficit of the Illinois Central) would be included in ascertaining the relative costs to the two groups of carriers of performing the North-South service involved. Northern lines thought it arbitrary and unfair for Southern lines to propose a deviation from the Commission's formula and practice to the end that the Southern lines' costs would reflect their deficit from performing passenger service between points in the South, while the costs of Northern lines would be stripped of that portion of their passenger deficit which results from their performing part of their passenger service.[21] In the suburban service, the Northern lines are operating trains in which the passengers are, for the most part, traveling between their homes and places of employment. The trains operated by the Southern lines are occupied by passengers who may be traveling for different purposes than the commuters in the North. But that fact is obviously without significance. In both cases a passenger service is being operated. In both situations the railroads are obliged by law to operate. In both situations a loss is incurred. In both situations there is a need for freight to make a contribution against the loss in order to continue the operation.[22]

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21. The court below (A. 344) said that "through the use of average costs", passenger deficits were included in the cost computations. It was not through the use of average costs that such deficits were included, but through the insistence of Southern lines that they be added, along with other overheads.

22. As this Court stated with reference to deficit passenger trains operated by the Southern Railway, "The problems raised by the discontinuance of trains Nos. 7 and 8 cannot be resolved alone by reference to appellee's loss in their operation but depend more upon the predominantly local factor of public need for the service rendered." *Alabama Comm'n. v. Southern R. Co.*, 341 U.S. 341.

The Interstate Commerce Commission's policy of taking passenger deficits into consideration in fixing freight rates was thoroughly reviewed in *Increased Freight Rates, 1948,* 276 I.C.C. 9, at 32-39. The lawfulness of the Commission's giving this consideration to passenger deficits was approved in *King v. United States,* 344 U.S. 254 (1952). That decision resulted from a proceeding instituted before the Interstate Commerce Commission by the principal Southern railroads, seeking to require an increase in Florida intrastate freight rates commensurate with that granted on interstate rates in *Increased Freight Rates, 1948, supra,* on the ground that the state rates discriminated against interstate commerce. The relief sought was granted by the Interstate Commerce Commission, and upon review this Court quoted as follows from the Commission's decision (261):

> ". . . if passenger service inevitably and inescapably cannot bear its direct costs and its share of joint or indirect costs, we have felt compelled in a general rate case to take the passenger deficit into account in adjustment of freight rates and charges. Both the freight and passenger services are essential, and revenue losses or deficits on the one necessarily must be compensated by earnings on the other if the carriers are to continue operations."

After referring to the fact that § 15a(2) of the Interstate Commerce Act (49 U.S.C. § 15a(2)) and the National Transportation Policy (preceding 49 U.S.C. § 1) direct the Commission to consider, among other things, the need of revenue to sustain efficient and adequate service, the Court concluded (p. 267) that there is no reason why the Commission may not give weight to passenger deficits in prescribing the intrastate freight rates in Florida, as it does in prescribing interstate freight rates for the southern territory.[23]

23. See also *Chicago, M. St. P. & P. R. Co. v. Illinois, et al.,* 355 U.S. 300, 307 (1958), and *Public Service Comm. of Utah v. U.S.,* 356 U.S. 421, 426 (1958).

In the proceeding here under review the Commission included a pro rata portion of the entire passenger deficit of the Northern and Southern lines, basing its figures upon the cost evidence submitted by the Southern lines before the exclusion of suburban deficits by them.

Upon oral argument in the Court below, the Southern lines admitted that they did not challenge the Commission's power to include suburban deficits and that they did not attack the Commission's consideration of such deficits from the standpoint of "policy" and, indeed, they admitted that deficits from suburban service might be considered, but only, they said, to the extent that they result from the apportionment of common costs (A. 242, 245).

The District Court found that the Commission erred in including suburban deficits because, it said, there was neither finding nor evidence "rationalizing the conclusion that suburban passenger deficits reflecting costs not common to freight service but 'solely related' to suburban passenger service can or should be treated as cost of North-South freight traffic," the Commission's standard for decision (A. 346, 354-355). The fact is, of course, that it is in the very nature of overhead, or constant, costs that they are not incurred in the performance of the service to which they are apportioned. *New York v. United States*, 331 U.S. 284, 316 (1947). But the District Court dismissed the Northern lines' point that these costs are treated as overhead costs, the allocation of which is required because of the need of revenue from the freight service to continue passenger operations. It said that the Commission did not so treat them, it having rejected contentions of both Southern and Northern groups for divisions over and above the cost of service on the ground of revenue needs (A. 345).

The Court plainly erred in this holding. Each group had contended before the Commission that in fixing the divisions the Commission should include an additive—over and above divisional shares based upon fully-distributed costs—for their general revenue needs. In rejecting these

contentions, the Commission made this finding, which was ignored by the District Court:

> "However, our prescription of divisions based on relative costs includes allowances for overhead and return, and in our judgment reflects a due proportion of the burden of maintaining the financial integrity and credit of the carriers involved. *Cf. New England Divisions*, 66 I.C.C. 196, 199. Accordingly, we see no justification at this time for adding any special increment favoring one group of carriers over the other." (A. 79).

The failure of the court to take note of that finding and to understand that by their very nature constant costs are not directly related to particular traffic led it to decide, erroneously, that there was no finding rationalizing the conclusion that the suburban deficits reflecting some costs not common to freight service but solely related to suburban service, should be treated "as cost of North-South freight traffic" (A. 346).

It should also be noted that the District Court's apparent theory (A. 344) that the Commission could consider only the deficit resulting from the apportionment of common expenses has no basis in the decisions of the Commission or of this Court.[24] In the Commission's leading case on the subject of passenger deficits, *Increased Freight Rates, 1948, supra,* there was no mention of any such theory. Moreover, the passenger deficit considered by the Commis-

24. The lower court said that it is "generally agreed" that intercity passenger deficits should be considered as a part of the cost of providing freight service because such deficits are usually the product of costs allocated to passenger operations from common facilities which must be maintained to provide freight service (A. 344). That statement on this complex matter is the court's, not that of the Commission. Indeed, in *Railroad Passenger Train Deficit,* 306 I.C.C. 417 (1959), the Commission considered contentions that passenger deficit figures are fictitious because of alleged shortcomings in its accounting rules and it found that evidence indicating the contrary "is of major significance and serves as a warning that common costs cannot be lightly dismissed" (pp. 415, 426).

sion in fixing the level of freight rates is the entire passenger deficit. The Commission considers overall rates of return from all operations (see, for example, *Increased Freight Rates, 1948, supra,* at pp. 18-24), and the increase in operating expenses due to wage, price and tax increases attributable to all services (see, *e.g., Increased Freight Rates, 1948, supra,* at pp. 20-24, and *Increased Freight Rates, E.W. and S. Territories, 1956,* 300 I.C.C. 633, at 641-647, 657-8).

In *King* there was likewise no mention of any limitation that the Commission might consider only so much of passenger deficits as result from the apportionment of common costs. In its opinion therein, the Court set forth a long quotation from the Commission's report, the essence of which was that if the passenger service cannot bear "its direct costs and its share of joint costs" (p. 261) the Commission has felt compelled to take the passenger deficit into account in fixing the freight rates and that:

> "Both the freight and passenger services are essential, and revenue losses or deficits on the one necessarily must be compensated by earnings on the other if the carriers are to continue operations. Both may be subjected to reasonable rates and charges to produce the fair aggregate return, even though thereby a higher rate of return may be exacted from the one than from the other." (344 U.S. 261-2) [25]

The Court then referred to the statutory provisions which direct the Commission to consider the need, in the public interest, of adequate and efficient transportation service and the need of revenues sufficient to sustain such ser-

25. The Court observed on page 262 that the Commission's change of policy from non-inclusion to inclusion of passenger deficits in fixing freight rates was the "inevitable consequence of steadily increasing passenger operating costs," together with the growth of competition from automobiles. Obviously these increasing passenger operating costs were real costs and not such costs as Southern lines' witness referred to as a mere matter of "terminology" (V.S. 14, p. 13; A. 713).

vice. It found that the statute leaves no ground for a claim that the Commission may not give weight to passenger deficits "in prescribing *interstate* freight rates to meet overall revenue needs." (Emphasis by the Court) With that, the Court's consideration of the power of the Commission to give weight to passenger deficits in prescribing interstate freight rates was ended. And it had not so much as mentioned any such theory as Appellees advanced in this case, i.e., that the justification for considering deficits is that they result from common costs.

The Court then considered whether the Commission may give weight to passenger deficits when prescribing intrastate freight rates under Section 13(4), which prohibits discrimination against interstate commerce. The Court took notice of the Commission's observation that there was no justification for a difference in treatment as between the Florida intrastate freight traffic and interstate traffic, and that the passenger deficit matter "would become even more serious for interstate shippers if this burden were imposed entirely upon them . . ." (p. 265).

In comparing the interstate and intrastate situations, the Court observed, at page 265, that:

> "In Florida, moreover, the discontinuance of railroad passenger service would not permit the discontinuance of high-speed tracks and equipment because of the need for fast freight schedules to transport perishable fruits and vegetables from Florida."

The Southern lines seem to suggest (Motion to Affirm, p. 19, fn. 16) that the entire case turned on that sentence. That it did not, and that Southern lines' suggestion is superficial in the extreme, will be evident from the most casual reading of the opinion. The sentence is immediately followed by the Court's statement that:

> "The Commission dealt with the freight and passenger revenues and properties of the Florida roads as a whole when determining the need for increases in interstate

freight rates. Nothing has been demonstrated which would demand different treatment of these properties in relation to the intrastate activities."

The Court concluded, at page 267, that:

". . . . there is no reason why the Commission may not give weight to passenger deficits in prescribing the intrastate freight rates in Florida, as it does in prescribing interstate freight rates for the southern territory."[26]

It was doubtless the Southern lines' realization that the *King* decision does not restrict the Commission's power to consider passenger deficits to those resulting from the apportionment of common expenses that induced them to concede in the lower court that they do not rest their suburban deficit point on any question of the Commission's power (A. 242, 245).

It should next be noted that the Commission found against Southern lines on a basic factual premise of their suburban deficit point. They had argued that this deficit could be eliminated by the discontinuance of commutation service, on the premise that suburban facilities are maintained solely for such service and are not used for freight or intercity passenger service (A. 123). After considering this contention, the Commission determined that although

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26. This Court has cited with approval its holding in *King* in at least two subsequent decisions; *Chicago, M., St. P. & P. R. Co. v. Illinois*, 355 U.S. 300 (1958), and *Public Service Comm. of Utah v. U. S.*, 356 U.S. 421, 426 (1958). In the former, the Court said, at p. 307:

"Passenger deficits have become chronic in the railroad industry and it has become necessary to make up these deficits from more remunerative services. The I.C.C. has recognized this practical reality of today's railroading and has changed its rate-fixing policy so that if interstate passenger service inevitably and inescapably cannot bear its direct cost and its share of joint or indirect costs, the I.C.C. feels compelled in a general rate case to take the passenger deficit into account in the adjustment of interstate freight rates and charges."

many individual items of suburban service can be considered solely related to that service the facilities and service as a whole cannot be considered solely related to suburban service and treated entirely apart from the freight service and intercity passenger service. It concluded, therefore, that suburban deficits should not be excluded from the constant costs (A. 124). The District Court held that the Commission was required "to determine how much of the railroads' cost of commuter service was in fact common with the cost of freight service and how much was solely related to commuter service." (A. 345) But having found that the commuter service and facilities "considered as a whole" could not be regarded as solely related to suburban service it was reasonable for the Commission to treat the costs as it did, that is, in exactly the same manner as it treated the costs of all other passenger services.[27] Clearly, it was within the Commission's administrative competence to do so.

It is important to note that (unlike the Southern lines, whose passenger revenue was less than their expenses that are solely related to passenger service) Northern lines' passenger revenues exceeded the expenses that are solely related to the performance of passenger service as a whole and that they had a deficit only when a portion of the common expenses was assigned to the passenger service (A. 123). In the calculation of the cost of the North-South service, therefore, the net result of the Commission's action was to allocate to the Southern lines a pro rata share of a deficiency of solely related passenger expenses under passenger revenue as well as the additional deficit resulting from the allocation of common expenses to the passenger service, while the passenger deficit included for the Northern lines resulted from the apportionment of common expenses alone. Overall, therefore, the lower court's view

27. Intercity passenger service requires equipment and facilities which have no relation to freight service. It requires *inter alia*, passenger locomotives, passenger cars, coach yards and passenger terminals.

(that it was proper to apportion to the freight service only that part of the passenger deficit which resulted from the allocation of common expenses) was actually met as to the Northern lines but not as to the Southern lines.

The District Court (A. 346) quoted from this Court's decision in *Chicago & N.W. R. Co. v. A.,T.&S.F. R. Co., supra,* to the effect that while the Commission has sometimes offset passenger deficits in freight rate cases, the issues are different when, in a divisions case, it is argued that carriers in one part of the country should subsidize the passenger operations of carriers elsewhere, that if the Commission were to give controlling weight to passenger deficits in a divisions case, it might be appropriate to take more evidence on the matter and discuss it in greater depth than the Commission did in that case, but that in the light of the fact that there the passenger deficits were of negligible relevance to the Commission's decision, there were no errors that would justify setting aside the order there involved.

Controlling weight was not given to the matter of passenger deficits in the present case. Upon the insistence of the Southern lines an allocable share of the deficits was included in determining costs but the Commission essentially gave both groups of roads equal treatment. Moreover all that the Court said in *Chicago & N.W.* was that, where controlling weight is given to passenger deficits in a divisions case, it might be appropriate to take more evidence on the issue and discuss it in greater depth than the Commission did in that case (387 U.S. at 350). Here there was no issue between the parties as to whether passenger deficits should be considered. The only issue was on the validity of Southern lines' request that part of the deficit should be excluded from consideration. The Commission declined to make this adjustment. Unlike the *Chicago & N.W.* situation, there was no claim here of "unfair procedural surprise" (387 U.S. at 349). The parties introduced all the evidence they desired and, after adequate

discussion in its report, the Commission declined to eliminate the suburban portion of the passenger deficits.

Finally, if there was any subsidization of one group of lines by the other it would have to be said that the Northern lines, who are not complaining about the matter, subsidized the Southern lines whose divisional shares were made greater by the inclusion of passenger deficits in determining service costs.

From the foregoing, it will be seen that there was neither error nor prejudice to the Southern lines in the Commission's consideration of passenger deficits.

6. In the Event of Remand the Prescribed Divisions Should Be Permitted to Continue in Effect Subject to Readjustments as Necessary to Protect All Parties.

That the Commission's order is valid and should not be disturbed on judicial review is evident both on the face of the Commission's report and in the light of precedent, particularly the very recent decision in *Chicago & N.W. Ry. Co.* Appellants believe it likely, therefore, that the Commission's order will be sustained. As indicated above, however, if the order should be permanently set aside, Appellants would be required to refund more than $25 million, plus interest, and the former divisions would be reinstated at an annual cost of about $8 million to Northern lines until the Commission could again prescribe new divisions. Northern lines must, therefore, proceed with great caution, and suggest that in the unlikely event there should be a remand the prescribed divisions should be permitted to continue in effect subject to possible readjustment following the remand proceedings.

In the *C.&N.W.* case this Court referred to the fact that thirteen years had elapsed since the complaints which gave rise to that litigation were first filed and it then held that the attacks on the Commission's cost findings were so insubstantial that no useful purpose would be served by further proceedings in the District Court. It is about

twenty-one years since Northern lines began this proceeding, and approximately eleven years since they petitioned for its reopening on November 2, 1956. In contrast to the concern of the Supreme Court regarding the time consumed in the disposition of *C.&N.W.* (and see *Illinois C.R. Co. v. Norfolk and W.R. Co.*, 385 U.S. 57, 75 (1966) and *Consolo v. Federal Maritime Comm'n.*, 383 U.S. 607, 621 (1966)) the District Court here concluded its decision not only by ordering the case back to the Commission for the development of the "actual costs of handling the specific traffic at issue" (A. 354) but it suggested that the evidence upon which the Commission acted had become stale and that the reception of new evidence was in order (A. 356).

Under § 15(6) the Commission is without authority to prescribe divisions retroactively except in circumstances not here present. *Brimstone R.R. Co. v. United States*, 276 U.S. 104, 117-123 (1928); *United States v. Baltimore & Ohio R. Co.*, 284 U.S. 195 (1931). Accordingly, such further order prescribing divisions as the Commission might enter following a remand would of itself have force only prospectively from its effective date. Thus, whether or not the Commission's new order made any change in its original prescription, it would lack power to protect these Appellants for the entire period of years from April 20, 1965 to the effective date of its new order. Since there is nothing of record to suggest, and the Court below found nothing to warrant any inference, that development of the more refined costs it deemed essential would at all warrant lower divisions for Northern lines than those prescribed in the order under review, an additional loss to Northern lines, at the rate of some $8 million per annum for all years prior to the effectiveness of a new Commission order, may reasonably be assumed.

Thus it is entirely possible that if the Commission were required to give further consideration to this matter, the result would be the prescription for Northern lines of similar or substantially similar divisions to those here involved. But, as stated, the Commission would lack au-

thority to make a new divisions order retroactive so as to protect Northern lines for the large revenue losses they would suffer for the period April 20, 1965 until a new order could become effective for the future, following the remand proceeding.

It is respectfully submitted that this Court, in the event of remand to the Commission for further findings, should, therefore, employ the procedure it adopted in *Sec'y. of Agriculture v. United States,* 347 U.S. 645 (1954), in which it vacated the District Court's order and remanded the cause to the Commission for further administrative proceedings, but without invalidating the Commission's order or enjoining its enforcement, thus leaving the unloading charges fixed by the Commission's order in effect pending completion of the remand proceedings. A similar procedure here, in the event of remand, would protect the interests of all parties by assuring the application of such divisions as the Commission might ultimately prescribe to all traffic moving subsequent to April 20, 1965.

As an alternative to this procedure this Court, in the event of a remand to the Commission, could direct the lower court to retain jurisdiction to make an equitable resettlement of the divisions in the event that upon remand the Commission in a valid order prescribed new divisions for the Northern lines more favorable than the old divisions. Since this would involve the resettlement of accounts by the payment of some $25 million plus interest by Northern lines to the Southern lines and the use for a number of years (until the Commission could complete further proceedings and issue a new order) of the old divisions which the Commission had found unlawful, and thereafter, assuming the issuance of a valid order by the Commission, the retransfer of the moneys—plus additional moneys attributable to later shipments—to the Northern lines, this alternative would not seem to be as desirable as that of permitting the present divisions to remain in effect subject to an equitable resettlement of revenues upon the completion of the remand proceedings.

7. The Contentions of the Southern Governors' Conference, et al. Are Without Merit.

The Southern Governors' Conference and the Southeastern Association of Railroad and Utility Commissioners, hereinafter called "the Conferences," contend that even if it be conceded that the Northern costs were relatively higher than the Southern on the specific traffic involved, the Commission could not lawfully reflect them in higher divisions north of the gateways without first finding that such higher costs were the result of what the Conferences referred to as "inherent territorial disadvantages."[28] This restriction, or test, which they incorrectly charged the Commission with having adopted, has no basis in Section 15(6) or in any judicial construction thereof.

The District Court, while emphasizing that it was remanding the case to the Commission for other reasons, stated that upon remand the Commission should decide and dispose of this contention in accordance with the Administrative Procedure Act (A. 341-343), by which it apparently meant that the finding of the Commission with respect to the contention should be stated with greater clarity.

The Commission said, with respect to this argument, "Relying on *New York v. United States,* 331 U.S. 284, 315 (1947), the interveners also take the positon that natural disadvantages must be found in the North before we may increase the divisions of the northern railroads." (A. 51) This, of course, was a statement of the Appellees' contention. The Commission answered it by stating: "In essence, however, other factors being equal, cost differences gen-

28. While the Conferences do not attempt to define or describe what they would include within the scope of "inherent territorial disadvantages," it would appear that they would exclude virtually everything that might affect relative costs except physical or natural conditons such as topography, grades and curves, climatic conditions, etc.

erally are the product of, and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories."[29]

This contention of the Conferences would forbid the Commission to act upon cost evidence until that body, through a process reversing the development of the costs, had investigated the causes of such higher costs and found that they stemmed from nothing but "inherent territorial disadvantages," a standard of obviously uncertain scope. Thus, having "marched up the hill" at the expenditure of much time, effort and money to produce the requisite Form A costs, the Commission in effect would have to "march down again" by making a tremendous factual inquiry into the causes of the higher costs. The Commission would thereby lose a great deal of the value and usefulness of Form A costs and be required to observe an illogical, wasteful and time-consuming procedure.

The justification offered the lower Court by the Conferences for judicial adoption of their contention concerning "inherent territorial disadvantages" was that other-

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29. The Commission then cited *Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, at pages 646-47. At the cited pages, the Commission, consistent with its conclusion here, said, after describing contentions concerning operating conditions:

> "While an appraisal of the evidence regarding physical operations indicates that both the complainant and the defendant operate in mountainous terrain, there is no need to determine whether such transportation conditions are more favorable or onerous to one than to the other. The nature of the physical transportation circumstances is concededly reflected in the cost of operations. In this respect, the cost data hereinafter discussed form a sounder basis for a determination of the issue raised than any conclusions to be drawn from the numerous factual statements regarding operating conditions."

This decision was upheld in *Carolina & Northwestern Ry. Co. v. United States*, 234 F. Supp. 112; affirmed, 380 U.S. 526. Similar recognition that costs "reflect the totality of conditions under which the carriers in the respective territories operate" is found in this Court's decision in *New York v. United States*, at pp. 348-9.

wise the Commission might give undue weight to higher costs which were higher because of conditions such as inefficient operation. But there is no need for providing any such restriction on the Commission's authority to prescribe divisions. Section 15(6) as enacted by Congress already provides protection against the use of relative costs affected by inefficiency of operations. Thus, at the outset of the list of matters required to be considered, the provision requires that the Commission "shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated. * * *"

In this case the Commission has quite specifically given full attention to "efficiency of operation" (A. 37-39), and has definitely found (A. 39):

> "We find upon this record that northern lines' cost of service is not shown to be affected by purported waste or inefficiency. More affirmatively, we find that both groups are being operated efficiently and that neither group should be considered as more or less efficient than the other."

The Conferences presented argument concerning the possible future effects of mergers authorized or proposed. In this connection it may be noted that subsequent to the closing of the record before the Commission, the respondent Southern railroads, supported by the Conferences, sought further hearing for the purpose of submitting evidence concerning the effect of proposed combinations and consolidations of rail carriers in Official Territory upon operating costs and revenue needs of said carriers. In its order of December 27, 1962, denying said petition (A. 1157) the Commission concluded as follows:

> "*It further appearing,* That such combinations and consolidations are involved in pending proceedings before the Commission, in some of which the hearings have not been concluded, and that it cannot properly

be assumed at this time that all of the combinations and consolidations will be approved and consummated, as proposed;

"*It further appearing,* That even if all or some of the combinations and consolidations are approved and consummated, the effect thereof on operating costs and revenue needs of the carriers involved will not be ascertainable within a brief period after consummation;

"*And it further appearing,* That reopening these proceedings for further hearing would result in unjustified delay in the disposition thereof; therefore

"*It is ordered;* That said petition be, and it is hereby, denied, for the reason that sufficient grounds have not been presented to warrant granting the action sought."

The Commission's findings under the heading "importance to the Public" (A. 50-51) and its above-quoted findings regarding efficiency of operation were all the findings that it was required to make with respect to this contention of the Conferences. *Minneapolis & St. Louis R. Co. v. U.S.*, 361 U.S. 173, 193-4; *Chicago & N.W. R. Co. v. A., T. & S.F. R. Co., supra,* at 358.

In the Conclusion of its opinion (A. 355) the District Court used an expression to the effect that the prescribed divisions are "bound to cut deeply into economic relations . . ." This, apparently, has reference to the contention of the Conferences that the Commission's decision in the present case would result either in a substantial diminution in the quality of the rail service within the South or a substantial increase in freight rates.[30] The revenue reduc-

30. It should be noted in this connection that in some of the past North-South divisions cases the Commission prescribed divisional factors which, on Florida citrus, were as much as 85% higher, mile for mile, for the Southern lines than for the Northern lines and on

tion of Southern lines as a result of the order under review ($7,948,000, A. 80) is only 62/100 of 1% of the freight revenue of the Southern lines ($1,280,900,000, A. 776) for the year in which the Commission's calculations were made (1956). After an appropriate adjustment for income taxes, therefore, it would appear that the reduced revenue might be somewhere in the neighborhood of 1/10 of 1% of the gross freight revenue of Southern lines. Manifestly, therefore, these alleged apprehensions of the Conferences regarding a substantial increase in rates or a diminution of the service as a consequence of this divisions order are wholly without substance. The Commission considered the contentions of these Appellees and found that the prescribed divisions "can result in no unlawful injury to the south." (A. 51)

In their original brief to the Commission of June 17, 1961, at page 5, the Conferences stated:

> "The destruction of the equal factor divisional scales sought in this proceeding by the Northern railroads ultimately threatens the destruction of the uniform class rate scales which the South fought so hard to secure."

This concern of these Appellees is without foundation. Rates and divisions affect different relationships, are regulated under different statutory provisions, and are subject,

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traffic in general, 25% higher for Southern than for Northern lines. *Atlantic Coast Line R. Co. v. Arcade & A.R. Corp.*, 194 I.C.C. 729, 761-2 (1933), and *Divisions of Rates, Official and Southern Territories*, 234 I.C.C. 175, 192 (1939). In the next decision, *Official-Southern Divisions*, 287 I.C.C. 497, the Commission equalized the factors and in the order under review, the Commission fixed higher divisional factors for the Northern lines than for the Southern. Contrary to the District Court's impression, there is clearly nothing novel about one group of lines having proportionately higher divisions than the other on North-South traffic. It is of the essence of the administrative function that the Congressional standards for Commission action under Section 15(6) may require it to change its orders from time to time in accordance with the facts which, upon investigation, it finds.

in their prescription, to different considerations. Rates involve shipper-carrier relations; divisions affect only inter-carrier relationships. Rates are regulated under portions of Sections 1, 2, 3, and 4 of the Act, while divisions are regulated under Section 15(6). Since enactment of the latter provision in 1920, it has been recognized as a provision made by the Congress whereby, in appropriate cases, the Commission could order disparate divisions out of rates which might be uniform in character or in measure of increase. *New England Divisions Case,* 261 U.S. 184, 191 (1923). In prescribing uniform *class* rates east of the Rocky Mountains in *Class Rate Investigation, 1939,* 262 I.C.C. 447 (1945), the Commission at pages 693-694 discussed the bearing of costs upon rates in part as follows:

> "Discretion and flexibility of judgment within reasonable limits have always attended the use of costs in the making of rates. Costs alone do not determine the maximum limits of rates. Neither do they control the contours of rate scales or fix the relations between rates or between rate scales. Other factors along with costs must be considesed and given due weight in these aspects of rate making. * * * [31]
>
> "Moreover, it has long been recognized that it is unwise from the standpoint of both shippers and carriers to attempt to reflect in any rate schedule or rate structure all the minute and unsubstantial variations in the costs of service that occur on different divisions or segments of the same railroad or between individual railroads or groups of railroads. The tendency has been, rather, to deal with average costs in such manner as to avoid needless rate variations and to permit the freest possible movement of traffic."

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31. Quoted by this Court in *New York v. United States,* 331 U.S. 284, 328, which sustained the Commission's order therein.

With reference to the Conferences' contentions concerning the prescription of differing divisions based upon relative costs, and the relation thereto to future rate levels, it is important to note that to the exent that there would be any difference in rates because of cost differences, the differences would be in favor of the Southern shippers. If higher costs are to be reflected in higher rates, it is Official Territory which would have the higher rates since the costs of the Official Territory railroads are higher. Thus the situation would be exactly the reverse of what it was when Southern transportation costs were higher and Southern shippers were required to pay higher rates than their Northern competitors.[32]

Finally, the insistence of the Conferences upon adherence to uniformity in divisions regardless of the change in basic facts which now show higher costs on the part of Northern lines than of Southern is quite at variance with the decisions of this Court as to the necessity of flexibility and adaptability on the part of administrative bodies. See, e.g., *American Trucking v. A., T. & S.F. R. Co.*, 387 U.S. 397, 416 (1967).

Referring to the contention of Southern interveners that the public interest required uniformity in these divisions, the Commission concluded (A. 50-51):

> "We recognize that the public interest must be considered and the importance to the public of the transportation services of the railroads is not a sectional concept. We are required under the act to preserve an adequate national system of transportation, and must therefore consider the public interest of all concerned. Such a consideration, however, does not by any means require a uniformity of divisions, nor can we find an

32. In fact, in the post-war general freight rate increase cases the Commission has several times granted increases which are higher within the North than within the South, or between the South and the North. See, for example, *Increased Freight Rates, E. W. and S. Territories, 1956*, 300 I.C.C. 633, 689 (1957).

affirmative virtue in it on this record. Cf. *Western Trunkline Case,* 225 F. Supp. at page 604. Moreover, as pointed out in *New England Divisions Case,* 261 U.S. 184, 191 (1923), section 15(6) was designed to help the weak 'by preventing needed revenue from passing to prosperous connections.' Thus, an adherence to uniformity as such, without a careful evaluation of the statutory criteria and the evidence of record, can hardly result in the fixing of just, reasonable, and equitable shares."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the District Court should be reversed and the cause remanded to that court with instructions to dismiss the complaints.

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APPENDIX A.

Statutes Involved.

A. Section 1(4) of the Interstate Commerce Act, 49 U.S.C. § 1(4), provides in pertinent part:

> It shall be the duty of every such common carrier establishing through routes . . . in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

Section 15(6) of the Interstate Commerce Act, 49 U.S.C. § 15(6), provides:

> (6) Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint

or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

B. Section 8(b) of the Administrative Procedure Act, formerly 5 U. S. C. § 1007(b) and now revised and codified as 5 U. S. C. § 557(c), (80 Stat. 387), provides:

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Section 10(e) of the Administrative Procedure Act, formerly 5 U. S. C. § 1009(e), and now revised and codified as 5 U. S. C. § 706 (80 Stat. 393), provides:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 938

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

ABERDEEN & ROCKFISH R. CO., ET AL., APPELLEES

On Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division

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BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the district court (A. 325-356) is reported at 270 F. Supp. 695. The reports of the Interstate Commerce Commission (A. 18-132; 176-186) are published at 325 I.C.C. 1 and 325 I.C.C. 449.

JURISDICTION

The judgment of the three-judge court was entered on August 22, 1967 (A. 357). The notice of appeal

was filed on October 23, 1967 (A. 5, 371). Jurisdiction to review the district court's decision is conferred by 28 U.S.C. 1253 and 2101(b). *Chicago and N.W. Ry. Co.* v. *Atchison, T. & S.F. Ry. Co.*, 387 U.S. 326; *Baltimore & O. R. Co.* v. *United States*, 298 U.S. 349. Probable jurisdiction was noted on March 4, 1968 (390 U.S. 940), and this appeal was consolidated with the appeal from the same judgment in *The Baltimore and Ohio R.R. Co.* v. *Aberdeen & Rockfish R.R. Co.*, No. 925, this Term.

QUESTION PRESENTED

A petition filed with the Interstate Commerce Commission under Section 15(6) of the Interstate Commerce Act [49 U.S.C. 15(6)] sought modification of Commission-prescribed divisions of joint rates applying over the lines of more than 200 railroads for the interterritorial transportation of virtually all North-South freight.[1] After considering evidence and upon making findings relating to each of the Section 15(6) criteria, the Commission concluded that the existing divisions were unjust, unreasonable and inequitable and it prescribed new divisions in proportion to the relative costs of the two groups of carriers in handling the traffic at issue.[2] The cost figures used by

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[1] Except coal, certain trailer-on-flatcar traffic, and border point traffic embraced in another proceeding entitled Docket No. 32055 (A. 86).

[2] The Commission prescribed a special basis of divisions for the Norfolk Southern Railroad covering traffic originated or terminated on its line when that railroad demonstrated that its circumstances and conditions were sufficiently unlike

the Commission were derived from Rail Form A, which produces average unit costs for territorial freight service, although the Commission made certain adjustments to reflect more accurately the costs of the particular traffic involved. In rejecting adjusted Rail Form A costs as a proper yardstick for this purpose, the district court held that the Commission was required to base its computations on more refined cost data.

The question presented is whether, in ascertaining the relative costs of service in an interterritorial divisions case, the Commission may rely on Rail Form A data as to territorial average costs, adjusted to more accurately reflect the costs of the particular traffic involved, or is required to develop more refined cost data.

STATUTES INVOLVED

Section 1(4) of the Interstate Commerce Act [49 U.S.C. 1(4)], and Sections 8(b) and 10(e) of the Administrative Procedure Act [5 U.S.C. 557(c) and 706] are set forth in Appendix A to appellants' brief in the companion case, No. 925, this Term.

Primarily involved is Section 15(6) of the Interstate Commerce Act [49 U.S.C. 15(6)], which provides, in pertinent part:

> Whenever * * * the Commission is of opinion that the divisions of joint rates, fares, or charges applicable to the transportation of passengers or

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those of the other Southern carriers as to merit individual treatment. The special divisions for the Norfolk Southern are not in issue.

property, are or will be unjust, unreasonable, inequitable, or unduly preferential * * * the Commission shall by order prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers * * *. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge.

STATEMENT

1. INTRODUCTION

This appeal involves the district court's imposition of novel cost standards for the Commission to follow in exercising its Section 15(6) authority to prescribe just, reasonable and equitable divisions of joint rates.[3]

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[3] A joint rate is established when two or more carriers publish a single charge for their joint carriage of freight from an origin point on one line to a destination on another. The proportion of a joint rate received by each of the carriers as its share of the revenue received for the joint service is commonly known as a "division."

The case arises out of the Commission's 1965 order prescribing new divisions of the revenues derived from the transportation of interterritorial freight traffic moving under joint rates between all points in the Northern and Southern [4] sections of the eastern part of the United States.

2. PROCEEDINGS BEFORE THE COMMISSION

The Commission's order here under review modified the divisions of North-South freight revenues it had previously prescribed in *Official-Southern Divisions*, 287 I.C.C. 497 (1953). In its 1953 order, the Commission based its prescription of equal-mileage factor divisions [5] upon a finding that, in computing relative costs of service for the groups of carriers concerned under Rail Form A standards, "the safest assumption for the future * * * [is] that neither contesting group will have an appreciably lower basis of operating costs than the other, and that there are no other relevant circumstances which are of sufficient importance to justify higher divisional factors for one group than

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[4] The North embraces Official Territory, which lies generally east of Lake Michigan, Chicago, Peoria, and Cairo, Illinois, and St. Louis, Missouri, and north of the Ohio River and Norfolk, Virginia. The South embraces Southern Territory, which lies south of Official Territory and east of the Mississippi River.

[5] These equal-factor divisions provided equal compensation for the same amount of service performed by the Northern and Southern railroads. Thus, for shipments moving 500 miles in each territory, the Northern and Southern railroads would each receive 50% of the joint rate (287 I.C.C. at 547, 552).

the other" (287 I.C.C. at 526). Upon Northern lines' petition for rehearing and modification alleging, among other things, that Northern lines' costs were now substantially higher than those of the Southern roads, the Commission reopened the proceedings for further hearing. (A. 20, 377-384, 414-415).

During the lengthy hearings that followed, both groups of carriers introduced evidence which sought to demonstrate the unfairness of the existing divisions and that each group was entitled to a larger share of the joint rates than previously received. The Commission considered 80 verified statements containing direct testimony and numerous attached exhibits, 30 additional exhibits introduced at the hearings and over 2700 pages of testimony on cross-examination.[6] Upon completion of the administrative proceeding in 1965, the Commission found that the existing divisions were in violation of Section 15(6) in that they allocated to the Northern lines a lesser share of the revenues from the joint rates than would be warranted by their share of the expenditures in providing the joint service (A. 79-80).

The Commission reached this conclusion after considering and making findings as to each of the criteria specified for "due consideration" in Section 15(6), as

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[6] Evidence considered by the Commission included detailed traffic studies based on actual movements (A. 25-31); the carriers' revenue shares received under the then existing divisions in a representative year (A. 29, 46-48); economic trends (A. 31); operating and revenue trends (A. 33-37); efficiency of operations (A. 37-39); elaborate cost studies based on Rail Form A (A. 39-50); and extensive data on various cost factors (A. 87-130).

applied to each of the two contendings groups of railroads. It found all of the relevant factors, except for costs, to be substantially equal,[7] but concluded that computations under Rail Form A cost standards, which it adjusted and restated to more accurately reflect North-South traffic, established a decisive difference in the relative costs of rendering the service involved.

More specifically, both groups of carriers tried and submitted their cases on the basis of fully distributed costs computed under Rail Form A, although the Southern lines presented twelve adjustments which, they asserted, would improve the accuracy of the Rail Form A figures so derived for the traffic involved (A. 40, 46-47). The Northern lines introduced other detailed data establishing the validity of Rail Form A costs as a proper standard of measurement and the impropriety of the Southern lines' proposed adjustments. The disputes over applicability of Rail Form A costs and the various proposed adjustments occupied a large part of the administrative record. However, as the Commission pointed out (A. 46-48), the only essential difference between the carrier groups related to the degree to which Rail Form A territorial unit costs of all traffic should be modified to fit the

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[7] The Commission found that both groups of carriers are being operated efficiently and neither group should be considered as more or less efficient than the other (A. 39); that there are no differences in importance to the public attributable to the services of the two groups (A. 51); and that no adjustment over and above divisions based upon costs was warranted for either group on the grounds of greater revenue needs or otherwise (A. 79).

specific work units of the traffic at issue, and to the meaning and significance of the Southern lines' suggested adjustments.

In a comprehensive analysis accepting five and rejecting seven of the Southern lines' adjustments as unsound or based on unsupported and inapplicable facts or assumptions, the Commission concluded that its restated Rail Form A costs, which were based on Southern lines' cost and traffic studies except as to the rejected adjustments, "more reliably," "accurately," and "adequately reflect the costs which are attributable to the traffic at issue" (A. 48-49, 77-78, 87-129). Upon consideration of such cost data, the Commission concluded that its "restatement of the costs, which are reasonably accurate and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis, shows that the cost level in 1956, the year both groups used in the final cost analysis, is somewhat higher in the North than in the South for like services. A consideration of all factors indicates that this situation will most likely continue in the immediate future" (A. 78).

Noting that in the sample year selected by the Southern lines "the Northern lines received 44.64 percent of the revenue while incurring 46.35318 percent of the fully distributed costs," the Commission determined that "[i]t is clear that an adjustment in the divisions is required to compensate the respective groups according to their expenditures in the joint effort of handling this interterritorial traffic. To the extent that the present divisions do not meet this test," the Commission concluded, "they are unjust,

unreasonable and inequitable" (A. 80). Accordingly, the Commission prescribed new divisions in the form of scales of divisional factors (A. 130) which "are based on the fully distributed costs and divide the revenues in the same proportion to those costs" [8] (A. 80), finding that "the results achieved through application of the divisional mileage scales here prescribed will for the future be just, reasonable, and equitable * * *" (A. 80).[9]

Under the newly prescribed scale of divisional factors, tables of integers arranged by mileage blocks (in 50 mile increments) are used to compute percentages for dividing the joint rates [10] which produce approxi-

[8] Southern lines requested the prescription of divisional scales based on costs urging that "[t]o the extent, if at all, the Examiners are found to be correct in their rejection of specific aspects of the Southern lines' cost evidence * * *, the cost evidence, as thus modified, would provide the basis for constructing the divisional scales" (A. 1361-1363). In agreeing with the Southern lines, the Commission prescribed new divisions on that basis.

[9] In its Supplemental Report, the Commission reaffirmed its conclusions that revised divisions were required and that the cost data of record it used provided an adequate evidentiary basis for the newly prescribed divisional scales (A. 181-183).

[10] Scales of divisional factors are tools for accomplishing the division of revenues by the use of common fractions to calculate percentages which are then used to divide the revenue from a given shipment of freight. For example, if the haul for an originating Northern line were 300 miles and the haul for the terminating Southern line were 500 miles, the scales selected by the Commission prescribe 241 integers for the originating Northern road and 321 integers for the terminating Southern road (A. 130). The sum of these factors is 562. Reduced to percentages, the Northern road would re-

mately $496 million in revenues annually. The shift in revenues which would result from the new divisions is approximately $8 million a year. This amounts to an overall increase in the revenues of the Northern lines from the traffic involved of 3.5 percent and a reduction in Southern lines' revenues of approximately 3 percent (A. 80, 181-182).

3. PROCEEDINGS BEFORE THE DISTRICT COURT

In March 1965, the Southern lines brought the instant suit before a three-judge district court in the Eastern District of Louisiana to enjoin the enforcement of and to set aside the Commission's order establishing the new divisions.[11] The Northern railroads intervened as defendants and joined the United States and the Commission in defending the order. In denying Southern lines' application for interlocutory injunction, the district court dissolved a previously issued temporary restraining order and permitted the newly prescribed divisions to become applicable on April 20, 1965, subject to conditions requiring a refund of the increases to the Southern lines if they were successful in setting aside the order.

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ceive $\frac{241}{562}$ or 43% of the joint rate and the Southern road would receive $\frac{321}{562}$ or 57%.

[11] The Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners intervened on behalf of the Southern carriers in the Commission proceedings and in the three-judge court judicial review action.

After oral argument, the district court concluded that the Commission's restated Rail Form A costs, although based on adjustments of territorial costs of all freight service to reflect North-South service, were not a proper yardstick for measuring the costs of the particular traffic in a divisions case. In the Court's view, the Commission was required "* * * to take affirmative action to require the development of an adequate record as to the actual costs of handling the specific traffic at issue" (A. 354). Accordingly, the district court set aside the Commission's order as not supported by substantial evidence and reasoned findings within the meaning of Sections 8(b) and 10(e) of the Administrative Procedure Act [5 U.S.C. 557(c) and 706], and remanded the case for further proceedings consistent with its opinion. Pending appeal, however, the court stayed its judgment and permitted the new divisions to remain in effect, subject to the same pay back conditions imposed in its denial of a preliminary injunction which require a financial settlement among the carriers back to the effective date of the Commission order (April 20, 1965), should its judgment be affirmed on appeal (A. 359).

SUMMARY OF ARGUMENT

I. Under Section 15(6) of the Interstate Commerce Act, Congress has imposed upon the Interstate Commerce Commission the duty to assure just, reasonable, and equitable divisions of joint rates as between connecting carriers. Exercising this authority, after consideration of evidence and upon making findings relating to each of the Section 15(6) criteria, the

Commission prescribed new divisions of the joint rates on interterritorial North-South freight traffic in proportion to the relative costs of handling that traffic. The cost figures used were derived from Rail Form A, which produces average unit costs of all territorial service, although the Commission made certain adjustments to reflect more accurately the costs of the particular traffic in question. The district court held, however, that restated Rail Form A costs were not a proper yardstick for this purpose and that the Commission was required to develop more refined data to reflect the actual costs of the particular traffic.

When contesting groups of carriers in a divisions case recognize the necessity of basing their costs of service on computations derived by applying Rail Form A territorial unit costs of all traffic to the specific work units incurred in handling the traffic involved in the contested divisions and one group sought —but failed to prove—that certain proposed adjustments were required to compensate for peculiar characteristics of the particular traffic, this Court has expressly declined to invade the province of the Commission and has approved Rail Form A computations as a proper standard of cost measurement. *Chicago & N.W. Ry. Co.* v. *Atchison, T. & S.F. Ry. Co.*, 387 U.S. 326.

Divisions cases are essentially pragmatic in nature. Congress has accorded the Commission in Section 15(6) a considerable amount of discretion to carry out its basic responsibility of prescribing "just, reasonable, and equitable" divisions. In determining

the adequacy of the cost data in the instant case, the Commission was acting in consonance with the statutory duty imposed upon it by Congress. In substituting its own view as to the adequacy of the cost evidence, the district court simply failed to give sufficient weight to the Commission's resolution of such matters, leaving little if anything to informed expertise and practical judgment. Such a result was never intended when, in Section 15(6), Congress conferred sweeping authority upon the Commission to effectuate the public interest in the existence of "divisions that colloquially may be said to be fair." *Baltimore & O. R. Co.* v. *United States*, 298 U.S. 349, 357-360.

The use of Rail Form A data is compelled as a practical matter since it is readily available and is not subject to biases which special studies conducted by the parties might understandably reflect. Moreover, it was never contemplated by Congress that costs of service in divisions cases be ascertained with exact mathematical precision—a technically impossible task since empirical judgments are essential. *New York* v. *United States*, 331 U.S. 284, 324-328. Indeed, it is rather illusory to assume that the exact costs of any particular traffic can be definitively ascertained since costs of particular shipments are necessarily an apportionment of the various expenses incurred in providing and maintaining facilities necessary to conduct rail operations generally. Where particular traffic uses physical facilities and employees' services in common with other traffic, and has been shown to have no distinguishing characteristics, the application of Rail Form A costs is plainly proper.

Nothing in the language of Section 15(6) expressly or impliedly prohibits the comparison of cost by applying Rail Form A territorial unit costs to the work units incurred in transporting a large and varied body of all traffic moving between two territories and handled by all railroads in each territory. The decision below conflicts with the established practice approved by decisions of this Court, substitutes the reviewing court's preference concerning the adequacy of cost evidence and constitutes an unwarranted incursion into the administrative domain. *S.E.C.* v. *New England Electric System*, 390 U.S. 207, 211. Since the Commission's procedures permitted all refinements to Rail Form A territorial unit costs which were necessary to reasonably reflect the cost of the particular traffic in question, the requirement of more refined cost data imposed by the court below would not only serve no useful regulatory purpose, but would seriously impair the Commission's ability to exercise in a practical manner its authority to adjust divisions.

II. The attempt of the Southern lines to rewrite the lower court's holding, so as to require rejection of the Commission's order for lack of evidence to support the use of Rail Form A costs to measure the cost items involved in their rejected adjustments, fails. Moreover, their more limited argument that the Commission's findings are inadequate and not supported by substantial evidence is itself without merit.

Southern lines were proponents of a different result from that urged by the Northern lines and had a

burden to maintain under Section 7(c) of the Administrative Procedure Act, 5 U.S.C. 556(d). As the district court acknowledged, however, the Commission in effect found that Southern lines failed to overcome Northern Lines' *prima facie* case of the applicability of Rail Form A territorial unit costs to measure North-South traffic and also to establish that their adjustments were required to compensate for the peculiar characteristics of that traffic. Thus, the Commission merely reversed their unsupported assumptions and calculations and reverted to the Rail Form A costs from which Southern lines had started. In each instance where this occurred, whether referred to by the district court as a representative example or not, the Commission's findings provided an adequate basis, supported by substantial evidence, for its prescription of the new divisions.

III. Nor do the arguments of the Southern Governors' Conference et al., intervening plaintiffs below, contain merit. Although urging that, "as a matter of law," the Northern lines cannot have an increase in divisions in the absence of findings that their higher costs result from inherent territorial disadvantages, the Commission made all the findings necessary to dispose of this claim. The bulk of the Conferences' arguments relate to the Commission's refusal to accept their unsupported and novel concept that "sectional" rather than "national" interests should control the prescription of fair divisions between the railroads. But these claims would disregard the evidence which established a need for revised divisions in order to compensate the Northern lines according to their

expenditures in the joint effort of handling North-South traffic. These arguments merely raise disagreement with judgments the Commission made, supported by evidence, on questions of transportation economics. These are not issues appropriate for judicial review and, even if they were, the Conferences have failed to show any error by the Commission that would justify the invalidation of its orders.

ARGUMENT

I.

THE DISTRICT COURT ERRED IN HOLDING THAT THE COMMISSION IS REQUIRED TO DEVELOP THE ACTUAL COSTS OF THE PARTICULAR SERVICES IN A DIVISIONS CASE AND CANNOT RELY ON RAIL FORM A TERRITORIAL AVERAGE COST COMPUTATIONS, AS ADJUSTED.

The district court held that the Commission must develop more refined data reflecting the actual costs of the particular traffic in an interterritorial divisions case and cannot accept, as a standard of measurement, computations produced through the use of Rail Form A territorial average costs, adjusted to reflect the expenses of handling the specific traffic at issue.[12] Compliance with the district court's ruling would mean that, before the Commission could determine the unlawfulness of existing divisions and prescribe new

[12] While the Commission's order was in terms ultimately set aside for lack of substantial evidence and adequate findings, the district court reached that conclusion only after rejecting the Commission's specific findings as to the adequacy of restated Rail Form A costs because these findings did not comply with the court's view of the proper standard of cost measurement to be applied (see, *e.g.*, A. 335, 349, 353).

divisions, it must develop—or have developed by the parties—special studies as to the costs of each of the services performed in handling North-South traffic. This is an impractical requirement.

Contrary to the decision below, the railroads themselves recognized the necessity for using the Rail Form A formula to measure the relative costs of North-South traffic, and they desired and expected the Commission to use that formula in ascertaining the costs of service. The only complaint was that the Commission had not made all the adjustments to the Rail Form A costs which the Southern lines had suggested. The district court's requirement of finding the exact costs of service is illusory, substitutes the court's view for that of the agency charged by Congress with the duty of prescribing fair divisions and conflicts with past decisions of this Court as well as Commission practice. The Commission plainly has the statutory authority to compute costs by adjusting and applying Rail Form A territorial unit data to the work units incurred in transporting all commodities between two territories by all railroads of these territories.

A. The Decision Of The District Court Is Contrary To Settled Commission Practice Approved Under Decisions Of This Court And Substitutes The Court's View For That Of The Expert Body Charged By Congress With Administering The Interstate Commerce Act.

The need for a comprehensive formula to measure rail costs led to the development of Rail Form A by the Commission's Cost Finding Section more than a

quarter of a century ago.[13] Data reported annually by the railroads to the Commission was first used in applying Rail Form A in *Class Rate Investigation, 1939*, 262 I.C.C. 447 (1945), affirmed, *New York* v. *United States*, 331 U.S. 284 (1947). Ever since this Court sustained the integrity of the Rail Form A formula in the *New York* case, it has been almost universally employed as an acceptable and reliable method for ascertaining relative railroad costs in every type of rate proceeding that comes before the Commission. (A. 953-957). Indeed, this Court has consistently approved the application of restated Rail Form A computations as a proper standard for measuring costs of service in divisions cases involving a large and varied body of interterritorial traffic handled by over 300 railroads, *Chicago & N.W. Ry. Co. v. Atchison, T. & S.F. Ry. Co.*, 387 U.S. 326, as well as a single commodity handled by two railroads interterritorially, *Carolina & N.W. Ry.*

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[13] Generally, under Rail Form A, the expenses of carriers assigned to geographical areas are first broken down into groups and are translated into territorial average unit costs of performing each of the kinds of service involved in moving specific shipments or in furnishing a given amount of service in each territory. Adjustments are contemplated to fit any peculiar characteristics of particular shipments for individual or groups of railroads. When the average costs for each unit of work are multiplied by the number of work units of each of the services found to be employed in moving a specific shipment or in furnishing a given amount of service, the cost figures thus produced will be the substantial equivalent of specific costs of the particular traffic in question. For a more complete description of Rail Form A and its use in developing regional cost studies, see Sen. Doc. No. 63, 78th Congress, 1st Sess.

Co. v. *United States*, 234 F. Supp. 114, affirmed, 380 U.S. 526.[14]

It has long been recognized that whether a cost study is adequate or should have been refined or supplemented by additional data is a question of fact which is within the special competence and discretion of the Commission, see *e.g.*, *Illinois Commerce Commission* v. *United States*, 292 U.S. 474, 481, 484; *Chicago & N.W. R. Co.* v. *United States*, 387 U.S. at 356. Here the contesting groups of carriers recognized the necessity for using the Rail Form A formula to measure costs of North-South service and requested that costs at the fully distributed level be utilized. The only difference between the parties involved the degree to which such territorial average costs should be modified to fit the specific traffic at issue. In rejecting seven of Southern lines' proposed twelve adjustments to Rail Form A costs, which it found were based on theoretical estimates, unsupported averages or guesses, the Commission merely reverted to the Rail Form A costs from which those railroads had started. Thus, in its determination the Commission merely adhered to the recognized practice of applying Rail Form A territorial unit costs to the work units incurred in handling particular traffic in order to produce a reasonable reflection of the expenses incurred in handling that traffic. In fact, the costing procedures used here in adjusting the South-

[14] And see *Permian Basin Area Rate Cases*, 36 L.W. 4337 at 4356, 4358 (May 1, 1968), where this Court recently sustained the Federal Power Commission's area maximum rates on gas derived from average costs, without further adjustment.

ern lines' studies are the same as those which the Commission employed with the unanimous approval of this Court just last term in *Chicago & N.W. R. Co.* v. *United States*, 387 U.S. at 351, 354, except that, in accordance with the evidence of both groups of railroads, the costs here were computed at the fully distributed level.[15]

The use of Rail Form A cost figures, in ascertaining relative costs in a large interterritorial divisions case such as this, is compelled as a practical matter. Rail Form A data is readily available[16] and does not include the biases which special cost studies conducted by the contesting parties might understandably reflect. Allocation of an appropriate part of overhead or constant cost items to the particular traffic is plainly proper,[17] and, if appropriate, Rail Form A cost

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[15] This fact is conclusively established by the *amicus* brief filed in the *Chicago & N.W. R. Co.* case by the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners, appellees here.

[16] Railroads annually report their costs to the Commission in various accounts according to the purposes for which the money was spent. The dollar expenditures in each account are separated between out-of-pocket costs and constant costs and the former is assigned to functional groupings. When the dollar figures in each account are divided by the number of service units which incurred the expense, a unit cost for each service or work unit is obtained. Unit costs multiplied by the number of service units incurred in a given body of traffic are added and result in the total dollar out-of-pocket costs for the traffic in question. If fully distributed costs are to be found, both the constant cost related and unrelated to distance are added.

[17] In *Northern Pacific R.R. Co.* v. *North Dakota*, 236 U.S. 585, 597, this Court held that when conclusions are based on

figures can be stated so as to exclude all or some constant cost items which should not be taken into account.[18] As to each cost item, however, the question is essentially one of practical and informed judgment. The Commission here found that Rail Form A costs, as adjusted, "more reliably," "accurately," and "adequately reflect the costs which are attributable to the traffic at issue," and are "particularly appropriate * * * because it is a large and varied body of traffic moving to and coming from terminals in all parts of

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cost, the entire cost must be taken into account, *i.e.*, "the outlays that exclusively pertain to a given class of traffic must be assigned to that class, and the other expenses must be fairly apportioned." And in *Baltimore & Ohio R.R. Co.* v. *United States*, 298 U.S. 349, 360, 378, this Court approved the Commission's use in a divisions case of cost and revenue evidence which reflect a due or fair proportion of the overall burden of doing business. That the language of Section 15(6)—"property held for and used in transportation"—is broad enough to support consideration of all railroad property, and thus fully distributed costs, was recognized in the *Baltimore & Ohio R.R. Co.* case, where this Court stated (298 U.S. at 360):

> It requires no discussion to demonstrate that § 15(6) authorizes the Commission to take into account and give due weight to revenues from all transportation services, the operating expenses and taxes chargeable to the same and the amounts available as compensation for the use of all carrier property. And unquestionably the paragraph also empowers the Commission to take into account the revenues, expenses, taxes and returns attributable to the services covered by the divisions under consideration.

[18] In this case there is no dispute concerning the propriety of using fully distributed costs. Their use here is questioned only in the district court's holding—in our view erroneous—that it was improper to allocate an appropriate part of suburban passenger deficits to the costs of North-South traffic, see *infra*, pp. 40-45.

both territories" (A. 48-50, 77-78, 120-121). Yet, the district court overturned these Commission findings and held that the cost evidence was not adequate since, in its view, more refined data reflecting actual costs was required.

While the district court was quite correct in stating that the Commission prescribed new divisions on the basis of the relative costs of handling North-South traffic, that hardly leads to the conclusion that the restated Rail Form A data used by the Commission was inadequate.[19] Here the Commission ascertained the relative costs of service by applying, with certain adjustments, Rail Form A fully distributed unit costs to each of the work units used in moving North-South traffic which were shown in Southern lines' traffic study of all such traffic moving in one year. What the Southern roads complained about—and persuaded the district court to accept—was that the Commission had not made additional adjustments to the cost data which they had suggested. (A. 343-344). In holding that the Commission violated its statutory duty in

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[19] Aside from the district court's substantial inaccuracy in defining the purpose of Rail Form A and its application here (A. 348-349), the court appears to hold as a matter of law that the Commission cannot apply Rail Form A costs to North-South traffic in reaching its determination "without further evidence." Since the court disregarded that particular evidence (*infra.* p. 35 *et seq.*) its holding erroneously condemns the use of Rail Form A as a standard of measurement of costs of service. Moreover, the goal in a divisions case is not slavish adherence to any particular exactitude, but rather a method of computation which takes into account the direct and, where appropriate, the indirect expenses and projects a reliable and reasonably accurate estimate of the cost of providing the particular service.

failing to take affirmative action to require the development of an adequate record as to the actual costs of handling the specific traffic at issue, the district court seriously misconceived not only the Commission's function under Section 15(6), but also its own function as a reviewing court. See *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515, 535-536; *S.E.C.* v. *New England Electric System*, 390 U.S. 207, 211.

Assessing the fairness of existing divisions and prescribing new divisions are matters which are essentially pragmatic in nature. Divisions proceedings cannot be governed by mathematical niceties since the pertinent considerations are at best inexact and imprecise. Congress plainly recognized this in enacting Section 15(6), and has implicitly approved the way the Commission has administered its authority under the statute by leaving it unchanged since 1920. As succinctly stated by this Court in *Baltimore & Ohio R. Co.* v. *United States*, 298 U.S. 349, 357, the purpose of these provisions "is to empower and require the Commission to make divisions that colloquially may be said to be fair." Continuing, this Court stated (*ibid.* at 359):

> The Commission alone is authorized to decide upon weight of evidence or significance of facts. There is no single test by which "just," "reasonable" or "equitable" divisions may be ascertained; no fact or group of facts may be used generally as a measure by which to determine what division will conform to these standards. Considerations that reasonably guide to decision in one case may rightly be deemed to have little

> or no bearing in other cases. Error as to the weight to be given financial needs, operating costs or other material facts is not a misconstruction of the Act.

In carrying out its powers under Section 15(6), the Commission is charged with giving "due consideration, among other things," to various factors there spelled out. And these factors are to be considered only "among other things," and along with "any other fact or circumstance which would ordinarily without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier * * *."

No one can dispute that, in enacting Section 15(6) with such sweeping authority, Congress never intended for the Commission simply to perform essentially ministerial tasks in determining how joint freight rates should be divided,[20] whether its determination is grounded on a comparison of costs of service or a consideration of other factors as well. See *Boston & Maine R.R.* v. *United States*, 208 F. Supp. 661, 675 (D. Mass., affirmed, 371 U.S. 26. Rather, the plain duty of the Commission is to effectuate "the public interest in maintaining all essential parts of the transportation system" (325 I.C.C. at 49). See *New England Divisions Case*, 261 U.S. 184, 191. Here, in rejecting Northern lines' claim that they were entitled to an adjustment in their divisions over and above

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[20] As stated by this Court in *Interstate Commerce Commission* v. *Hoboken R. Co.*, 320 U.S. 368, 381: "* * * [T]he question as to what is a proper division is one for the Commission's discretion, reviewable only for unreasonableness, departure from statutory standards, or lack of evidentiary support."

their relative costs of service because "their revenue needs are greater since the Southern lines' average rates of return are somewhat higher," the Commission specifically pointed out that its "prescription of divisions based on relative costs includes allowances for overhead and return, and in our judgment reflects a due proportion of the burden of maintaining the financial integrity and credit of the carriers involved" (A. 79). Thus, in determining the adequacy of the cost data and the propriety of using adjusted fully distributed costs, the Commission was acting in consonance with the statutory duty imposed upon it by Congress. The significance of that Congressional authorization, and the wide latitude of discretion which necessarily accompanies it, was disregarded by the district court in substituting its judgment for that of the Commission with regard to the sufficiency of the cost evidence on which its determination was based.

Nor is the district court's or railroad appellees' suggested distinction of this Court's decision last term in the *Chicago & N.W. Ry. Co.* case, *supra*, apposite (A. 349-350; Motion to Affirm, p. 13). There, although the lower court had not dealt directly with the cost issues, this Court found that "attacks on the legal validity of the Commission's findings on costs * * * so insubstantial that no useful purpose would be served by furthering proceedings * * *" (*ibid.* at 356). In the instant case, as in *Chicago & N.W. Ry. Co.*, "[t]he presentation and discussion of evidence on cost issues constituted a dominant part of the lengthy administrative hearings, and the issues were thoroughly explored and contested before the Commission.

Its factual findings and treatment of accounting problems concerned matters relating entirely to the special and complex peculiarities of the railroad industry" (*ibid.*). Here, as there, the basic cost study upon which the Commission and all parties relied was Rail Form A territorial averages, with certain proposed adjustments allowed and others rejected.[21] And finally, here, as there, "the Commission's disposition of these matters is sufficient to show that its conclusion had reasoned foundation and were within the area of its expert judgment" (*ibid.*). (See *infra*, pp. 38-47). In the instant case, the district court simply failed to give sufficient weight to the Commission's resolution of such matters and "indulged in an unwarranted incursion into the administrative domain." *S.E.C.* v. *New England Elec. System, supra*, at 211.

In our view, costs of service in divisions cases can not be ascertained with exact mathematical precision —a result which is, of course, technically impossible since empirical judgments are essential, particularly as to the distribution of overhead. *New York* v. *United States*, 331 U.S. 284 at 335; *Baltimore & Ohio R.R. Co.* v. *United States*, 298 U.S. 349 at 378. Indeed, it is rather illusory to assume that the exact costs allocable to specific traffic can be definitively as-

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[21] Thus, the district court is simply wrong in construing the *Chicago & N.W. R. Co.* case as involving Rail Form A costs only to the extent of three adjustments. Indeed, in basing their studies on Rail Form A data here, Southern lines used unadjusted Rail Form A territorial average costs for 89.45% of the total North-South costs which they attributed to the traffic in question. (See A. 867-876, 877-880, percentage computed).

certained. In point of fact, any shipment's actual cost is necessarily an apportionment of the various expenses incurred in providing and maintaining facilities and in conducting rail operations generally. Thus, there is no such thing as a particular, specific or "actual" cost for handling North-South traffic as distinguished from other traffic because North-South traffic uses physical facilities and employee services in common with other traffic. The costs of the facilities and employee services must be apportioned to each traffic on the basis of the amount of service, *i.e.*, work units, incurred by each. For example, a car of North-South traffic moves in a train with cars of other traffic. Every car in the train is allocated a part of the costs of locomotive maintenance, fuel, train crew costs, etc. The basic unit of apportionment, a gross-ton mile, is the same for every car and ton in the train. There is no reason to assign to a car or ton of North-South traffic a proportion of train running expense which is larger, smaller, or different than to a car or ton of other traffic. This principle of allocating costs on the basis of work units incurred applies to the maintenance expense of the track and roadway over which the traffic moves, the switching expense it incurs, and all other costs.

Finally, judicial and administrative construction and application of Section 15(6) aside, the one thing that is perfectly clear is that the statute does not prohibit the Commission's comparison of costs of service by applying Rail Form A territorial unit data to the specific services in question. A study of the language of Section 15(6) discloses no express or im-

plied suggestion that the criteria for measuring the justness of divisions of joint rates is limited in any way. On the contrary, it specifies that the Commission shall give "due consideration" to any relevant fact or circumstance in the prescription of fair and equitable divisions.

In sum, the district court's holding that restated Rail Form A cost figures were improperly utilized by the Commission is erroneous, conflicts with established practice under decisions of this Court and substitutes the court's own view concerning the adequacy of the cost evidence for that of the agency charged by Congress with the duty of prescribing fair divisions. The Commission plainly has the statutory authority to compute costs of service by applying Rail Form A territorial unit data to the work units incurred in transporting a large and varied body of traffic between two broad territories in a case involving all commodities and all the railroads of each territory. We submit, Section 15(6) must be read as authorizing the Commission to utilize such an approach. This view is confirmed by the fact that the consistent judicial and administrative interpretation of the statute has never been repudiated by the legislative branch even with the slightest modification since Rail Form A was reported to it in 1943—over 25 years ago (see Sen. Doc. 63, 78th Cong., 1st Sess.).

B. Requiring The Development Of Exact Costs Is Illusory And Would Serve No Significant Regulatory Purpose.

As the prior discussion shows, costs of service in divisions cases can not be ascertained with exactitude.

In addition, it is equally as clear that the more refined data required by the district court would have only limited utility.

On the basis of such refined data the Commission could decide that Rail Form A computations are not adequate to measure the costs of handling North-South traffic because the characteristics of the services performed in handling that traffic are so different from average traffic as to require special study and treatment. (*Cf.*, *Boston & M. R.R. Co.* v. *United States*, 208 F. Supp. at 674-5 (D.C. Mass.), affirmed, 371 U.S. 26). But this possibility was provided for by Commission procedure, the parties introduced evidence along these lines, and the contrary was shown. And despite the Southern lines' assertion that Northern lines failed to produce the necessary evidence in their sole possession in order to resolve the issue as to whether Rail Form A territorial average costs required adjustments to reflect the costs of North-South traffic (see A. 336), the Commission in effect concluded—as the district court acknowledged—that "the Northern lines established a prima facie case that Rail Form A costs properly measure the cost of the specific traffic" (A. 343), and that the Southern roads had not overcome this *prima facie* case insofar as their suggested but rejected adjustments were concerned.

A second possible use for the refined data envisioned by the district court would be to demonstrate that the Rail Form A territorial data with respect to individual services was so extreme as to distort the costs of handling North-South traffic. Here again, however,

the Commission allowed for such a showing. The Southern lines proposed some twelve adjustments for specific services. The Commission considered these adjustments, accepted five [22] and rejected seven [23] as unsound in concept or based on unsupported opinions and inapplicable facts or assumptions.[24] With regard to these questions of fact, it is well settled that the Commission is not required to give conclusive weight to unsupported opinion evidence of Southern lines' witnesses. See *Baltimore & Ohio R.R. Co.* v. *United States*, 298 U.S. at 378, 379; and *Loving* v. *United*

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[22] Accepted were adjustments concerning (1) way and through train separation (A. 87); (2) platform costs (A. 87-89); (3) switching and terminal companies (A. 89-91); (4) short lines (A. 110-113); and (5) train tonnage (A. 121-122).

[23] Rejected were adjustments concerning (1) count of cars interchanged, originated, and terminated (A. 91-94); (2) car costs (A. 94-101); (3) freight car empty return ratios (A. 101-110); (4) switching costs to eliminate the effect of volume switching at origin and destination (A. 113-121); (5) constant costs of suburban passenger service deficits (A. 122-124); (6) constant costs on transit commodities (A. 124-128); and (7) equalization of gateway interchanges (A. 128-129).

[24] In support of the ruling that the Commission violated its duty to develop a more adequate record, the district court appears to rely on the fact that "in several instances [the Commission] held that the absence of comparable evidence in the record itself prevented adjustments in territorial averages," citing several instances (A. 344). The Court misread the findings made since in each instance the cited adjustments were rejected primarily for lack of merit or support in evidence. Lack of comparable evidence, in some cases, was merely an additional reason for the Commission's rejection of Southern lines' proposed adjustments (A. 94; 108; 110; 121).

States, 32 F. Supp. 464 at 467 and cases cited (W.D. Okla.), affirmed, 310 U.S. 609.

As a theoretical matter, the only new purpose to be served by refined cost data would be to challenge the propriety of using Rail Form A costs either to require more accuracy or to restrict consideration to only those costs directly pertaining to the traffic in question. Such an effort to achieve a theoretically perfect formula for ascertaining relative costs of particular traffic without appropriate allowances for overhead and return on investment conflicts with the broad purposes underlying Section 15(6)—even in a case such as this where relative costs of service was the criterion on which the adjustment in the divisions was grounded.

Here the Commission concluded that, as restated with appropriate adjustments, the Rail Form A cost data submitted was of such quality, credibility and accuracy that it could be accepted as adequately reflecting the costs of handling the particular North-South traffic at issue. In view of this conclusion, there was no need for the Commission to have embarked upon an independent investigation to determine whether the parties might be overlooking or concealing some relevant evidence or whether special studies would produce more refined, significant data beyond that already introduced by the parties for and against the proposed adjustments to Rail Form A computations. See *Chicago & N.W. Ry. Co.* v. *Atchison, T. & S.F. Ry. Co.*, 387 U.S. at 343.

Indeed, since the particular carriers involved are obviously in the best position to know if there are

any peculiar characteristics of their traffic which may differ from average traffic, it seems quite fair and reasonable—and wholly consistent with Section 15(6) and this Court's decisions thereunder—to require such carriers to come forward and point out to the Commission the peculiar characteristics which they believe require special treatment. It is difficult to see how the Commission can be expected to know, as an initial matter, whether such peculiar characteristics may exist or whether any "special studies" may be needed. If the Commission, in order to comply with the district court's decision, were to be required to conduct special studies to determine the unit costs of every work unit of the services performed in every case, the administrative proceeding would be virtually interminable. And the results of such an unduly burdensome approach, even if practicable, would be of little, if any, utility in the absence of special circumstances.[25]

In the final analysis, no significant regulatory purposes would be served by the district court's requirement of developing more refined costs.[26] In addition,

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[25] Moreover, here Southern lines acted throughout the Commission proceeding on the basis of Rail Form A average costs, with suggested adjustments. After the Commission rendered its decision rejecting certain of their proposed adjustments, Southern lines urged that more refined "actual costs" were required. Having voluntarily employed Rail Form A costs, and having failed to justify their proposed adjustments or to overcome their opponents' *prima facie* case that North-South traffic is average traffic, Southern lines should be bound by the findings grounded on the evidence introduced.

[26] In the *Chicago & N.W. Ry. Co.* case, the Commission found significant the smallness of the percentage-point differ-

and perhaps more importantly, the purpose of Congress in conferring authority upon the Commission to adjust divisions fairly might well be effectively frustrated by such a requirement.[27]

II.

SOUTHERN RAILROADS' MORE LIMITED ARGUMENT, AS TO THE REFINEMENT OF COSTS REQUIRED UNDER THE DECISION BELOW, IS WITHOUT MERIT.

In their Motion to Affirm, Southern lines attempted to justify, on a more limited ground, the district court's novel requirement that the Commission cannot

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ence between two cost showings—one based on a study made in great detail of the particular service rendered, and the other involving a straight Rail Form A application. It concluded that "one substantiates the other, and supports the view that, for a large and varied body of traffic as here at issue, territorial average costs will be the substantial equivalent of specific costs" (A. 78-80). In this case, a similar comparison of two such studies establishes that the percentage-point difference is almost infinitesimal (A. 48-50).

[27] While the district court's ruling refers to "a divisions case" (A. 348), the principle announced is broad and necessarily raises doubt as to the validity of cost formulas similar to Rail Form A, such as Highway Form B and Barge Form C, which have been developed for determining the relative costs of service of the several kinds of carriers subject to its regulation. It is essential that the Commission be able to ascertain relative rail costs on the Rail Form A basis and make adjustments when necessary. As this Court said in another context concerning the necessity to proceed on a group basis in the *New England Divisions Case:* "[o]bviously, Congress intended that a method should be pursued by which the [Commission's] task * * * could be performed." (261 U.S. at 197).

use Rail Form A data as a standard of cost measurement without taking affirmative action to have developed more refined data reflecting the "actual" costs of handling North-South traffic. Apparently, it is now their position that the district court merely rejected the Commission's order for lack of evidence to support the use of restated Rail Form A costs in specific instances corresponding to their suggested but rejected adjustments.[28] (Motion to Affirm, pp. 9-11). They asserted that nothing in the decision below casts doubt on the integrity of Rail Form A or precludes the Commission from relying on Rail Form A costs as appropriately adjusted since "no party here contends that Rail Form A cannot provide the framework for analysis" if supported by evidence. (*Ibid.*, pp. 7 and 13.) The district court, however, reached the very conclusion urged upon it by the Southern lines.[29] (See A. 354). Thus, although having urged the district court to hold the Commission's order invalid because of failure to develop more refined data reflecting "actual" costs of the traffic at issue, Southern lines appear to now maintain that the Commission's order is invalid because there is no evidence "to support the use of unadjusted average Rail Form A costs to measure

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[28] Such as car costs, the cost of commuter operations, the ratio of empty-to-loaded cars, the costs of interchange and switching the cars.

[29] In requested conclusion of law numbered 5, they asked the lower court to hold that the Commission violated its statutory duty in failing "to take affirmative action to require the development of an adequate record as to the actual costs of handling the North-South traffic at issue."

the critical cost factors" urged in their adjustments. But this narrower contention will not withstand analysis.

As previously indicated, the sharp dispute as to the proper method of ascertaining costs of service concerned only "the degree to which Rail Form A territorial average costs should be modified to fit the specific traffic at issue" (A. 47). The Northern lines relied principally on standard Rail Form A computations since the traffic covered almost all commodities moving over all railroads and between all stations in both Official and Southern territories.[30] They introduced evidence which established the *prima facie* validity of using Rail Form A costs to measure the relative costs of North-South traffic. Train tracing and train utilization studies provided a documented and detailed demonstration that North-South traffic is not handled as a distinct entity, but is rather average traffic handled as an indiscriminate part of all traffic and possesses no distinguishable transportation characteristics. (A. 575-576 and 541-582).[31]

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[30] For the year 1956, North-South traffic produced revenues which constituted 6% and 21.4% of the total freight revenues of the Northern lines and the Southern lines, respectively (A. 796), which combined represents 10% of the combined revenues of both lines. Compare *New York* v. *United States*, 331 U.S. at 330 and 343 in which this Court approved the use of Rail Form A costs where the class rate traffic involved constituted only a small percentage (4.1%) of the total traffic of the railroads.

[31] The train utilization studies showed how railroad facilities and services are planned and operated so as to transport all freight similarly and demonstrated the extent to which the total train service of the Northern lines was used in mov-

The Southern lines, contending that Rail Form A average costs of all traffic was not a proper yardstick for measuring North-South traffic, presented downward adjustments to reflect alleged particular characteristics of that traffic. (A. 40 and 50). In urging these adjustments in order to gain increases in their divisions based on costs as well as revenue needs, the Southern lines were themselves proponents of a different result from that urged by the Northern lines and, therefore, had a burden to maintain under Section 7(c) of the Administrative Procedure Act, 5 U.S.C. 556(d).[32] (A. 77-78). However, the Northern lines responded with evidence establishing the invalidity of each proposed adjustment and the propriety for using Rail Form A costs. (See, *e.g.*, A. 893-905, 911-931, 933-974). After carefully considering this evidence in 9 pages of its report and 26 pages of an appendix, the Commission found that "the cost computation of each side furnished substan-

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ing the traffic in question. (A. 544-547, 577-582). It showed, among other things, that in a test week in May of 1959, North-South traffic moved in 45% of all trains operated and, therefore, encountered all operating conditions and transportation burdens incurred on general traffic. (A. 547).

[32] The requirement of Section 7(c) that "the proponent of a rule or order shall have the burden of proof" was explained in the Attorney General's Manual on the Administrative Procedure Act, 1947, at page 75, by referring to Sen. Rep. p. 22 (Sen. Doc. p. 270) and H.R. Rep. p. 36 (Sen. Doc. p. 270), as meaning "not only that the party initiating the proceeding has the general burden of coming forward with a *prima facie* case but that other parties, who are proponents of some different result, also for that purpose have a burden to maintain."

tial verification for that of the other side." It then concluded that, apart from the rejected adjustments, "our restatement * * * based on the Southern lines' cost computation, as applied to their traffic studies, * * * more reliably and accurately reflect[s] the movement of the traffic in question" (A. 48). Thus, on the basis of the evidence submitted by the Northern lines and verified by the Southern lines' own presentation, there is substantial evidence to support the Commission's conclusion that restated Rail Form A costs properly measure the costs of North-South traffic.

Although acknowledging the Commission's conclusion, the district court referred to three cost items [33] as "important separate issues" of "greater significance as illustrations of the more pervasive error" of the Commission in using unadjusted Rail Form A costs and held that the Commission's cost computations were not supported by reasoned findings and substantial evidence. In this respect the district court erred. The Commission made clear and concise findings that Southern lines' proposed adjustments were unjustified and that Rail Form A provided the best method of associating expenses with the services performed in moving the traffic at issue. A discussion of the cost items cited by the district court illustrates this fact.

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[33] Solely related costs of suburban passenger service, switching costs and empty return ratios of box cars.

A. Empty-Return Ratios Of Box Cars

The Commission substituted Rail Form A empty return ratios for that devised by the Southern lines.[34] These ratios were derived from a seven-day study based upon supervised data spaced throughout a year that all railroads are required to furnish by order of the Commission.[35] It produced ratios of 39% in the North and 33% in the South. The Southern lines proposed to reduce these ratios to 30% in three steps covering the alleged effect of special device cars, Canadian traffic and a judgment factor. The Commission discussed and rejected the adjustments by finding that the first step is "not adequately supported; at best, it is merely illustrative;" that the second step "is in error;" and that the third step "is purely an unsupported assumption." (A. 107-108). The Commission then concluded that:

> "the empty ratios for both boxcars and refrigerator cars developed by the special studies of the Southern lines are not as sound an estimate of the empty return incurred by the Official-Southern traffic as are the 7-day study territorial empty return ratios. The latter reflect the compilation of actual data reported by the railroads on a comparable basis in each territory under an order of this Commission." (A. 110).

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[34] The district court rejected the Commission's findings by referring only to the single dissent in the proceedings stating that "the nature of this problem is summarized" there. This hardly constitutes a review of the reasons expressed by the Commission or the rationale supporting its conclusion. (A. 346).

[35] This data covered all types of cars, including auto parts' cars.

B. Switching Costs

The Commission disagreed with the Southern lines' treatment of switching costs which proposed to eliminate the effect of volume switching at origin and destination. The Southern lines urged that their Rail Form A territorial average switching costs were depressed by the large proportion of volume movements of certain commodities in their territory to the point that those costs were not representative of North-South traffic which includes only a small amount of such commodities. Their cost study used origin and destination switching costs based on a special study of only 41 out of 967,554 cars in the South. Here again, in rejecting Southern lines' adjustment, the Commission found that (A. 121):

> Territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic moving to and coming from terminals in all parts of both territories. In our opinion, and we so find, the depressing effect, if any, of volume switching commodities on the average would affect both territories and, for purposes of comparison, would be largely offsetting.
>
> The switching studies in the South have weaknesses, both in the sample and in the studies themselves. The adjustment in the North was not made on a basis comparable to that in the South, and here, where the relationship of North and South is of prime importance, this is a major defect.
>
> For these reasons, we conclude that the contentions of the northern lines are of merit and

that Rail Form A territorial average switching costs more accurately measure the relative switching costs on each side of the border of the official-Southern traffic than the switching costs computed by the southern lines.

C. Solely Related Costs Of Suburban Passenger Service.

The Commission rejected Southern lines' adjustment for allocating passenger service deficits to constant costs. While the Northern lines initially sought to exclude the entire amount of both Northern and Southern lines' passenger deficits, the Southern lines supported inclusion of such deficits in the cost figures to be used in assaying the propriety of existing, and in prescribing new, divisions. However, they sought to have the Commission draw a distinction between intercity and suburban passenger deficits, since it was desirable, from their point of view, to have the intercity deficits of the Southern roads included.[36] Inclusion of intercity deficits was urged for the reason that such deficits are allegedly almost entirely attributable to the apportioned costs of common facilities which must be incurred to provide freight service. Exclusion of suburban deficits was urged because suburban service facilities are allegedly separate and not used in common with freight or intercity passenger service and could be eliminated by discontinuance of suburban service. The Commission, however, found such a

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[36] In the context of this case, Southern lines' overall passenger deficits are relatively greater than those of the Northern lines (A. 958-961, 975-977, and 978-979).

distinction unjustifiable. After referring to Southern lines' single example of solely related expenses of certain separate suburban track facilities and noting that other costs relating to roadway and terminals would continue, the Commission found that "although many items of suburban service can be considered solely related, the facilities and service as a whole cannot be considered solely related * * * and treated entirely apart from freight service and intercity passenger service" (A. 124). The Commission then went on to conclude that (*ibid.*):

> "* * * Because the suburban service deficit includes common costs which must be incurred to provide freight service or intercity passenger service, such costs are properly chargeable to those services to the extent they cannot be recovered from suburban operations, and the deficit from suburban operations should not be excluded from the constant costs. * * *"

Thus, after making the basic determination that passenger deficits should be included in the fully distributed costs, the Commission apportioned a share of the entire Northern and Southern lines' passenger deficits to the costs of handling North-South traffic, in the same proportion that the particular traffic bears to the total traffic of each territory.

While the district court acknowledged that the Commission found the distinction between intercity and suburban deficits unjustifiable, it nevertheless overturned the Commission on this question since it viewed intercity deficits as sufficiently related to the

common facilities which must be maintained to provide freight service. However, ignoring the Commission's express findings to the contrary, the district court chose to regard suburban deficits quite differently. In rejecting the Commission's rationale and findings, the district court stated flatly that the Administrative Procedure Act requires a determination and findings on "the critical issue * * * [of] how much of the railroads' cost of commuter service was in fact common with the cost of freight service and how much was solely related to commuter service" (A. 345). It concluded that the Commission failed to make adequate findings in this regard (A. 346). In substituting its own view as to what passenger deficits may appropriately be included in constant costs, the district court once again misconceived its function of judicial review, and departed from prior Commission practice approved by the Court. See *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 618-619; *Illinois Central R. Co.* v. *Norfolk & W. Ry. Co.*, 385 U.S. 57, 66, 69.

The Commission's approach in apportioning all passenger deficits to the costs of freight service in a divisions case is consistent with established practice, specifically approved by this Court, of fixing freight rates on the basis of including passenger deficits as a part of freight service costs. In *King* v. *United States*, 344 U.S. 254, 261, 264, 267, most of the principal Southern railroads sought and were granted an increase in the Florida intrastate freight rates on the ground that they discriminated against interstate commerce. The policy reasons for taking passenger deficits into account in adjusting freight rates were

expressed in the Commission's report.[37] In sustaining the order without regard to whether the costs were common or solely related, this Court concluded that (*ibid.* at 267) "there is no reason why the Commission may not give weight to passenger deficits in prescribing the intrastate freight rates in Florida, as it does in prescribing interstate freight rates for the Southern Territory."[38] Here, the passenger deficits were unquestionably included in fixing the level of, and in granting general increases in, the joint freight rates on North-South traffic.[39] Thus, the Commission was merely dividing the joint rates in conformity with the factors which went into their composition and the consistent administrative practice approved by this Court.

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[37] *Increased Freight Rates, 1948*, 276 I.C.C. 9 at 35:

> "* * * if passenger service inevitably and inescapably cannot bear its direct costs and its share of joint or indirect costs, we have felt compelled in a general rate case to take the passenger deficit into account in adjustment of freight rates and charges. Both the freight and passenger services are essential, and revenue losses or deficits on the one necessarily must be compensated by earnings on the other if the carriers are to continue operations."

[38] *Accord: Chicago, M., St. P. & P. R.R. Co.* v. *Illinois*, 355 U.S. 300, 307; *Public Service Comm'n of Utah* v. *United States*, 356 U.S. 421, 426.

[39] See *Increased Freight Rates, 1948*, 276 I.C.C. 9, 32-39; *Increased Freight Rates E. W. & S. Territories, 1956*, 300 I.C.C. 633, 641-647, 657-658; *Railroad Passenger Train Deficit*, 306 I.C.C. 417, 477-479; and S. Rep. No. 445, 87th Cong., 1st Sess., p. 285.

Indeed, the allocation of passenger deficits to the costs of freight service in a divisions case is rational and compelled as a practical matter. Both intercity and suburban passenger services have some solely related and some common costs and are, therefore, both similar in character. A meaningful comparison of the relationship of fully distributed costs can only be made on the basis of including all passenger deficits.[40] These deficits are incurred and represent money lost to the railroads by reason of the fact that the Interstate Commerce Act requires the continued rendition of necessary passenger services.[41] Such losses must be recovered from railroad freight operations if railroads are to remain solvent.

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[40] At several places in its opinion, the district court referred to the fact that the Commission itself had noted that some costs of providing suburban service could be considered as solely related to that service (A. 344-345, 355). In light of what it erroneously regarded as "a concession that many commuter facilities are solely related to that service and have nothing whatsoever to do with the cost of handling the North-South traffic or any other freight traffic" (A. 345), the court found the Commission's treatment of suburban deficits inconsistent and unsupportable. The fact that some costs of providing suburban service might be considered as solely related, however, hardly leads to the conclusion that all such costs can or should be so regarded or that the Commission acted improperly or contrary to law in not excluding some of these costs here. Many costs of intercity passenger service are also solely related thereto, such as, among others, stations, cars and train operation, and the Commission included these.

[41] Thus far Congress has refused to permit wholesale abandonment, discontinuance or deregulation of essential passenger services, or to require subsidization of such services. See *Alabama Comm'n* v. *Southern Ry.*, 341 U.S. 341.

As discussed, *supra* pp. 40-42, the Commission made findings plainly explaining its reasons for treating an appropriate part of the suburban passenger deficits as a cost of North-South service. The law requires no more. *Minneapolis & St. Louis Ry. Co.* v. *United States*, 361 U.S. 173, 236. And contrary to the district court's view concerning the applicability of this Court's comments in the *Chicago and N.W. R. Co.* case, *supra*, (A. 345-346), this is not a case where the Commission has given controlling weight to passenger deficits and has required carriers in one part of the country to subsidize passenger operations elsewhere. It was upon Southern lines' insistence that the Commission included passenger deficits within fully distributed costs. However, as to anything beyond the inclusion of a proportionate part of passenger deficits as the constant or overhead costs of North-South freight service, the Commission specifically found (A. 79), that nothing "presented here offers a concrete basis on which to find that either group is entitled to a share of the joint rates larger than accruing under the divisions hereinafter prescribed on the basis of relative costs [which] includes allowances for overhead and return, and in our judgment reflects a due proportion of the burden of maintaining the financial integrity and credit of the carriers involved."

Finally, in the preceding discussion we have considered those aspects of the district court's holding which we regard as significantly in error and have dealt with the court's particularized challenges to the

adequacy of the Commission's findings.[42] Although referred to by the district court as illustrations of the Commission's basic error, we submit that, under a proper view of Section 15(6), the Commission's cost findings provided an adequate basis for its prescription of new divisions.[43] A fair reading of the district

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[42] In a concluding paragraph of its opinion, the district court also stated that the cost data used by the Commission, in addition to the other infirmities which it had found, "[w]ith the passage of each year * * * becomes more and more vulnerable to the charge of staleness," so that a reopening of the proceeding by the Commission to obtain more current data "well might be warranted" (B&O J.S. App. 32a). Considering the time-consuming and complex nature of interterritorial divisions case such as this one, however, the court's suggestion in this regard might result in the Commission's never being able to decide such cases on the basis of sufficiently recent data—thus negating its authority under Section 15(6). *Cf., Baltimore & O. R. Co.* v. *United States,* 298 U.S. 349, 389 (concurring opinion by Mr. Justice Brandeis); and *Interstate Commerce Commission* v. *Jersey City,* 322 U.S. 503, 514-515, 517-518.

[43] With respect to each of the remaining four proposed adjustments of the Southern lines, the Commission's findings, supported by the evidence, adequately expressed its reasons for relying on Rail Form A data.

(1) Gateway Interchange Costs: Southern lines averaged Rail Form A interchange costs in the North and the South and multiplied the difference between the average and Rail Form A figures by the number of cars involved which produced an overstatement in the North and a corresponding understatement in the South of $797,043. Southern lines attempted to justify this adjustment equalizing interchange costs by referring to certain gateways where engine times were equalized and others where equal charges are made under joint facility arrangements. Finding several weaknesses in Southern lines' adjustment, the Commission rejected it (A. 128-129).

(2) Car Costs: Southern lines sought to substitute aver-

court's opinion shows that nothing short of special studies of each work unit of North-South service would, in its view, have sufficed. In their attempt to rewrite that holding, therefore, the Southern lines must fail. And, as shown, *supra*, pp. 35-46, even as to their more limited claim concerning the lack of rea-

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age car costs for the entire United States in lieu of Rail Form A territorial averages for each group of carriers. Based upon Northern lines' evidence rebutting Southern lines' justification for their adjustment and firmly establishing that Rail Form A costs properly reflected the costs of handling North-South traffic, the Commission rejected the Southern lines' supposititious car costs because "[t]he use of a national average car cost conceals territorial differences in cost which are important in the consideration of divisions between the two involved territories" (A. 101).

(3) Count of Cars Interchanged: Southern lines proposed that all cars transferred between rail and water carriers at ports be considered as originated or terminated rather than some cars being so considered and others as being interchanged. The Commission rejected this proposed adjustment because it was wrong in theory and not supported by adequate underlying data. (A. 94).

(4) Constant Cost on Transit Commodities: A transit commodity is one moving under a single published rate which provides for some kind of storage or processing in transit and covers the movement of the raw material into and the movement of the finished product beyond the transit or processing point. Although pulpwood and wet phophate rock are not single rate transit commodities, Southern lines claimed a tacit transit arrangement existed which would use the rails on movement of the finished product; and, therefore, that portion of constant costs assigned on a ton and ton mile basis to the raw materials which was not recovered from the revenue received should be added to the cost of moving the finished products. The Commission rejected this adjustment by finding that it was "not well founded" to "transfer to interterritorial traffic * * * a part of the constant costs which had been assigned to intraterritorial traffic." (A. 127-128).

soned Commission findings supported by substantial evidence, their argument is without merit. Cost accounting, to be sure, is not an exact science. Here it was not inexpertly done, yet the district court, although lacking the power, substituted its own fact appraisal for that of the Commission. See *Carolina & N.W. Ry. Co.* v. *United States*, 234 F. Supp. 112, 114 (W.D. N.C. 1964), affirmed, 380 U.S. 526. In the *Carolina & N.W.* case, as here, "[w]ith much ingenuity, counsel for Southern has attempted to find questions of law where there are none." And here, as there, this Court should conclude that "[t]he Commission has acted neither capriciously nor arbitrarily, nor has it misinterpreted or misapplied the law."

III.

THE ARGUMENTS OF THE SOUTHERN GOVERNORS' CONFERENCE, ET AL., AS TO THE INVALIDITY OF THE COMMISSION'S ORDER UNDER THE DECISION BELOW, ARE WITHOUT MERIT.

In their Motion to Affirm, the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners [44] trace the untenable cost arguments advanced by the Southern railroads although they submitted no cost evidence of their own. The Conferences, however, tend to emphasize their separate and "most important" claim that, even if the Northern lines experience higher costs of service, the Commission must find that such higher costs reflect inherent territorial disadvantages before giv-

[44] Hereinafter referred to as the "Conferences".

ing effect to them in an interterritorial divisions case —otherwise equal factor divisions must be maintained. (Motion to Affirm, pp. 6, 24-26). Their contention rests upon the premise that the Commission made no adequate findings and, therefore, its order would effectively nullify the economic gains realized by the South as a result of *New York* v. *United States*, 331 U.S. 284. The infirmity in this argument lies in the fact that *New York* v. *United States, supra*, is not pertinent to the point they attempt to make.

In the *New York* case, the Commission, acting under Section 3(1), prescribed a uniformity of *class rate* structures between all territories east of the Rocky Mountains in order to eliminate unduly discriminatory rates which were not justified by differences in costs or transportation conditions. Here the reasonableness of the rates was not in issue and the Commission was merely dividing the revenues paid by the shippers in order to provide the carriers with compensation fairly proportionate to the amount and character of the services which they perform. Changes in divisions are essentially matters between the participating carriers and do not affect the rates in any manner. More significantly, the statutory criteria for removing an undue discrimination in rates under Section 3(1) are not the same as adjusting inequitable divisions under Section 15(6); and no judicial construction of Section 15(6) imposes a restriction upon the Commission's use of relative costs in only those cases where inherent territorial disadvantages exist. Moreover, the dire consequences which the Confer-

ences profess to see in the Commission's treatment of the issues in this case are simply not present.[45]

Nevertheless, the Conferences urge that the Commission erred in failing to make adequate findings disposing of their contentions. We submit that the Commission's reports affirmatively show that there is nothing ambiguous or vague about the Commission's findings rejecting their claim.

With respect to the Conferences' argument that there was a failure "to give effect to the overriding demands of the public interest which, they say, require uniformity in these divisions," the Commission found (A. 50-51):

> * * * We recognize that the public interest must be considered and the importance to the public of the transportation services of the railroads is not a sectional concept. We are required under the [Interstate Commerce] Act to preserve an adequate national system of transportation, and must therefore consider the public interest of all concerned. Such a consideration, however, does

[45] As the Commission found (A. 50), the Conferences' contentions were that "a shift of divisions from the Southern lines would result in higher rates on Southern and interterritorial and intraterritorial traffic, and diminution of services, facilities, and equipment. Thus, they forsee the impairment of the ability of Southern shippers to compete in distant markets and diversion to other modes of transportation, thereby impeding the economic growth of the South." Indeed, it is doubtful whether such conjectural consequences would result solely from the Commission's order in question since the estimated $7.9 million reduction in Southern lines' revenues resulting from the new divisions is only 62/100 of 1% of the Southern lines' total revenues in the year tested, without an appropriate adjustment for income taxes (A. 80; A. 776).

> not by any means require a uniformity of divisions, nor can we find an affirmative virtue in it on this record. * * * Moreover, as pointed out in *New England Division Case*, 261 U.S. 184, 191 (1923), Section 15(6) was designed to help the weak "by preventing needed revenue from passing to prosperous connections." Thus, an adherence to uniformity as such, without a careful evaluation of the statutory criteria and the evidence of record, can hardly result in the fixing of just, reasonable, and equitable shares.[46]

With respect to the question of "inherent territorial disadvantages," several paragraphs of the district court's opinion discuss that issue in quixotic fashion (A. 340-343). Pointing out it was strenuously urged that "as a matter of law the Northern railroads cannot have an increase [in divisions] in the absence of inherent territorial advantages," the district court stated that it could not determine whether the Commission had resolved this issue. The court concluded that, if the Commission had resolved this issue, its determination suffered from a lack of findings and substantial evidence, and that, if it had not, the Commission had failed to resolve a material issue. Since

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[46] Compare these findings with the district court's erroneous characterizations thereof. (A. 351). The cases relied upon by the court do not stand for the proposition cited, *i.e.*, "that the Commission has consistently followed the view that the primary responsibility for meeting the cost and revenue needs of the railroads of any territory lies with the people and the industry of that territory." The overall purpose of Section 15(6), as expressed by this Court in the *New England Divisions Case*, and cited by the Commission above, is to the contrary. In fact, the concept stated here by the Commission is the one consistently followed.

the case was being reversed on other grounds, the lower court stated that upon remand the Commission "should decide and dispose of this contention in accordance with the Administrative Procedure Act." As the Commission pointed out, "In essence, however, other factors being equal, cost differences generally are the product of, and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories" (A. 51). Additionally, the Commission further stated:

> "Indeed, the continued maintenance of divisions which, all other things being equal, do not reflect the relative costs of service would not suggest justice between the parties. Such inequities being manifest here, we are of the opinion that divisions correcting them can result in no unlawful injury to the South" *(ibid.)*.

Thus, the Commission simply determined that, in a divisions case where the carriers were found to be efficient, their services were of equal importance to the public, and where the fairness of existing divisions and the need for revised divisions was assessed on the basis of relative fully distributed costs of service, it was appropriate to conclude that cost differences reflect inherent territorial disadvantages, insofar as that consideration is relevant under Section 15(6). The Commission's discussion establishes that it gave "due consideration" to all the evidence of record and the contentions of the parties with respect thereto[47]

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[47] The Conferences appear to be urging that since no difference exists in the physical or natural transportation condi-

and made findings which adequately informed the parties of its actions on their claims. Under these circumstances, no other findings were required by the Interstate Commerce Act, the Administrative Procedure Act, or decisions of this Court. See *Minneapolis & St. Louis R. Co.* v. *United States*, 361 U.S. 173, 193-194; and *N.L.R.B.* v. *Wichita Television Corp.*, 277 F.2d 579 (C.A. 10th 1960), cert. denied, 364 U.S. 871.

We submit, that while the Conferences are disappointed that the Commission was unable to accept their unsupported and novel concept that "sectional" rather than "national" interests should control the prescription of fair divisions, such disappointment falls far short of constituting error of law or fact. Their attempts to read a "sectional" concept into the "importance to the public" factor of Section 15(6) by relying on *New York* v. *United States*, *supra*, is foreign and contrary to the objective of maintaining an adequate national transportation system which Congress sought to achieve in the enactment of Section 15(6). See *New England Divisions Case*, 261 U.S. 184 at 189-190 and the National Transportation Policy, 49 U.S.C. preceding Section 1. The bulk of the arguments of the Conferences are directed to judgments that the Commission made, supported by evidence, on questions of transportation economics. See

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tions in either territory, the higher Northern costs must be attributed to inefficiency, overcapacity or a higher degree of industrialization in the North (Motion to Affirm, pp. 25-35). The Commission, however, considered and rejected these claims (See A. 31-33, 39).

S.E.C. v. *New England Elec. System*, 390 U.S. 209, 211, 213. Even if these arguments raised issues appropriate for judicial review, which they do not, the Conferences have failed to show any error by the Commission that would justify invalidation of its orders.[48]

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[48] In concluding that "the Commission has special responsibilities in a case of this magnitude" and must make more specific findings "when it departs from its prior finding" that equal factor divisions were appropriate, the district court erred (A. 351). This Court has held that an order of the Commission must be judged on its own merits and not by comparison with alleged inconsistent findings made in other proceedings. *Virginian Ry.* v. *United States*, 272 U.S. 658, 665-666; *Georgia P.S.C.* v. *United States*, 283 U.S. 765, 775. More specifically, this Court has held that it will not set aside a Commission order merely because the Commission has made different decisions during successive stages of the same controversy. *Manufacturers Ry. Co.* v. *United States*, 246 U.S. 457, 482; *Board of Trade* v. *United States*, 314 U.S. 534, 568. Here there is no inconsistency in the basis for initially prescribing equal factor divisions and subsequently prescribing higher divisions for the Northern lines. Both determinations rested on Rail Form A costs of service. In the first proceeding, the costs were found equal and, in the second, Northern costs were found to be higher. See *American Trucking* v. *A., T. & S. F. R. Co.*, 387 U.S. 397 at 416.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the district court should be reversed.

Respectfully submitted.

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June 1968

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 308132 800

IN THE

Supreme Court of the United States

OCTOBER TERM 1968

THE BALTIMORE AND OHIO RAILROAD COMPANY, *et al.*,
Appellants

vs.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*,
Appellees

INTERSTATE COMMERCE COMMISSION,
Appellant

vs.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*,
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

BRIEF FOR APPELLEES SOUTHERN GOVERNORS' CONFERENCE ET AL.

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July, 1968

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

BRIEF FOR APPELLEES SOUTHERN GOVERNORS' CONFERENCE ET AL.

QUESTIONS PRESENTED

The United States District Court for the Eastern District of Louisiana set aside two orders of the Interstate Commerce Commission which would have abandoned the basis of equality in dividing North-South freight revenues and substituted a basis under which the Northern railroads would receive a share of those revenues disproportionately larger than their share of the services performed in handling that freight. The district court's decision was based upon the fact that the Com-

mission's action was not supported by reasoned findings or substantial evidence. The questions presented by these appeals are:

1. Whether the district court invaded the province of the Interstate Commerce Commission in setting aside the orders of the Commission prescribing inflated divisions for the Northern railroads on the ground that such orders were based upon cost conclusions that were not supported by reasoned findings and substantial evidence as required by the Administrative Procedure Act?

2. Whether the district court properly concluded that the Commission had not acted lawfully in prescribing an inflation in the divisions of the Northern railroads on the basis of territorial average costs, without either findings or evidence to support the premise upon which that action rested — that is, that such costs are the product of and reflect inherent territorial disadvantages from which the North suffers as compared to the South?

3. Whether the district court properly concluded that the Commission cannot lawfully impose the burden of the higher transportation costs on one section of the country upon another section, even if such costs reflect inherent differences between the two sections, without findings as to whether the section being subsidized can support its own transportation system and whether the section being called upon for such subsidy can afford to provide it without undue harm to its economy?

STATEMENT

Twenty-one years ago, this Court handed down its historic decision in *New York v. United States*, 331 U.S. 284 (1947), upholding an order of the Interstate

Commerce Commission which struck down as unlawfully discriminatory the basic railroad class rate structure that had impeded the growth of the South since before the turn of the century. Prior to that case, railroad rates had consistently been higher in the South than in the North, and Southern shippers had been compelled to pay substantially higher charges to reach Northern markets than Northern shippers were paying to reach Southern markets, even where the distances involved were the same. The purported justification for this rate discrimination, which both the Commission and this Court rejected, was that the North has "natural advantages" over other sections of the country — such as a heavier "concentration of population" and "the preponderance of the nation's total natural resource of energy supply" — which made it "the logical location" for many industries (331 U.S. at 314). Because of these "natural advantages," it was contended that the North was entitled to lower rates than the South for the same amount and kind of rail service.

In rejecting this proffered justification for a discriminatory class rate structure, this Court acknowledged that the North did indeed enjoy certain immense advantages over other sections of the country. But it agreed with the Commission that these advantages were as much an effect of, as a cause for, the discriminatory rate structure (331 U.S. at 315):

> "... It is sufficient at this point to say that the record makes out a strong case for the inference that natural disadvantages alone are not responsible for the retarded development of the South and the West, that the discriminatory rate structure has also played a part. How much a part cannot be determined, for every effect is the result of many factors. But the inference of prejudice from the dis-

> criminatory rate structure is irresistible. If this discriminatory rate structure is not justified by territorial conditions, then its continued maintenance preserves not the natural advantages of one region but man-made trade barriers which have been imposed upon the country. . . ."

Hence, the Court rejected the suggestion that the advantages of the North were a justification for discrimination against the South, and it ordered that discrimination removed by putting into effect a uniform class rate structure. This was finally done in 1952, and for the first time in this century, the South enjoyed a position of equality with the North with respect to the cost of rail transportation.

Although the decision in *New York* v. *United States* had made it clear that there were no inherent differences in transportation conditions in the North and South, the Northern railroads refused to accept equality with the South. The Northern States having failed to convince the Court that the North was entitled to lower rates because of " natural advantages," the Northern railroads decided to pursue their aim of obtaining a preference for the North through precisely the opposite strategy — by seeking inflated divisions from North-South freight traffic to offset claimed Northern *disadvantages*.*

*In their Brief opposing our Motion to Affirm in this case, the Northern railroads took exception to this characterization of the strategy which they have pursued in these cases, claiming that it charges them with being "*motivated* by a purpose 'to keep the South in a permanent position of economic inferiority' " (Appellants' Brief Opposing Motion to Affirm, p. 13). (Emphasis added.) No such charge is made or intended here, for we are concerned with the effect of the Northern railroads' strategy, not its motivation. We do not deny that "The Northern lines accepted the Commission's decision in the *Class Rates* case" *(ibid.)* and the increase in their revenues which went along with it, nor do we challenge their implicit suggestion that their sole motivation throughout these cases has been their own financial aggrandizement. We only point out that the overall strategy pursued by all of the Northern interests has been formulated without regard to its effect upon the South, and that this strategy, if successful, would greatly harm the South.

During the period following the affirmance of the Commission's order in the *Class Rates* case and prior to the issuance of the orders of the Commission which are the subject of this litigation, revenues from North-South freight traffic were divided on an equal-factor basis — that is, both the Northern and the Southern railroads received a share of the revenues from that traffic based directly upon the amount of service they performed in handling it. This equal-factor basis of divisions was prescribed by the Commission itself to implement the principle of uniformity announced in the *Class Rates* case. *Official-Southern Divisions*, 287 I.C.C. 497, 523 (1953). Under this basis, each group of railroads received an identical share of the joint rate on any shipment involving an equal haul in each territory. Where one group of railroads performed more service than the other, that group received a larger share of the revenues, but the difference in divisions was directly related to the amount of service performed.

In 1956, however, only four years after the uniform class rate structure was put into effect, the Northern railroads filed a petition before the Interstate Commerce Commission claiming that they are entitled to *more* than an equal share of the North-South freight revenues based upon the amount of service they perform because the costs of performing rail service are higher in the North than in the South. They asked the Commission to prescribe a basis of divisions with inflated Northern factors which would have accorded them more than the Southern railroads for each unit of rail service performed.

As representatives of the interests of the people of the South, the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners intervened in the proceedings before the Com-

mission. Our participation in these proceedings was not designed to secure any special favor for the Southern public or for the Southern railroads. Quite the contrary, we took the position that all sections of the country should be treated *equally* — that, except where justified by the most imperative of special circumstances, each section should bear the costs of its own transportation system.

The Northern railroads' petition seeking an inflation in their divisions on the basis of claimed higher Northern costs raised two distinct groups of issues, each of which was thoroughly contested in the proceedings before the Commission. The first group of issues, to which most of the evidence and argument of the Southern railroads was directed, was whether costs on North-South freight traffic are actually higher in the North, as the Northern railroads asserted, for the same amount and kind of rail service. The Southern railroads sought to show that the claim of higher Northern costs was based entirely upon *territorial average costs* that did not measure the costs of performing rail services of the same amount and kind in both territories, which, of course, is the only relevant comparison since North-South freight traffic is, by definition, the same traffic in both territories. We joined in and supported the position of the Southern railroads on this issue.

The second, and by far the more important group of issues from the standpoint of these appellees, related to the question of whether, even assuming the Northern railroads' claim of higher costs to be valid, the Commission should prescribe an inflated basis of divisions to reflect such cost percentages. Our position was that the Commission should not force the railroads, and hence, indirectly the public, of one section of the country to subsidize the transportation system of another section, without some showing of special circumstances that

would justify and require shifting the burden of one section to another.

On February 3, 1965, and May 18, 1965, the Commission issued its orders in this case substantially granting the relief prayed for by the Northern railroads in their petition. The Commission's orders inflated the Northern railroads' divisions so that they receive, on the average, 17 percent more than the Southern railroads for the same amount and kind of service. These court proceedings were instituted to review the lawfulness of the Commission's prescription of this inflation.

The district court proceedings revolved principally about the question of whether the Commission's reports lawfully resolved the issues which had been presented to it. In granting the Northern railroads' request for an inflated basis of divisions, the Commission had discussed at length the contention that territorial average costs did not measure the costs of handling North-South freight traffic. But it had rejected that contention largely on the ground that there was no alternative to using territorial average costs, since no other cost data were available to it which had been prepared on a comparable basis in both territories. Moreover, the Commission had virtually ignored our contention that the North's divisions should not be inflated even if their costs of handling North-South traffic were somewhat higher than the South's. On this point, the Commission had said that "an adherence to uniformity as such, without a careful evaluation of the statutory criteria and the evidence of record" would not be proper (325 I.C.C. at 27; A.51). But the Commission had nowhere attempted to evaluate the evidence and arguments which we advanced to support a continuation of the principle of uniformity.

The district court found legal defects in the Commission's treatment of both these aspects of the case. It first

pointed out that the Commission's use of territorial average costs was not supported by reasoned findings or substantial evidence as required by the Administrative Procedure Act (A. 349):

> "The Commission stated its exclusive standard to be the relevant cost of handling the specific freight traffic to which the divisions apply. We are persuaded that the order is not based on substantial evidence nor supported by reasoned findings within the meaning of Sections 8(b) and 10(e) of the Administrative Procedure Act because the use of territorial averages accounting for the Northern inflation has not been supported with findings of evidence relating any such inflation to the North-South Freight traffic."

The district court then went on to observe that the Commission had failed to follow similar statutory requirements in dealing with our contention that bare differences in cost, even if properly found to exist, should not automatically be reflected in interterritorial divisions (A. 351):

> "[F]or many years prior to this case the Commission has consistently followed the view that the primary responsibility for meeting the cost and revenue needs of the railroads of any territory lies with the people and the industry of that territory. [citing cases] In this very case, prior to re-opening, the Commission held that the primary division of revenues accruing from this traffic were to be made on an equal-factor scale. We recognize that the Commission is not perpetually bound by their 1953 holding, but *we do believe that the Commission has special responsibilities in a case of this magnitude when it departs from* its prior finding . . ." (Emphasis added.)

Accordingly, the district court held that "upon remand, the Commission should decide and dispose of this contention in accordance with the Administrative Procedure Act" (A. 343). These appeals followed.

SUMMARY OF ARGUMENT

I.

The Commission's order granting an inflation in the divisions of the Northern railroads at the expense of the South was explicitly and solely based on the premise that Northern costs of handling North-South traffic were higher than Southern costs. However, in reaching this conclusion, the Commission relied upon unadjusted territorial average costs to measure certain critically important service factors which are performed in the course of hauling North-South traffic. This action of the Commission was contrary to law. The evidence in this case establishes conclusively that territorial averages do not measure the relative costs of the Northern and Southern railroads in handling North-South freight traffic. Indeed, the evidence shows that the use of such averages is inherently unfair to the South, since the territorial averages are higher in the North because the North is the beneficiary of a more advanced state of industrialization and economic development than the South. The North's greater output of manufactured goods, which requires special cars and special handling, and its need for such other expensive services as commuter passenger service, necessarily means that its average cost of handling all traffic will be higher for reasons that have nothing whatever to do with the costs of handling North-South traffic, which by definition is the same traffic in both territories. To use territorial averages to establish the proper relationship between the

North and the South in this *Divisions* case is to compel the South to subsidize the higher costs of handling traffic with which it has no contact and from which, therefore, it derives no benefit. The district court was plainly correct in holding that the Commission could not use territorial averages without some affirmative evidence that they actually measure the relative costs of handling North-South freight traffic.

II.

The district court was also correct in holding that the Commission had not dealt lawfully with the basic contention of the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners in this case.

Based on this Court's historic decision in *New York* v. *United States*, 331 U.S. 284 (1947), which sustained a Commission order establishing territorial equality in class rates between the North and South, we contended before the Commission that unequal divisions ought not be prescribed even on the basis of relative costs unless the higher costs of the preferred territory were found to be the product of inherent territorial disadvantages. As we read the Commission's report, it agreed that under the standard of the *New York* case, it could grant the Northern railroads inflated divisions only if it found that the North suffers from inherent territorial disadvantages. Hence, it purported to apply this test, holding that the cost differences between the North and South "*are* the product of, and reflect, the inherent advantages and disadvantages in the two territories" (325 I.C.C. at 28; A. 51). (Emphasis added.)

Commission counsel apparently interpret the Commission's report in the same way and seek to defend the

holding that the North suffers from inherent disadvantages. However, they cite neither findings in the Commission's report nor evidence in the record to support such a holding, and, in fact, there are no such findings or evidence. Moreover, the Commission's holding of inherent Northern disadvantages is directly contradicted by evidence that the Northern railroads presently seek through various mergers and consolidations to eliminate the non-inherent costs associated with overcapacity and wasteful duplication of facilities. The Commission itself acknowledged that waste is being eliminated from the Northern rail system, but it persisted in prescribing divisions reflecting costs including such waste until these Northern mergers are actually consummated and merger savings realized.

Throughout these proceedings, the Northern railroads have refused to defend the Commission's finding that the North suffers from inherent disadvantages, claiming instead that the Commission was merely commenting upon our contention. In these circumstances, the district court was uncertain whether the Commission had in fact resolved the issue of whether a finding of inherent disadvantage was a necessary prerequisite to a divisions inflation. The court observed that whether the Commission's statement is regarded as a finding or a comment, it could not lawfully support the Commission's action here, since the Commission had either failed to resolve a fundamental issue before it or had done so without reasoned findings or evidence. Accordingly, the district court directed the Commission to dispose of this issue on remand in accordance with the provisions of 8(b) of the Administrative Procedure Act.

III.

The district court also properly held that the Commission had not lawfully justified its abandonment of

the principle of uniformity, even apart from the question of whether the North suffers from any inherent disadvantages. A central question before the Commission was whether, even if the North's costs are unavoidably higher than those in the South, the South should be required to subsidize any part of such costs. In the proceedings before the Commission, we contended that it should not, relying upon the Commission's long established policy that each territory is primarily responsible for bearing its own transportation costs. We pointed to the absence of any evidence that the South was in a better position than the North to bear these supposedly higher Northern transportation costs.

The evidence indicated that the imposition of this Northern cost burden on the South would impede Southern efforts to attain economic and industrial parity with the North. Accordingly, we urged that any higher Northern costs found to be unavoidably incurred be met with rate increases within the North instead of divisional preferences as against the South. The Commission completely ignored this whole issue, making no ruling at all upon a specific exception presented to it on the point. The district court properly viewed this as erroneous. While recognizing that the Commission was not precluded from altering its previous policy, the court also correctly held that the Commission had failed to explain either its departure from equal-factor divisions or its abandonment of the principle that each territory must bear the primary responsibility for meeting the cost and revenue needs of the railroads which serve that territory.

ARGUMENT

The dominant technique of both of the appellants' briefs in this case is to treat the case as though it is a

mere squabble among railroads with no substantial significance from the standpoint of the public interest. Whether this technique represents a failure to comprehend the true importance of this case, or simply a strategy of submerging troublesome issues with which the appellants cannot effectively deal, we offer no opinion. Whatever may be the underlying reason for appellants' approach to the case, however, it is imperative that the impression they create be dispelled.

This case is of vital importance to the South and, indeed, to the entire country. At stake is nothing less than the question of whether there will be a free economy in this country, unhampered by artificial trade barriers which would prevent the free flow of transportation resources from one section of the country to another. The principle of uniformity in railroad rates and divisions guarantees a free flow of transportation resources. Differing levels of rates and inflated systems of divisions inevitably create barriers to free trade.

As the least prosperous section of the country, the South is vitally interested in the maintenance of freedom in the economy for, without it, the South may be walled into a position of permanent inferiority. However, although appellants contend otherwise (I.C.C. Brief p. 53), the principle of uniformity in rates and divisions is in no sense "sectional," for it guarantees every section of the country equal treatment. Thus, the principle not only offers a way to economic equality for those sections of the country that are currently lagging behind, but it also guarantees other sections that they will not be relegated to such inferior status.

In the final analysis, the principle of uniformity is designed to permit industry to come to people who need

work instead of requiring people to seek out industry. It is common knowledge that one of the major problems in this country has been the emigration of large numbers of people from the South. This has hurt the South by depriving it of its human resources while only creating problems of adjustment in other sections of the country. We believe that a part of the cause for this situation has been the discrimination against the South in matters as vital as railroad rates, which was only ended in 1952. This case would re-impose that discrimination in another form, for it would re-institute the very kind of barriers that have prevented a free flow of industry to the South with its ample supply of labor. This could only mean that the Southern labor force would again be compelled to seek out industry.

We recognize, of course, that these sorts of economic considerations are for the Commission, not for this Court. But that is precisely the problem — the Commission has totally ignored the economic ramifications of its action, treating the case as an intra-industry dispute. We urge the Court to take cognizance of the real issues in this case and to determine whether the Commission has resolved those issues in accordance with the Administrative Procedure Act. We submit that it has not.

I. THE DISTRICT COURT CORRECTLY SET ASIDE THE COMMISSION'S COST FINDINGS AS ARBITRARY AND UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

In order to avoid repetition, we shall not restate here the many points made by the Southern railroads in their Brief in defending the district court's decision setting aside the Commission's orders because of legal defects in

the cost conclusions upon which those orders were based. Nor shall we discuss in detail each of the various arguments advanced by the appellants in attacking this aspect of the district court's holding, which are also dealt with in the Southern railroads' Brief. We are fully in agreement with the position taken by the Southern railroads that territorial average costs cannot conceivably be used on this record as a measure of the costs of handling North-South freight traffic. The record shows uncontroverted differences between North-South freight traffic and territorial average traffic in both those sections of the country with respect to each of the cost elements upon which the Northern railroads' inflation is based. In the face of these differences, the Commission's acceptance of territorial averages to measure the costs of North-South traffic was grossly arbitrary. The record does not show what the relative costs of handling North-South traffic actually are. But the district court was clearly correct in holding that this was the responsibility of the Northern railroads, as proponents of an inflation in their divisions, and of the Commission, as the agency charged with administering the Interstate Commerce Act consistently with the public interest. The record being clear that territorial averages do not measure the costs of North-South freight traffic, evidence of those costs should have been obtained.

We do think it necessary, however, to devote some attention to an argument advanced by appellants which bears directly upon the public interest aspects of the issues presented here — namely, Commission counsel's contention that there is more fairness in cost determinations based upon Rail Form A territorial average costs than there would be in determinations based upon special studies, simply because "Rail Form A data is readily available and does not include the biases which special

studies conducted by the contesting parties might understandably reflect" (I.C.C. Brief, p. 20). We think that this argument is not only fundamentally unsound, but that it carries the seeds of unfairness which, if ever sown, might permanently deprive the South of an opportunity to achieve economic equality with the rest of the country. For the truth is that Rail Form A averages are themselves biased in ways which inevitably work to the disadvantage of the South in interterritorial cases of this kind.

The single most important fact about territorial average costs is that these costs tend to vary directly with the degree of industrialization in the areas served by the railroads for which costs are being computed — that is, the greater the degree of industrialization in any area, the higher the territorial average costs of the railroads serving that area. The reason for this correlation between territorial average costs and the degree of industrialization in an area is that, with few exceptions, it costs considerably more to handle manufactured goods than to handle raw materials. Special equipment must be used to handle many manufactured articles — equipment which is more expensive, which usually requires greater maintenance, and which almost invariably has a much higher than average empty return ratio because it is not suitable for any return haul. Raw materials, on the other hand, usually move in the least expensive equipment in multi-carload quantities which permit a considerable saving in switching expense per car. Moreover, a high degree of industrialization of an area also often forces the railroads serving that area to perform other expensive services, such as commuter passenger service, which increase the Rail Form A average costs of railroads serving the industrialized territory.

The railroads serving the Northeastern portion of the

United States handle far more manufactured traffic than any other group of railroads in the country. The concentration of basic industry, such as iron and steel, in the Northeast is well known. But the dominance of that section of the country is even greater with respect to the manufacture of durable consumer goods, such as automobiles. Nearly all of the automobile parts used throughout the country are manufactured in the North. Hence, there is a very heavy movement of this important traffic both within the North and between the North and other sections of the country in which the Southern railroads do not participate. The South, on the other hand, is a deficit area with respect to most manufactured goods, so the movement of such goods within the South in which the Northern railroads do not participate is much more limited.

The result of this substantial difference in the degree of industrialization and in the amount of manufactured traffic moving in intrateritorial freight traffic in the North and in the South is that the Rail Form A average costs of the Northern railroads are the highest of any railroads in the country, and the average costs of the railroads serving the South are the lowest. (The Western railroads, serving an area less industrialized than the Northeast but more industrialized than the South, show average rail costs precisely in line with that degree of industrialization.) The following table* graphically depicts this situation:

	Per Capita Value Added by Manufacture (1956)	*Rail Form A Territorial Average Costs (1956)*
Official Territory	229	122
Western Territory	118	115
Southern Territory	100	100

*Table based upon data set forth at A. 722 and costs constructed from the Commission's Statement 2-58, which was used by the Commission here (325 I.C.C. at 24; A. 47). The indexes were constructed by treating Southern figures as 100 and calculating percentage deviations for the North and the West.

This table shows a clear correlation between the degree of territorial industrialization and the Rail Form A average costs of the railroads that serve that territory. Of course, the correlation is not a perfect one, since other factors also influence territorial average costs. In the North, for example, the inflating influence of manufactured traffic is partially offset by the greater amounts of coal traffic handled by the Northern railroads, since coal is one of the cheapest commodities to handle. And in the West, the inflating influence of manufactured traffic is only one of several factors (such as the necessity for crossing mountain ranges) which contribute to the higher cost level of those railroads. However, in each case, it is clear that the degree of industrialization of any section of the country is an important factor influencing the level of the territorial average costs of its railroads.

Since the level of territorial average costs is influenced so greatly by the degree of industrialization of the area served, such average costs do not precisely measure either the actual costs to a single railroad of carrying a single commodity or the relative costs of two groups of railroads in carrying the same commodity or commodities. No commodity will have cost characteristics precisely identical to the theoretical average commodity, even in a single territory; nor will the Rail Form A averages for any two groups of railroads be based upon the same amount and kind of service in both territories. In this case, for example, where the cost issue before the Commission was the relative costs of the Northern and Southern railroads in handling North-South freight traffic — a defined body traffic which by definition consists of the same carloads of freight in both territories — use of average costs derived from the different bodies of traffic moving in each territory to measure the relative costs of handling a movement of the same body of traf-

fic in both territories creates the false impression that Northern costs are substantially higher than Southern costs. This distortion can be corrected only by a careful analysis of the particular cost elements which are shown to be higher in the North because of the territorial averages. If the Commission refuses to make such an analysis, supplemented where necessary by special studies, the inevitable result is that it will conclude that Northern costs are higher on North-South traffic merely because the North is more industrialized than the South. Such an uncritical acceptance of unadjusted territorial average costs would, of course, only tend to perpetuate the very difference in the degree of territorial industrialization which brought about the higher Northern averages in the first place. Plainly, there is nothing at all that is fair about that.

In the final analysis, the real issue in this case is not whether the use of territorial averages to measure the costs of North-South traffic is fair but whether such a technique should be tolerated, despite its patent unfairness, out of considerations of administrative convenience. We submit that considerations of administrative convenience have no place in a case as important as this. Whatever may be the Commission's responsibility to obtain specific cost evidence in a routine rate case, it certainly is no burden upon the Commission to require such evidence where necessary to resolve the issues in a case involving basic economic relations between two sections of the country. Commission counsel's claim that this is inconsistent with the nature and purpose of the Rail Form A cost formula simply reveals a basic misunderstanding of that formula. The Commission's Cost Section was created and Rail Form A devised at the urging of these very appellees to dispel the illusion that the North was entitled to preferential class rates. Rail

Form A was properly applied in that case and accomplished its purpose. But now, by applying the averages produced by the formula to a situation in which such averages have no factual basis, the Commission would use the formula to recreate the same kind of preference with respect to divisions which it was intended to remove with respect to rates. Rail Form A was never intended to have such application. The district court quite properly refused to permit any such blind subjugation of the principle of uniformity.

II. THE COMMISSION VIOLATED THE ADMINISTRATIVE PROCEDURE ACT IN DEALING WITH THE CONTENTION THAT NORTHERN RAIL COSTS ARE NOT AFFECTED BY INHERENT TERRITORIAL DISADVANTAGES.

The district court correctly set aside the Commission's order in this case on the ground that the use of unadjusted territorial averages to measure the costs of handling North-South freight traffic was unsupported by evidence; and was thus contrary to the Administrative Procedure Act. However, in applying the standard of relative costs, the Commission committed further errors, which the district court directed the Commission to remedy upon remand. These errors constitute an independent ground upon which the judgment of the district court should be upheld.

In the proceedings before the Commission, the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners contended that even if there are cost differences in handling the relevant traffic, an inflation in the divisions of the

Northern railroads would not be justified unless "such differences are the product of the inherent advantages and disadvantages that go to make up the respective overall transportation conditions of the two territories" (Exceptions to Examiners' Recommended Report and Order, A. 1376). Our contention was based on the principle that neither existing overcapacity in the Northern rail transportation system nor any higher cost factor caused by temporary economic conditions in the North should be artificially perpetuated by casting any part of those costs on the people and economy of another territory. We pointed out that in *New York* v. *United States*, 331 U.S. 284, 315 (1947), affirming the Commission decision in *Class Rate Investigation, 1939*, 262 I.C.C. 447 (1945), this Court rejected the contention that Northern shippers should be granted preferential rate treatment in the absence of any "natural" differences in transportation conditions between the North and other sections of the country.

In the *New York* case, it was conceded that the North did enjoy immense advantages over other sections of the country; however, this Court agreed with the Commission that the Northern advantages were not "natural" or inherent, but were produced by such factors as the rate structure itself, which operated as a "man-made trade barrier" (331 U.S. at 315). In this case, we pointed out that a discriminatory divisions structure, "not justified by territorial conditions," likewise would preserve "man-made trade barriers." By burdening the South with the excess Northern costs, a divisional preference would tend to perpetuate both the existing Northern overcapacity of rail facilities and the different economic conditions now existing in the North and the South. Hence, we contended that in light of the principle announced and applied in the

New York case, the Commission should not, and indeed could not, prescribe an inflation in the Northern railroads' divisions based upon higher Northern costs without first considering the reasons for such costs. In no event would an inflation in divisions be proper unless a finding could be made that the inflation would not perpetuate artificial differences upon which it was based.

The Commission, as we read its decision, agreed with the principle laid down in *New York* v. *United States*—but it then proceeded to hold that this principle had been satisfied in this case because "other factors being equal, cost differences generally are the product of, and reflect, the inherent advantages and disadvantages in the two territories" (325 I.C.C. at 28; A. 51). Having thus held that the Northern cost differences are the product of "inherent disadvantages" rather than "other factors," the Commission prescribed an inflation of 17 percent in the Northern railroads' divisions.

There is no evidence, and there are no reasoned findings, to support either the Commission's premise that the "other factors" which could account for higher Northern costs are "equal" in both territories or its resultant conclusion that higher Northern costs are the product of inherent territorial disadvantages. Throughout these proceedings, the Southern carriers contended that if Northern transportation costs are higher than those in the South, it is because of overcapacity in the Northern railroad system. Costs due to overcapacity are not inherent, as the Northern railroads have themselves admitted by seeking to rid themselves of such excess costs in a series of important control and merger cases. See, e.g. *Chesapeake & Ohio R. Co. — Control — Baltimore*

& Ohio R. Co., 317 I.C.C. 261 (1962); *Norfolk & Western Ry. Co. and New York C. & St. L. R. Co. — Merger*, 324 I.C.C. 1 (1964); *Pennsylvania R. Co. — Merger — New York Central R. Co.* 327 I.C.C. 475 (1966); *Norfolk & Western Ry. Co. — Merger — Chesapeake & Ohio R. Co.*, I.C.C. Finance Docket No. 23832 now pending. The overriding purpose of these rail consolidations has been to eliminate the non-inherent costs which arise out of inefficient and wasteful duplication of facilities.

In the *Penn-Central* case, *Pensylvania R. Co. — Merger — New York Central R. Co.*, 327 I.C.C. 475 (1966), the Commission expressly recognized the existence of overcapacity in the Northern railroad system (327 I.C.C. at 512):

> "The Eastern District has, at this time, an oversupply of rail facilities inasmuch as the total volume of rail traffic in the district does not adequately support the existing railroad plant regardless of how the traffic may be apportioned or diverted from one railroad to another."

This single merger is expected eventually to produce savings in excess of $80 million each year (327 I.C.C. at 501). Other Northern rail consolidations will further trim the present excess Northern costs. The C&O-B&O control arrangement is already producing savings of $44 million a year, and will eventually yield greater savings when these two roads are merged (317 I.C.C. at 277). The N&W-Nickel Plate-Wabash merger was found to produce savings of $29 million a year (324 I.C.C. at 80). The N&W-C&O merger would produce savings of $36 million per year, and this figure would be increased to some $50 million by the inclusion of other railroads. (I.C.C. Finance Docket No. 23832, Exhibits 10 and 11).

The cumulative effect of all these proceedings will be a complete re-structuring of the Northern rail network into two powerful systems, each capable of providing single-line service throughout the North. The inevitable result of this realignment will be, not only a massive elimination of duplication and waste in facilities, but, also, a profound change in traffic patterns to permit a more efficient handling of freight by the two systems. Evidence was offered in the Penn-Central merger case showing that some $179 million a year can be saved from the elimination of unnecessary interchanges within the North (I.C.C. Finance Docket No. 21989, Exhibit FH-5). When all these potential savings are considered, it is plain that there is no inherent reason why Northern costs should be any higher than costs in the South.

The Commission's report and order in this case give no effect at all to the fact that there is substantial overcapacity and waste in the Northern rail system, even though the Commission conceded that Northern overcapacity contributed to Northern costs in a manner that cannot conceivably be related to inherent territorial disadvantages. The Commission permitted costs concededly inflated by such factors to be reflected in higher Northern divisions on the theory that the cost savings to be produced by Northern mergers had not yet been realized and were not precisely ascertainable (325 I.C.C. at 17-18; A. 39):

> "It is true the savings expected from proposed mergers and consolidations are not reflected in the cost studies of record. However, the southern lines themselves have noted that mergers are now going forward in all territories, including the South. If and when such proposed mergers are ultimately approved and finally consummated in both groups the savings produced thereby will be *then* reflected in the respective unit costs." (emphasis supplied.)

Neither of the appellants suggests that this consti-

tutes an adequate disposition of our contention that any higher Northern costs found to exist should be regarded as the product of overcapacity, not inherent disadvantages. Commission counsel simply ignore the Commission's treatment of the issue while the Northern railroads prefer to quote from an order of the Commission directed, not to the question of inherent territorial differences, but to the question of whether evidence should have been considered "concerning the effect of proposed combinations and consolidations of rail carriers in Official Territory upon operating costs and revenue needs of said carriers" (B&O Brief, pp. 60-61). This order of the Commission has no relevance to the issue of inherent territorial differences, nor does it respond to that issue any more satisfactorily than the Commission's report. Our point is, not that merger savings should be treated as available to the carriers before they are realized, or that the Commission should prejudge pending mergers and assume that they will be approved, but that the very fact that such savings can be achieved if overcapacity and waste is eliminated demonstrates that higher Northern costs are not the product of "inherent" disadvantages. Whether or not Northern merger savings are ever realized, there is no reason to charge the South for the present Northern cost of overcapacity.

The force of this reasoning is in no way diminished by the Commission's observation that mergers were also proceeding in the South. For although our rail transportation system may have some degree of overcapacity so that Southern rail costs might also be reduced somewhat by Southern rail consolidations, such savings will not even begin to approach the savings achievable by Northern carriers, such as Penn-Central. Overcapacity in the North is simply far greater than in the South. In fact, the dispersion of industry out of the Northeast and into other territories, including the South, creates an in-

creasing demand for rail service in the South at the same time it reduces demand in the North, with the result that Northern overcapacity can be expected to increase while the Southern excess capacity will likely diminish (as discussed in detail at pp. 30-31, *infra*).

Certainly, the Commission did not find, and on this record could not find, that overcapacity in the North and in the South are equal. Thus, there is no foundation for the Commission's conclusion that "other factors" that might explain cost differences are "equal" in the two territories. Without findings or evidence on that critical point, the Commission's ultimate finding that Northern excess costs are the product of inherent disadvantages is unsupported by reasoned findings and substantial evidence as required by the Administrative Procedure Act (5 U.S.C. §§ 557, 706).*

In the district court, the Northern railroads sought to escape from this legal deficiency by claiming that the Commission's finding was merely a "comment" (B&O Brief, dated August 1, 1966, p. 128). However, the district court's action could not be defended on any such ground, for the Commission's disposition of the issue was plainly defective, however this aspect of its report was viewed. Thus, the district court pointed out (A. 342) that if the Commission's language constituted a finding that the Northern excess costs were the product of inherent disadvantages,

*The Commission's conclusion that cost factors, other than inherent territorial disadvantages, are "equal" in both territories is likewise contradicted by the Northern railroads' claim that their higher costs are caused by higher wage and tax levels (B&O Brief, p. 39, note 14). These higher average wage and tax levels are more than offset by the greater traffic density of the Northern carriers (A. 791). But even if they were not, what is important to note here is that such higher costs would be totally unrelated to inherent territorial disadvantages, since they would be the product of the long standing advantage which the North has maintained in economic and industrial development.

> "then the Commission's conclusion (that higher Northern costs reflect inherent territorial disadvantages) is subject to attack because there are no findings as to what these inherent territorial disadvantages consisted of."

On the other hand, if the Northern railroads were correct, and the language was merely intended as a "comment," then,

> "the Court must consider whether the Commission's failure to resolve the material issue raised with respect to that question can be reconciled with the express requirement of Section 8(b) . . . The Administrative Procedure Act requires findings on material issues of law" *(ibid.)*.

In either case, the Commission's treatment of our contention was contrary to the Administrative Procedure Act. Because of the vagueness in the Commission's language, the district court found it impossible to determine with any certainty just what the Commission had done, so it directed the Commission to clarify and explain its disposition of our contention on remand.

This aspect of the district court's decision is clearly correct. In our view, the Commission's error lay in its holding without evidentiary support that "other factors" which might explain the higher Northern costs found to be applicable to North-South traffic were "equal" and that the Northern higher costs thus reflected inherent Northern territorial disadvantages. Otherwise, the Commission is chargeable with having only "commented," without ruling upon, our principal contention in the proceedings before it. However, the district court was clearly warranted in finding the Commission's language to be vague and in directing the Commission to clarify its meaning on remand. As Mr. Justice Cardozo

once said: "We must know what a decision means before the duty becomes ours to say whether it is right or wrong." *United States* v. *Chicago, M., St.P. & P.R. Co.*, 294 U.S. 499, 511 (1935). Accord: *Secretary of Agriculture* v. *United States*, 347 U.S. 645, 654 (1954); *Railway Labor Executives Ass'n* v. *United States*, 379 U.S. 199, 200 (1964).

Commission counsel continue to take cover in the same vagueness which puzzled the district court. In their Brief, they describe the Commission's position as follows (I.C.C. Brief p. 52):

> "[T]he Commission simply determined that, in a divisions case where the carriers were found to be efficient, their services were of equal importance to the public, and where the fairness of existing divisions and the need for revised divisions was assessed on the basis of relative fully distributed cost of service, *it was appropriate to conclude that* cost differences reflect inherent territorial disadvantages, insofar as that consideration is relevant under Section 15(6)." (Emphasis added.)

Is the conclusion referred to a disposition of our contention? The choice of language seems deliberately vague, but as in the case of the Commission's own language in the report, we can only interpret this as an admission that the decision in this case does rest upon a finding of inherent territorial disadvantages. But if that is so, the finding remains unsupported by evidence. Counsel for the Commission do not even now cite a single piece of evidence which would relate cost differences in the North to inherent territorial disadvantages.

The Northern railroads have maintained a different position. They say that the Commission is not required to follow the principle of *New York* v. *United States*. In their view, cost differences alone are a sufficient basis

for divisions without regard to the causes of the higher costs. They concede that the Commission has not even considered whether the costs upon which it acted were based upon inherent territorial differences and argue that in doing so the Commission was justified because this would require "a tremendous factual inquiry" (B&O Brief, p. 59). Their reasons for taking this position are obvious. The Northern railroads know that their higher costs do not derive from inherent disadvantages. Otherwise, of course, they would not continue so anxiously to seek the benefits that accompany consolidation of rail facilities. Obviously, the Northern railroads cannot simultaneously urge that their high costs are inherent and that they should be permitted to reduce their costs through mergers. Thus, the Northern railroads' position here is the same which they pressed in district court — that the Commission merely "commented" on our contention and actually based its decision upon cost differences in the two territories which may have no connection at all with inherent territorial conditions.

But as the district court pointed out, if that is what the Commission has done, it has failed completely to resolve some of the principal issues before it. Can the Commission prescribe a basis of divisions which prefers one section of the country over another where that preference will tend to perpetuate the very economic differences between those sections upon which it is based? And even if the Commission has such power, under what circumstances should it be exercised? Why should the North, as a railroad rate territory, be entitled to maintain, partly at the expense of the South, a rail transportation system far more extensive than that which the South can afford to build for itself? Why should the South be forced to subsidize the uneconomic conse-

quences of attempting to maintain facilities that are partly unneeded in the North? And why should the people of the entire country be deprived of the benefits that flow from a unified national economy unhampered by artificial barriers that prevent the most efficient allocation of transportation resources?

Ironically, one of the leading causes of Northern overcapacity is that industry which was formerly concentrated almost exclusively in the North is now moving out into other territories, including the South. As the Commission itself found in the *Penn-Central Merger* case (Recommended Report, F.D. 21989, p. 198, adopted as the finding of the Commission, 327 I.C.C. at 481):

> "We believe that one of the primary explanations for this trend [the decline in rail traffic in the North] lies in the changing structure and location of industry in the Eastern District and the nation as a whole or the 'industrial mix'. Historically, the Eastern District has been noted for its heavy industry, and the fact that it has supplied the nation with steel and other basic items which have previously moved by rail from Pittsburgh and other eastern industrial points to the western, northern and southern extremities of the nation. The growth of major population centers throughout the nation, however, which are able to support the necessary high fixed investment of heavy industry has caused a certain degree of 'decentralization' of industry. This, in many instances, has eliminated, or at least restricted, eastern producers from such markets and thereby curtailed the use of rail service to some undocumented extent."

The inflation prescribed in the divisions of the Northern railroads in part because of the costs due to Northern overcapacity would require the South to subsidize excess Northern rail facilities at the expense of investing in its

own rail transportation system. Such a subsidy would blunt the cost stimulus which would encourage the North to make further reductions in inefficiency and overcapacity. But worst of all, it would retard the very economic transformation upon which the South must depend if it is to achieve equality of economic opportunity with the North. For if the Southern railroads are deprived of the revenues necessary to construct new facilities for businesses desiring to move South, and if those revenues are diverted to the Northern railroads thus permitting the maintenance of facilities that would otherwise be uneconomic, the inevitable result will be a strong tendency for business to remain in the North even in instances where all other economic factors indicate that it should move South.

As already noted, the Commission found in the *Class Rates* case that there are no inherent differences in transportation conditions between North and South, and this Court agreed with that conclusion in *New York* v. *United States* (331 U.S. at 315). There is no evidence in this case which would support a contrary view. In the absence of any inherent disadvantages, the question which must be confronted is why one territory should be burdened with any part of the burden of higher costs in another territory — costs which are higher because of the benefits of industrialization and a developed economy, because of a transportation system with excess capacity for providing freight service, and because of great population centers requiring extensive commuter facilities. Preferences in rates or divisions preserve and rigidify these territorial differences, rather than promote their disappearance.

The Northern railroads suggest (B&O Brief, pp. 61-62) that the amount of money involved is too small for us to be much concerned. To support this claim they seek to

compare the revenues involved with gross revenues of the railroads. By doing so, however, they seek to submerge the fact that the shift in revenues represents an inflation ranging up to 45 percent on the traffic to which it applies. Obviously, that is the relevant comparison here, for it is certain to be the primary concern of the Southern railroads when they consider rate levels on traffic moving between the North and the South. Since the Southern economy is vitally dependent upon trade with the North, we must be concerned with any discrimination that is likely to impede that commerce. Moreover, a fundamental question of principle is involved here: whether the South should be compelled to pay *any* amount — no matter how great or small — of higher Northern rail costs that do not reflect inherent territorial disadvantages. Either the South is entitled to equal treatment or it is not. That is the central issue before this Court.

III. THE COMMISSION'S ACTION IN PRESCRIBING AN INFLATION IN THE NORTHERN RAILROADS' DIVISIONS VIOLATES THE ADMINISTRATIVE PROCEDURE ACT EVEN IF ITS CONCLUSION THAT THE NORTH SUFFERS FROM INHERENT TERRITORIAL ADVANTAGES IS ACCEPTED.

These appellees also contended before the Commission that whether or not excess Northern costs were found to be the product of inherent advantages, the imposition of any part of that cost burden on the South would be improper and unjustified unless the North were found to be unable to support its own cost burden. Accordingly, when the Commission's Examiner recommended that the Northern railroads be granted an inflation in their divisions because of supposedly higher costs without such a

finding, we took specific exception to the recommended report on the ground that "the burden of that increase could not properly be imposed upon the Southern public, as it was here, without an effort first to determine whether the North is capable of supporting its own transportation system through rate increases" (A. 1388). The Commission failed to rule on our exception, and failed to make any findings which would support the notion that a part of the Northern cost burden should be borne by the South. This constitutes an independent error supporting the decision of the district court.

The principle that each territory is primarily responsible for carrying its own transportation cost burden has been consistently followed by the Commission for more than thirty years. In *New England Divisions*, 126 I.C.C. 579, 599 (1927), the Commission, speaking through Commissioner Eastman, stated:

> "The dangers in (the) . . . assumption that deficiencies in local earnings must inevitably be made up on interchange business at the expense of connecting lines are obvious. Communities and the roads which serve them might too readily arrive at the conclusion that they are 'unable' to increase local rates and, in disregard of the principle of self-help, unduly rely upon others to carry their burdens."

This principle of primary local responsibility through equality of divisions has since been applied in numerous cases involving the division of interterritorial joint rates, including those accruing on North-South traffic. Equal-factor divisions were prescribed for North-Southwest traffic in *Official-Southwestern Divisions*, 287 I.C.C. 533 (1953), and are still in effect today. Equal factor divisions were also prescribed as to North-Midwest traffic in *Official-Western Trunk Line Divisions*, 316 I.C.C. 351 (1962), the Commission noting that "the common level

of class rates in the two territories argues strongly for a single scale of divisional factors" (316 I.C.C. at 365). And when that scale was set aside as improperly constructed (*Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 255 F. Supp. 584 (1965), it was replaced by mutual agreement with another equal-factor scale, which was approved by the Commission in an order dated April 8, 1966. The only traffic other than North-South traffic as to which unequal divisions are now in effect is Midwest-Mountain Pacific traffic. However, since higher rates apply throughout Mountain-Pacific territory, the inflation in the Mountain-Pacific divisions scale amounts simply to an arrangement whereby the railroads of Mountain-Pacific territory can retain the higher rates paid by the people of that territory (*Akron, Canton & Youngstown R. Co., et al.* vs. *Atchison, Topeka & Santa Fe Ry. Co., et al.*, 321 I.C.C. 17, 77 (1963), quoted in *Chicago & N.W. R. Co.* v. *Atchison T.&S.F. Ry. Co.*, 387 U.S. 326, 357-358 (1967)).

The principle of equality in divisions has also been applied in dividing the joint rates accruing on North-South freight traffic. In *Divisions of Rates, Official and Southern Territories*, 234 I.C.C. 175 (1939), the Southern railroads were denied a generally higher basis of divisions, despite the Commission's recognition "that transportation costs on the traffic here considered may properly be considered to be higher in the South" (234 I.C.C. at 189). The Southern railroads were permitted a divisions differential only where higher rate levels prevailed in the South, as a way to retain the higher rates paid by Southern shippers: "Where no such increment is to be found in the rates . . . fair application of the principle demands that the divisions of each group of carriers be on the same basis" (234 I.C.C. at 192-193). Following the Commission's decision in the *Class Rates* case (*Class*

Rates Investigation, 1939, 262 I.C.C. 447 (1945), differences in the rate levels of interterritorial North-South traffic and intraterritorial Northern traffic substantially disappeared. Accordingly, in *Official-Southern Divisions*, 287 I.C.C. 497 (1953), the Commission removed the limited divisions differential in favor of the Southern lines, and prescribed the equal-factor basis of divisions which was in effect until the order now in question.

The Commission's order in this case thus represents a radical departure from the principle which has previously governed the decision of divisions cases.* The South is today the only territory in the country which is required to subsidize the railroads of another territory through divisions preferences unrelated to higher rates in the favored territory.** An essential question in this case is whether the Commission's action in abandoning its previous policy and establishing this preference has

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*Commission counsel's sole response to this contention is the unreasoned assertion that these cases do not "stand for the proposition . . . 'that the primary responsibility for meeting the cost and revenue needs of the railroads of any territory lies with the people and the industry of that territory'" (I.C.C. Brief, p. 51, note 46). This hardly seems adequate unless Commission counsel expect this Court either to read all these lengthy Commission reports itself in a search of a different explanation or to accept on faith the assertion that the district court misinterpreted the reports.

**Commission counsel's suggestion that Section 15(6) was designed for a purpose contrary to the principle of primary local responsibility (I.C.C. Brief, p. 51, note 46) is as unsound as it is unsupported. Certainly, the *New England Divisions* case, in which Commissioner Eastman announced the principle, does not support counsel's suggestion. In that case, this Court stressed the absolute necessity of putting a part of the burden of New England transportation costs upon other sections of the country, saying (261 U.S. at 192).

> "To have raised the additional revenues needed by the New England lines wholly by raising the rates in New England — particularly when the rates west of the Hudson were raised much less — might have killed New England traffic."

In contrast, no consideration at all has been given to the possibility of raising Northern rates in this case.

been justified as required by law. We submit that it has not been.

The Commission, of course, is not precluded from changing its mind. We do not contend that Section 15(6) forever binds the Commission or the nation's railroads to a system of divisions whereby each territory is primarily responsible for the costs of its own railroad transportation system, although we cannot help but agree with Commissioner Eastman that "[t]he dangers" in any other approach "are obvious" (126 I.C.C. at 599). In any event, abandonment of equality deserves an explanation. The Commission erred in ignoring our exception,* and in refusing to consider the respective capabilities of the North and South to pay for Northern excess rail costs.

Furthermore, the report violates the well-established rule that when an agency departs from previously adopted principles, it must explain and spell out the legal basis for its decision. *Secretary of Agriculture* v. *United States*, 347 U.S. 645, 653 (1954). The Commission in this case offered no explanation for its displacement of the principle of primary local responsibility. As the district court pointed out, such a radical departure from prior Commission policy should have been explained (A. 351). Even now, counsel for the Commission make no effort to explain the departure, nor do they refer to evidence that the North cannot bear its own cost burden, since no such evidence exists.**

The Commission's action in abandoning the principle

*Section 8(b) of the Administrative Procedure Act expressly condemns this aspect of the Commission's action, for it provides: "The record shall show the ruling on each . . . exception presented" (5 U.S.C. §557(c)).

**The Commission's Brief contributes only one footnote (I.C.C. Brief, p. 54, note 48) to this issue, and it makes no mention of the Commission's failure to spell out the reasons for abandoning the principle of primary local responsibility. The Commission's view seems to be that there is no responsibility, "special" or otherwise, to elucidate the basis for its decision here.

of primary local responsibility has especially harsh consequences here, since it permits the claimed higher rail costs of the North to be imposed upon the South. The evidence in this case demonstrates that the North is still by far the most prosperous territory in the United States. In *New York* v. *United States* this Court took specific note of the wide disparity between Northern and Southern economic development. In the two decades that have passed since that decision, little has occurred to alter the relative economic situation in the two territories. Despite an 849 per cent increase shown in "Value Added by Manufacture" in the South between the years 1935 and 1956 (A. 72), the South still contributes only 11.7 per cent of the "Value Added by Manufacture" in the country as a whole. The per capita statistics are to the same effect *(ibid).* In every category shown, the South still lags far behind the North in wealth and in level of economic activity. The Commission itself found that both the freight revenues and the net operating income of the carriers in Northern territory far outstripped those of the Southern railroads (325 I.C.C. at 13-14; A. 33-34), and that there was no such difference between the revenue needs of the Northern and Southern carriers as would justify a divisions preference (325 I.C.C. at 49; A. 79).

The South, of course, has realized gains as a result of the establishment of the principle of uniformity in *New York* v. *United States.* But the orders in this case would effectively nullify those gains. Although the orders here operate *directly* only upon the revenues of the railroads and not upon rates, an inflation in the Northern railroads' divisions on North-South freight traffic will inevitably have an impact not merely upon the Southern railroads' revenues but also upon the transportation system and, consequently the whole economy of the South. Because the earnings of the Southern railroads have consistently

been found by the Commission to be inadequate,* any action which would further reduce those rates of return for the benefit of the Northern railroads would necessarily result either in a diminution of rail services in the South, or in an increase in the rates which Southern shippers must pay for such services, or both.

It is obvious that the Southern railroads cannot spend money for maintenance and expansion of their services unless they have the money to spend. Consequently, if the Southern railroads have no excess revenues to spend for this purpose in their current earnings, a substantial decrease in those earnings would inevitably have an impact upon the railroads' operations.

The only alternative to a substantial diminution in the quality of rail service available to the people of the South would be a substantial increase in rates. Any substantial rate increase would obviously put these shippers at an even more serious disadvantage in their efforts to compete with shippers located closer to the center of population.

The extent of this unfairness becomes even more apparent when it is realized that the Northern railroads'

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*The Commission has consistently stated in its own proceedings that the rates of return of the Southern railroads are inadequate. In *Increased Freight Rates, 1951*, 284 I.C.C. 589, 612 (1952) the Commission found rates of return, of these railroads to be substandard, even though they were then substantially higher than they have been in recent years, saying:

> "Judged by any standard shown of record, the rates of return earned or prospectively to be earned by the railroads by the districts and regions specified in our former reports in this case, are substandard."

And only last year, in *Increased Freight Rates*, 1967, 329 I.C.C. 854 (1967), the Commission reiterated this finding (329 I.C.C. at 872) in holding that the Southern railroads were entitled to another general freight rate increase designed to generate the revenues necessary to permit them to maintain their current level of service.

primary duty is to serve the competitors of Southern industry. It is common knowledge that most of the buying power of the country is concentrated in the North and that, notwithstanding the substantial geographical disadvantage which must be overcome, industries located in other parts of the country must seek to reach that market. The Commission itself recognized this situation in its report in the *Class Rates* proceeding (262 I.C.C. at 696):

> "Official territory is the greatest consuming territory in the country, and is the market that nearly all manufacturers desire to reach, particularly where they have a surplus of their products to sell. In shipping to official territory, manufacturers in the other territories not only have the disadvantage of location, but are subjected to an additional burden in those instances where they must pay class rates on a much higher level than their competitors in official territory. This situation reacts to the disadvantage of manufacturers in the other territories, and to the advantage of those in Official Territory, tends to restrict the growth and expansion of the manufacturers in the other territories, and to some extent, to prevent the establishment of new manufacturing plants in those territories."

Moreover, the alternative of a rate increase is particularly ominous here since revenues lost to the Northern railroads through their inflated divisions might be made up, in part at least, from an increase in intrastate rates within the South — rates which are of vital importance both to the growth of an independent Southern economy and in their effect upon the overall ability of Southern shippers to compete in the markets of the North. Over the protest of some of the appellees (see e.g. *King* v. *United States*, 344 U.S. 254), the Commission has successfully asserted the power under Section 13 of the Interstate Commerce Act to take into account the entire

financial condition of the railroads, rather than restricting itself to those aspects related to intrastate commerce, in passing upon the adequacy of intrastate rates.* Under this rule, any loss of revenues in this interterritorial divisions case may later be used by the Commission as a basis for compelling intrastate rate increases. Hence, in future Section 13 proceedings the very rates of return which the Commission has here depressed to meet the burden of claimed higher transportation costs in the North may have to be augmented by increases in intrastate rates.

The basic unfairness of imposing the burden of higher Northern transportation costs upon the South is apparent where the economy of the South is demonstrably and dramatically weaker than that of the North, as the record here unquestionably shows that of the South to be. The inevitable effect of any divisional structure that accords higher divisions to the Northern railroads would be to improve the rail transportation system of the North at the expense of the Southern public, for any transfer of divisional revenues to meet the needs of the Northern railroads could not fail to have an adverse impact upon rail transportation in the South, either

*The Commission has repeatedly utilized Section 13 orders based upon this theory as a source of additional revenues for the Southern railroads. Indeed, as a result of such proceedings or the threat of such proceedings, intrastate rate increases have been effected in each one of the States represented here during the period covered by the rate of return date set out above. See, e.g., *Louisiana Intrastate Rates and Charges*, 284 I.C.C. 467 (1952); *Alabama Intrastate Express Rates and Charges*, 288 I.C.C. 423 (1953); *Mississippi Intrastate Freight Rates and Charges*, 291 I.C.C. 39 (1953); *Louisiana Intrastate Freight Rates and Charges*, 291 I.C.C. 279 (1954); *North Carolina Intrastate Freight Rates and Charges*, 293 I.C.C. 541 (1954); *Tennessee Intrastate Freight Rates and Charges*, 294 I.C.C. 633 (1955); *South Carolina Intrastate Freight Rates and Charges*, 296 I.C.C. 159 (1955); *Alabama Intrastate Rates and Charges on Coal, Lumber, and Scrap Iron*, 297 I.C.C. 241 (1955); *Lousiana Intrastate Passenger Fares*, 305 I.C.C. 137 (1958); *Louisiana Intrastate Freight Rates and Charges*, 306 I.C.C. (1959).

through increased freight rates or through a diminution in the availability of rail services, facilities and equipment, or both. Consequently, a transfer of divisional revenues to the Northern railroads would bear heavily upon the Southern public regardless of the reasons that might be offered to support it.

The record shows that the Southern people are fighting a long uphill struggle in their efforts to raise their standard of living to that already enjoyed in other parts of the country. In such a situation the South cannot properly be expected to make a disproportionate contribution to the maintenance of the rail system in the North. The South has many needs of its own which must be met, and we are striving mightily to meet them despite the handicap of a still woefully inadequate industrial base. There is simply nothing whatever in the record to justify a further shackling of the efforts of our people by requiring them to subsidize the rail transportation system of the North.

The undisputed facts show no basis for the Commission's action in imposing the burden of the allegedly higher Northern transportation costs upon the Southern people. That action is therefore unlawful under Section 10(e) of the Administrative Procedure Act.

CONCLUSION

When the claims being pressed by the Northern railroads in this case are considered against the background of the historical context out of which they arose, it is plain that what is involved here is simply another effort by Northern interests to obtain preferential treatment in rail transportation charges, without regard to the fact

that the inevitable effect of such preferences, whether they occur in rates or divisions, is to keep the South in a permanent position of economic inferiority. Whether the fashionable justification is inherent Northern disadvantages, as here, or inherent Northern advantages, as in the *Class Rates* case, and whether Northern rail costs are argued to be higher than those in the South or lower, the result is always the same. Thurman Arnold summed it up almost thirty years ago in a speech delivered August 22, 1941 at Hot Springs, Arkansas:

> "The industrial East has been the Mother Country. The South and West have been the colonies. The colonies have furnished the Mother Country with raw material. The Mother Country has been exploiting the colonies by selling them manufactured necessities at artificially controlled prices . . . How this all happened in a complicated process. Big business has treated the West and South primarily as a source of raw materials, not as a place to manufacture and sell finished products at competitive prices.
>
> "This is the age-old principle of colonial empires. It is dictated by the necessity of keeping up dividends in the Mother Country against cheaper local competition in the colonies. The methods of maintaining control of industrial markets in the South and West are based on the power of tightly organized cartels to control supply, transportation and distribution in such a way as to put new competing enterprise in the colonies under a continuing handicap."

In refusing to permit the Interstate Commerce Commission to promote this kind of policy without reasoned findings based upon substantial evidence as required by the Administrative Procedure Act, the district court has done nothing more than to guarantee the South the minimal protections of the law against this threat. The rightful province of the Commission has in no sense been in-

vaded, for the Commission is still free to decide the case as it sees fit so long as it observes legal requirements.

For the foregoing reasons, the judgment of the United States District Court for the Eastern District of Louisana should be affirmed.

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July, 1968

SUPREME COURT, U. S.

FILED

JUL 31 1968

JOHN F. DAVIS, CLERK

NOS. 13 AND 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

THE BALTIMORE AND OHIO RAILROAD COMPANY, *et al., Appellants,*

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al., Appellees.*

INTERSTATE COMMERCE COMMISSION, *Appellant,*

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al., Appellees.*

On Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division

BRIEF FOR SOUTHERN RAILROAD APPELLEES

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July, 1968

TWENTIETH CENTURY PRESS, INC., CHICAGO 60606

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torial average costs of all traffic carried by the Northern and Southern railroads; and (2) the costs of the North-South freight traffic, which constitute only 6 percent of the total freight traffic of the North and 21 percent of the total freight traffic of the South (A. 795-796). The Commission made it plain that its standard was the costs of the North-South freight traffic (325 I.C.C. at 50; A. 79-80):

> ". . . everything else being substantially equal, the relative costs of the parties *reflecting their respective operations as to this traffic* can properly serve here as a guide for the determination of just, reasonable and equitable divisions."
>
> • • •
>
> ". . . an adjustment in the divisions is required to compensate the respective groups according to their expenditures in the joint effort *of handling this interterritorial traffic.*" (emphasis supplied).

The Commission also stated that "the purpose is to measure the cost of services performed under the line-haul rates to be divided" (325 I.C.C. at 56; A. 89); and that the purpose is to "reflect the costs which are attributable to the traffic at issue" (325 I.C.C. at 26; A. 49-50). The Commission itself thus made it plain that, in using costs as a standard, the relevant costs are those associated with the North-South traffic which produces the revenues being divided. Use of average costs of all traffic, including primarily intraterritorial traffic, would inject revenue needs concepts foreign to the costs of service.

Under the Commission's own standard, the inflation which was accorded the North can be justified only by a showing of higher Northern costs in handling the North-South traffic in issue. The cost evidence relied upon by the Northern railroads was based upon the average costs of all traffic handled within the North and South, coupled with a "train

utilization study" purporting to show that North-South traffic and other traffic reflected in the territorial average were handled in the same trains in the North (A. 541-582). Analysis of the elements of the territorial average costs, however, revealed that for most items of rail freight service, including all of the costs of operating trains, maintaining roadway and stations, and the like, Northern costs are no higher than Southern costs, as measured by the averages relied upon by the Northern railroads. The entire difference between the Northern and Southern costs was accounted for by a relatively few factors (*e.g.*, border point interchanges, car costs, empty return ratios, switching at terminals, commuter deficits) (A. 864-865). The Northern railroads introduced no evidence showing that North-South traffic has characteristics substantially similar to territorial average traffic with respect to these cost elements.

With respect to each of the several elements of territorial average costs which account for the entire difference between Northern and Southern costs, the Southern railroads introduced evidence showing that the higher Northern territorial averages could not be related to the cost of handling North-South traffic. They also proposed adjustments to each such cost element. The Commission criticized and rejected these adjustments proposed by the Southern railroads and, instead, used unadjusted territorial average costs for each of the controverted cost elements that account for the difference between the Northern railroads. However, the Commission did not cite any evidence relating the higher Northern territorial average costs on these elements to the costs of the North-South freight traffic at issue. Nor did it make reasoned findings with respect to the specific contentions advanced by the Southern railroads on the basis of the evidence showing that territorial averages do not measure the relative costs of handling North-South traffic.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

THE BALTIMORE AND OHIO RAILROAD COMPANY, *et al.*, *Appellants*,
v.
ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*, *Appellees*.
No. 13

INTERSTATE COMMERCE COMMISSION, *Appellant*,
v.
ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*, *Appellees*.
No. 15

On Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division

BRIEF FOR SOUTHERN RAILROAD APPELLEES

QUESTION PRESENTED

The Interstate Commerce Commission has ordered that the Northern railroads be given a disproportionate share of the uniform rates on North-South freight traffic. The exclusive basis for this order was that the Northern railroads incur higher costs than the Southern railroads in handling that particular traffic. However, the entire Northern inflation resulted from a few cost elements, as to each of which the Commission used the territorial average costs of all traffic in the respective territories. These averages were not adjusted to measure the relative costs

of the North-South freight traffic constituting only a small fraction of the total traffic. The question presented is whether, on a record in which the higher Northern territorial averages for the several cost elements accounting for the Northern inflation had been challenged as not reflecting the characteristics of the North-South traffic, the district court properly set aside the Commission's order on the ground that there was neither substantial evidence nor reasoned findings relating these higher Northern territorial averages to the North-South freight traffic at issue.

STATEMENT

Prior to the decision of the Commission, the revenues from freight traffic moving between the North and the South were divided on the basis of equality and uniformity. Divisions were made by use of an equal-factor divisional scale, which provided equal compensation for the same amount of service performed by either group of railroads. Thus, for shipments moving the same distance in each territory, the Northern and Southern railroads each received 50 percent of the joint revenue. *Official-Southern Divisions*, 287 I.C.C. 497, 547, 552 (1953).

The establishment of equal-factor divisions followed the Commission's historic decision in *Class Rates Investigation, 1939*, 262 I.C.C. 447 (1945), which was affirmed by this Court in *New York* v. *United States*, 331 U.S. 284 (1947), and which became fully effective in 1952, *Class Rates Investigation, 1939*, 281 I.C.C. 213 (1951). In the *Class Rates* case, the Commission determined that the higher rate levels at that time applicable to the movement of rail freight throughout Southern territory constituted an unlawful discrimination against the South and, accordingly, ordered the discriminatory rate structure replaced with a uniform rate structure applicable throughout the United States east of the Rocky Mountains. The prescrip-

tion of equal-factor divisions of joint rates followed the establishment of rate uniformity in the *Class Rates* case. *Official-Southern Division*, 287 I.C.C. 497, 523 (1953); see also *Official-Southwestern Divisions*, 287 I.C.C. 553, 578 (1953).

Proceedings Before the Commission

The present proceeding began when the Northern railroads filed a petition seeking, as they conceded, "*disproportionate* divisions of a uniform structure of rates" (A. 1543) (emphasis in original). The Commission's order accorded the Northern railroads disproportionate divisions by prescribing divisions calculated from divisional scales in which the scale for the North is substantially higher than the scale for the South. Thus, under the new divisions, for a shipment moving 300 miles in each territory, the Northern divisional factor is 241, whereas the Southern factor is 206 (325 I.C.C. at 51, 82; A. 81, 130), an inflation of 17 percent. The inflation becomes much greater (up to 45 percent) for shorter hauls and somewhat less for longer hauls (*ibid.*).

The inflation in the Northern railroads' divisions granted by the Commission was based exclusively on the Commission's conclusions with respect to cost of service. In considering the standards of Section 15(6) of the Interstate Commerce Act, the Commission found that the Northern and Southern railroads should be considered equally efficient (325 I.C.C. at 18; A. 39), that each group of railroads was of equal importance to the public (325 I.C.C. at 28; A. 51), and that neither group had greater revenue needs than the other (325 I.C.C. at 49; A. 79). Differences in costs were then expressly stated to be the exclusive basis of the Commission's decision (325 I.C.C. at 50; A. 79-80).

The Commission also stated explicitly what costs it relied upon as its standard, distinguishing between: (1) the terri-

Proceedings Before the District Court

The Southern railroads filed this action in the district court to set aside the portion of the Commission's order prescribing an inflation in the divisions of the Northern railroads (A. 6). The three-judge district court (Circuit Judge Wisdom and District Judges Hunter and West) set aside the Commission's order and remanded the case to the Commission. The basis of the district court's decision is summarized in the following portions of its opinion (A. 335, 349-350):

> "Only a relatively few elements of the Northern railroads' average costs are higher than the Southern railroads' costs. It is uncontroverted on this record that most elements of railroad costs (such as operating trains, maintaining roadways, etc.) are no higher in Northern railroads than for the Southern railroads. The inflation in the costs is attributable to a relatively few cost items. These include the cost of commuter operations, the cost of interchanging cars, the ratio of empty to loaded cars, the cost of railroad freight cars, and a few other items. As to each of these controverted items, the Commission relied exclusively on territorial average costs (Rail Form A)."
>
> • • •
>
> "The Commission stated its exclusive standard to be the relevant cost of handling the specific freight traffic to which the divisions apply. We are persuaded that the order is not based on substantial evidence nor supported by reasoned findings within the meaning of Sections 8(b) and 10(e) of the Administrative Procedure Act because the use of territorial averages accounting for the Northern inflation has not been supported with findings or evidence relating any such inflation to the North-South freight traffic.
>
> "What is appropriate in one case may be inappropriate in another. We do not hold that the Commission was required to start from scratch and construct a new divisional scale directly from cost data. We do

find that, having stated its exclusive standard to be the relevant cost of handling the freight traffic to which the divisions apply, the Commission's order is not based on substantial evidence within the meaning of the Administrative Procedure Act. . . .

"With the Commission's expertise in mind, it is our duty to review the record and the conclusions reached, as required by the provisions of the Administrative Procedure Act. As to the sufficiency of the evidence to support the order, it is not the proper function of this Court to substitute its judgment or to weigh evidence. On the other hand, it is our duty to ascertain whether or not the findings and conclusions are supported by substantial evidence."

The district court also observed that compliance with the requirements of the Administrative Procedure Act was especially important in this case in which the outcome "is bound to cut deeply into economic relations on such a scale and when the result involves a departure from an equal divisions formula previously adopted" (A. 355).

The judgment of the district court has been appealed by the Northern railroads (B&O, et al.) and the Interstate Commerce Commission. The United States, the statutory defendant (28 U.S.C. § 2322), did not appeal.

SUMMARY OF ARGUMENT

I. In order to assure effective judicial review of administrative orders, Congress has provided that three-judge district courts shall have the power and the duty to set aside orders of the Interstate Commerce Commission found not to be supported by substantial evidence or reasoned findings. The court below, in performing that statutory duty, reviewed an order of the Commission which abandoned the uniform and equal basis upon which Northern and Southern railroads had been dividing the uniform

rates on North-South freight traffic and substituted divisional factors which are substantially higher for Northern railroads than for Southern railroads.

The exclusive standard adopted by the Commission in this case was the relative costs incurred by Northern and Southern railroads in handling North-South freight traffic at issue. For most elements of costs (including operating trains, maintaining roadway and stations and the like) the average costs were equal in the North and South. As a result, the entire inflation granted to the Northern railroads resulted from the Commission's treatment of a relatively few cost elements (including border interchanges, car costs, empty return ratios, switching and commuter deficits). With respect to each of these several elements that accounted for the entire Northern inflation, the Commission used the territorial average costs of all traffic in the North and in the South rather than the costs of the North-South freight traffic, which constitutes only a small fraction (6 percent) of all traffic in the North and only 21 percent of all traffic in the South.

The Commission's reliance on the higher territorial averages for the cost elements accounting for the entire inflation granted the Northern railroads was not supported by any evidence or reasoned findings relating that inflation to the North-South freight traffic. Since the Commission had adopted the costs of North-South traffic as its exclusive standard, the district court found that the Commission's order was not based upon substantial evidence or reasoned findings as required by Sections 10(e) and 8(b) of the Administrative Procedure Act.

Upon this record, reviewed in light of the standard adopted by the Commission itself, not only was the district court's decision within its power of judicial review but any other decision would have constituted an abdication of

the duty of judicial review established by Congress in the Administrative Procedure Act.

II. The correctness of the district court's holding that the inflation granted the Northern railroads was not supported by substantial evidence or reasoned findings relating any such difference in costs to North-South freight traffic is further shown by analysis of the several cost elements that account for the entire inflation.

The costs attributed by the Commission to the Northern railroads included deficits incurred in providing commuter service in Northern cities. The sole reason given by the Commission for including commuter deficits was that such deficits arise from costs common to freight and passenger service. But the Commission also found as a fact that "many individual items of suburban service" are not common costs at all but are, instead, "solely related" to suburban service (325 I.C.C. at 78; A. 124). The Commission did not justify imputing to the costs of North-South freight service the commuter deficits arising from costs which are solely related to commuter service and which thus have no relation to the costs of North-South freight service.

Appellants' efforts to justify the Commission's inclusion of the entire deficit from Northern commuter operations as an element of freight costs find no support in any finding of the Commission. Appellants' attempted justification rests on concepts of "revenue needs" which the Commission rejected as a basis for decision in this case, and upon a concept of consistency with rate-making—a concept which the Commission did not adopt but which, if adopted, would require uniform divisions of uniform rates rather than an inflation for the North. In recent cases and in reports to Congress, the Commission has articulated a policy *against* burdening freight shippers with deficits from commuter service, and favoring subsidy by the Northern communities

if such services are to be continued. The Commission unlawfully failed to supply any rationalization of its action here in imposing the burden of Northern commuter deficits on Southern railroads and shippers.

The Commission included a separate element in its prescribed cost scales to represent the costs incurred by Northern and Southern railroads in interchanging cars at territorial border points. Based upon territorial averages, this element shows costs 58 percent higher for the North than for the South. The Commission applied these territorial averages to North-South traffic, even though the Northern and Southern railroads are interchanging the *same* cars at the *same* border points and there is no evidence or finding justifying *any* higher costs for the Northern railroads than for the Southern railroads at these interchange points, much less 58 percent higher costs.

Although North-South freight traffic moves in the same cars between the North and the South, the Commission used territorial average car costs which are 32 percent higher for the North. There is no evidence to support any higher costs for the North with respect to the cars used jointly in handling North-South traffic, and the underlying findings of the Commission do not support, but in fact impeach, the prescription of any inflation. Moreover, because the difference in the territorial average costs results from differences in the railroads' car-owning and leasing activities, as contrasted with their function as transportation agencies, the Commission's use of such average costs also violates Section 15(6) of the Interstate Commerce Act, under which the only relevant costs are those incurred in "the service of transportation."

The Commission used the average terminal switching costs for all traffic in each territory in the absence of any evidence relating the higher Northern territorial average costs for all traffic to the relative costs of Northern and

Southern railroads in switching the cars carrying North-South traffic. The Commission rejected the Southern railroads' switching studies as having the "major defect" of being applicable only to the Southern costs of switching North-South traffic and not showing comparable figures for the North (which the Northern railroads declined to study). As the courts have previously held, such treatment of switching costs is untenable.

The Commission applied territorial average empty return ratios to North-South traffic without any evidence that the higher Northern averages were applicable to North-South traffic. And it did so in the face of evidence of record showing that the higher Northern territorial average resulted from traffic characteristics within that territory that had no bearing upon the empty return ratios incurred with respect to North-South traffic. Also, the Commission's use of admittedly inconsistent methods in counting cars improperly inflated the Northern costs. Furthermore, the Commission rejected an adjustment to reflect the full Southern costs of handling essentially transit commodities in North-South traffic on the ground that no comparable adjustment was made for the Northern costs, despite the concession of the Northern railroads that no comparable situation existed in the North.

III. The Commission's departure from its long-standing policy of relating divisions to rate structures, a policy which resulted in uniform divsions of uniform rates in the North and South, has not been justified. Even if the costs applied by the Commission to North-South traffic had been supported by evidence, no reason was given for using the inflation in the Northern costs as a basis for inflating the Northern share of the entire revenue from North-South traffic, which produces a substantial profit over and above the costs incurred in handling that traffic.

IV. There is no merit to the argument made by the Northern railroads that the district court erred in setting aside the Commission's order without reserving jurisdiction where, as here, the Northern railroads did not ask that court to reserve jurisdiction, the procedure followed was in accordance with the express stipulation of the Northern railroads, and re-establishment of uniform divisions is not inequitable to the Northern railroads, which have failed to prove any higher costs in the handling of North-South traffic.

ARGUMENT

I. THE DISTRICT COURT PROPERLY SET ASIDE THE COMMISSION'S ORDER GRANTING AN INFLATION IN THE NORTHERN RAILROADS' DIVISIONS WHERE THAT INFLATION WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE OR REASONED FINDINGS.

The action of the Commission challenged in this case is the abandonment of equal and uniform divisions related to the uniform rate structure and the substitution of a new basis under which the divisional scale for the North is substantially higher than the divisional scale for the South.

Although this action of the Commission was expressly based upon its conclusion that the Northern railroads' costs of handling North-South traffic are higher than those of the Southern railroads with respect to a relatively few elements of service, appellants do not attempt to justify the inflation granted to the North by supporting the few specific cost determinations upon which it rests. They prefer, instead, to discuss generally the Commission's undenied discretion and expertise in finding costs and prescribing divisions. But this case does not turn on any such generalities. The specific question presented by this case and decided by the district court is whether the inflation accorded the Northern railroads is supported by substantial evidence and reasoned findings as required by statute.

In Section 10 of the Administrative Procedure Act, Congress provided for effective judicial review of administrative action. Section 10(e) provides: "The reviewing court shall . . . hold unlawful and set aside agency action, findings and conclusions found to be . . . unsupported by substantial evidence" (5 U.S.C. § 706). Congress further provided that all agency decisions "shall include a statement of . . . findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record" (5 U.S.C. § 557(c)).

Thus, under the statute, it was the duty of the district court to determine whether the Commission's order granting an inflation to the Northern railroads contained reasoned findings which were supported by substantial evidence. *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 487-488 (1951). The district court held that, where the Commission had prescribed divisions "on the basis of the average cost of all traffic for this series of important elements of cost which are higher in the North for reasons that have not been shown to have any relation to the North-South freight traffic here at issue," the Commission's "order is not based on substantial evidence nor supported by reasoned findings within the meaning of Sections 8(b) and 10(e) of the Administrative Procedure Act" (A. 348-349).

The record before the district court compelled this conclusion. The basic issue in the case was whether inflated divisions for the Northern railroads were justified on the basis of relative costs. Both Northern and Southern railroads used the Rail Form A cost formula as a framework for analysis. Of the scores of separate cost elements covered by Rail Form A, the Northern railroads' claim for an inflation depended upon the use of the unadjusted territorial average costs of all traffic for a few elements. Analysis of these several elements did not involve any attack upon Rail Form A as a framework for cost analysis, and the

Commission itself did not reject the Southern railroads' claims on any such basis. Instead, the controversy as to each of the challenged cost elements centered on the question of whether the difference in the territorial averages represented higher Northern costs incurred in handling North-South traffic.

The Southern railroads presented evidence to show that the higher Northern territorial average costs could not be used to justify an inflation with respect to the North-South traffic at issue in this case in light of the physical facts of handling North-South traffic. For example, as more fully described *infra* (pp. 43-46), the Southern railroads showed that North-South traffic moves between the territories in the same cars, and that these cars are interchanged between Northern and Southern railroads at points located on the territorial border under such circumstances that these costs, whatever their dollar amount, are the same for both Northern and Southern railroads. No Northern railroad witness even claimed that these costs were higher for the Northern railroads. Yet the Northern railroads relied upon and the Commission used territorial average interchange costs which are 58 percent higher in the North. Although critical of the Southern railroads' efforts to estimate the dollar amount of the equal costs of interchanging the same cars at the same points, the Commission did not find that the Northern costs for this element of service are in fact higher than Southern costs, but simply used the 58 percent higher territorial average. An unexplained and unjustified reliance upon the territorial average costs for all traffic cannot serve as evidence when the whole issue is whether any difference in the costs, much less the 58 percent difference in the territorial averages, is applicable to North-South traffic.

The Northern railroads did not present evidence even attempting to show how the higher average costs of all traffic could have any relation to the North-South traffic at issue insofar as the elements which accounted for the entire Northern inflation were concerned. The Northern railroads did introduce a "train utilization study" designed to show that North-South traffic moves in the same trains as other traffic (ICC Brief, p. 35 n. 31; B&O Brief, pp. 32, 38). But there is no controversy as to train costs, such as "locomotive maintenance, fuel, train crew costs" (ICC Brief, p. 27), because average train costs are not higher in the North than in the South (A. 864-865). As a result, these costs had nothing to do with the cost elements upon which the inflation prescribed by the Commission rested (as the district court recognized, A. 335). Analysis of train costs merely confirms that the costs of handling North-South traffic are equal in the respective territories.

Appellants' present theory that the "train utilization study" supports the use of territorial averages to measure *all* elements of cost on North-South freight traffic finds no support in the record and is contradicted by the Commission's own decision since, as counsel concede (ICC Brief, p. 8), the Commission itself adjusted the territorial averages in several separate respects. Nowhere did the Commission itself rely upon generalizations about train costs or the "train utilization study" as justifying use of unadjusted territorial averages to measure the several elements, including gateway interchanges, car costs, empty return ratios, and commuter deficits, which actually account for the inflation granted the Northern railroads but which have nothing whatever to do with "train utilization".[1]

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[1] In citing the conclusions of the Northern railroads' witness who introduced the "train utilization study" (ICC Brief, p. 35), Commission counsel fail to indicate that this same witness confined

As to these disputed cost elements, the Northern railroads simply rested upon the territorial averages themselves. Thus, unlike the usual case in which the Commission decides on the basis of conflicting evidence whether or not the territorial average properly measures the cost of a particular service performed on the traffic involved, the record here was devoid of evidence justifying the application of higher Northern territorial average costs to North-South traffic with respect to the cost elements that accounted for the entire Northern inflation. Upon such a record, the district court properly concluded that the Northern inflation prescribed by the Commission was not supported by substantial evidence or reasoned findings.

Such a holding does not, as appellants would have this Court believe, condemn Rail Form A or render it unwork-

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his conclusion to train operations and admitted that he knew nothing about empty return ratios or the other cost elements that cause the inflation in the Northern costs (A. 986).

The Northern railroads refer to Northern wage levels, which they say are higher than those in the South (B&O Brief, p. 39, n. 14). The cost of labor was not one of the elements of Rail Form A costs relied upon by the Commission to show a generally higher Northern cost level. Nor could the Commission have relied upon labor costs because wages in the North, which are only 2 per cent higher than in the South and which occur in the "executive and professional" categories (A. 941, 1035-1036), are offset by the far greater traffic density on the lines of the Northern railroads than is enjoyed on the lines of the railroads operating in the South (A. 791). Whatever the factors affecting the levels of these costs in the several territories, their net effect is that the costs *per unit* of traffic are not higher in the North except for the several elements of territorial average costs referred to in the text that account for the entire Northern inflation.

able. All that the district court required, and the least that it could have required, was that with respect to the several cost elements which produced the entire Northern inflation, there be evidence relating the difference in the territorial average costs to the North-South traffic at issue (A. 348-349):

> "Defendants argue that the question of whether or not Rail Form A was representative, and whether it should have been supplemented are questions of fact, the determination of which is within the competence of the Commission. We start, of course, from the premise that on the subject of transport economics, the Commission's judgment is entitled to great weight. The appraisal of cost figures is itself a task for experts and, unlike a problem in mathematics, it cannot be precisely right or wrong. We know, too, that the Rail Form A cost formula was devised for the express purpose of measuring territorial average costs and has been widely used as an acceptable means of comparing relative transportation costs. It represents a comprehensive study entitled to full weight when the issue is one that it was designed to cover. However, this formula was designed to measure the cost of handling all the traffic in two or more territories, and cannot appropriately be accepted *without further evidence* for mechanical application to particular segments of traffic in a divisions case. The 'many minute calculations' contained in Rail Form A were used to measure the overall average costs and certainly produce a misleading appearance of exactitude when applied mechanically to measure a specific cost of a specific body of traffic such as that involved here. Evidence of overall territorial averages surely can and should be considered, *but as to specific important cost items the Commission should not wholly and exclusively rely on such averages. United States* v. *Abilene and Southern R.R. Co.*, 265 U.S. 274; *Atchison, Topeka and Santa*

Fe Ry. Co. v. *United States*, 225 F. Supp. 584." (Emphasis supplied).[2]

It is thus apparent that the district court did not hold or even suggest that the Commission should not follow the Rail Form A method of analyzing transportation costs by breaking down transportation services into the particular elements of cost. What the district court did hold was that in using this method of cost determination, the Commission could not simply assume, without evidence, that a higher Northern territorial average for a particular element of cost necessarily meant that the Northern railroads incurred similarly higher costs on North-South traffic.

It is simply arbitrary to assume, without any supporting evidence, and in the face of the undisputed physical facts, that the average costs of 100 percent of the Northern traffic and 100 percent of the Southern traffic measure, as to all elements of cost, the relative costs of handling North-South traffic, which represents only 6 percent of the total traffic in the North and 21 percent of the total traffic in the South (A. 795-796). The average costs of the Northern railroads are obviously governed by the costs of the 94 percent of the total traffic which is not North-South traffic. Indeed, nearly 80 percent of the total Northern traffic is intraterritorial (A. 908), and it is that traffic, handled entirely within the North, that has the dominant

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[2] In *United States* v. *Abilene and Southern R. Co.*, 265 U.S. 274, 291 (1924), Mr. Justice Brandeis emphasized in a divisions case that "averages are apt to be misleading." In *Atchison, T. & S. F. Ry. Co.* v. *United States*, 225 F.Supp. 584, 606-607 (D. Colo. 1964), the three-judge court (opinion by Judge Doyle) set aside a Commission order prescribing divisions where the Commission had relied upon misleading averages without the reasoned findings required by the Administrative Procedure Act. Neither the Commission nor the United States appealed that decision.

influence on the Northern average. A higher Northern average cost may well mean that the cost of handling intraterritorial traffic is higher than the cost of handling the *different* intraterritorial traffic in the South. But it is arbitrary to assume, without further evidence, that territorial averages alone prove that the Northern costs are higher than the costs of the Southern railroads in their joint handling of the *same* traffic between the North and the South.[3] As the Court held in setting aside an order of the Commission in *I.C.C.* v. *Mechling*, 330 U.S. 567, 583 (1947): "The unsifted averages put forward by the Commission do not measure the allegedly greater costs [of the carriers] nor indeed show they exist."

The ruling of the district court that the several territorial average cost elements which account for the entire Northern inflation could not be sustained without any evidence relating the differences in the territorial average cost to North-South traffic is the minimum ruling that the court could have made consistent with the statutory requirement that Commission orders be supported by substantial evidence. Contrary to the contentions of Commission counsel that the district court ruling will somehow frustrate the Commission's administration of divisions and rate cases (ICC Brief, p. 33, n. 27), the Commission itself has imposed a far more rigorous and all-inclusive standard. In *Increased Freight Rates, 1967*, 332 I.C.C. 280 (1968), the Commission held on three separate occasions that territorial average costs have little value in determining the costs of handling particular segments of traffic. For example, the Commission held: "Territorial costs are not necessarily

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[3] The question is not whether any averages may be used. Rather the question is whether the relative costs of handling two bodies of traffic (all traffic in each of the two territories) may be used, without any supporting evidence, to measure the relative costs of handling a single and different body of traffic (North-South traffic).

determinative of the costs of particular movements. See *Louisville & N. R. Co.* v. *Akron, C. & Y. R. Co.*, 309 I.C.C. 491 [a divisions case involving one Southern railroad and all Northern railroads]" (332 I.C.C. at 294). The Commission also ruled that "territorial average costs are entitled to little weight in determining the costs of handling particular movements" (332 I.C.C. at 303; see also 332 I.C.C. at 296).

No one has ever suggested that these holdings, or similar holdings of the Commission in divisions cases[4] and rate cases,[5] cast any doubt upon the usefulness of Rail

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[4] *Louisville & N.R. Co.* v. *Akron, Canton & Youngstown R. Co.*, 309 I.C.C. 491, 509 (1960); affirmed sub nom. *Boston and Maine R. Co.* v. *United States*, 208 F. Supp. 661 (D. Mass. 1962), affirmed 371 U.S. 26 (1962); *Louisville & N.R. Co.* v. *Southern Ry. Co.*, 319 I.C.C. 639, 654 (1963), affirmed sub nom. *Carolina & Northwestern Ry. Co.* v. *United States*, 234 F.Supp. 112 (W.D. N.C. 1964), affirmed, 380 U.S. 526 (1965). In *Illinois Central R. Co.* v. *Great Northern Ry. Co.*, I.C.C. Docket No. 34699 (Examiner's report dated September 15, 1966, adopted by the Commission July 31, 1967, modified March 20, 1968), the Commission relied upon a cost study in which, contrary to the contention of the Northern railroads (B&O Brief, p. 33, n. 10), the Illinois Central had adjusted Rail Form A "to take into account the particular characteristics of the traffic involved" including switching costs, interchange costs and other elements (Examiner's report, sheet 4). None of the several cost elements which account for the entire Northern inflation in this case was specifically controverted in the *Illinois Central* case.

[5] *Midwest Emery Freight System, Inc.* v. *Baltimore & O. R. Co.*, 321 I.C.C. 637, 650 (1964); *American Agricultural Chemical Co.* v. *Atlantic C. L. R. Co.*, 258 I.C.C. 779, 786 (1944); *United States* v. *Great Northern Ry. Co.*, 293 I.C.C. 341, 345 (1954); *State Corporation Commission of Kansas* v. *Atchison, T. & S. F. Ry. Co.*, 301 I.C.C. 703, 742 (1957); *Rochester & Pittsburgh Coal Co.* v. *Baltimore & O. R. Co.*, 294 I.C.C. 423, 433-435 (1955); *Rath Packing Co.* v. *Ahnapee & W. Ry. Co.*, 296 I.C.C. 693, 715 (1955); *Phosphate Rock to Shreveport and Nacogdoches*, 298 I.C.C. 353, 358-359 (1956); *Crude Sulphur from Louisiana and Texas to Virginia*, 300 I.C.C. 715, 726 (1957).

Form A as a tool for cost determination.[6] The Commission simply held in those cases, as the district court held here with respect to the several cost elements that account for the entire Northern inflation, that unadjusted territorial averages should not be used without independent evidence to support their application to the particular traffic at issue.[7]

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[6] Nor has the Commission itself ever suggested, as appellants strenuously urge here (ICC Brief, p. 26, B&O Brief, p. 34), that the requirement of anything more precise than territorial average costs is illusory, and that more reliable costs are impossible of ascertainment. If more reliable costs can be determined in rate cases for large categories of traffic moving throughout the various territories with a degree of accuracy sufficient to lead the Commission to reject territorial averages as entitled to little weight, the same improvement in reliability can be achieved with any other body of traffic, including North-South traffic.

[7] Appellants' reliance on the use of Rail Form A in *New York* v. *United States*, 331 U.S. 284 (1947) (ICC Brief, p. 35, n. 30; B&O Brief, pp. 31-32), is misplaced. In that case, the Commission made it plain that "the intent of the cost study was to reflect territorial average operating conditions . . ." *Class Rates Investigation, 1939*, 262 I.C.C. 447, 588 (1945). The Commission was not, as appellants assert, undertaking to measure the cost of the small volume of traffic actually moving on class rates, but was deliberately seeking to measure the average costs of all traffic. Class rates constitute a maximum or ceiling for all traffic, and the Commission has consistently used the class rates prescribed in that proceeding as the guide for rates generally. See *Page Belting Co.* v. *Boston & M. R. Co.*, 294 I.C.C. 307, 309 (1955); *Mannington Mills, Inc.* v. *Abilene & S. Ry. Co.*, 301 I.C.C. 275, 276, 283 (1957), and cases cited therein. In *New York* v. *United States*, 331 U.S. 284 (1947), the Court upheld the Commission's action on the premise that it was intended to affect all traffic (331 U.S. at 309). The Commission's deliberate use of territorial averages applied to all traffic in the *Class Rates* case is in marked contrast to the Commission's declaration in this case that the standard here is the cost of handling the North-South traffic in issue (325 I.C.C. at 26, 50, 56; A. 49-50, 79-80, 89).

Appellants also argue that the district court imposed an undue burden upon the Commission when it pointed out that the Commission has extensive powers to require the production of cost evidence (ICC Brief, pp. 31-33; B&O Brief, pp. 34-39). The district court did not impose any burden on the Commission, much less an undue burden. The holding of the district court was simply that the Commission itself having stated as its exclusive standard the costs of North-South traffic, the Commission's action in prescribing an inflation for the North was not supported by substantial evidence or reasoned findings relating any such inflation to the North-South traffic (A. 349).

The question of the extent of the Commission's power "to investigate and gather evidence beyond that presented" (A. 353) was raised by the Commission's rejection of several of the adjustments proposed by the Southern railroads on the ground that, although the Southern railroads had presented evidence showing the costs of handling North-South traffic in the South, the Northern railroads had not presented evidence of the costs of handling North-South traffic in the North and, therefore, no "comparable evidence was available in the record" (district court opinion, A. 344 n. 13, citing four such instances in the Commission's report, 325 I.C.C. at 60, 66, 69, 76; A. 94, 105, 110, 121). Under these circumstances the district court properly observed: "The I.C.C. is not the prisoner of the parties' submissions. It is empowered to investigate and gather evidence beyond that presented . . ." (A. 353). The district court added that, in a case in which there is a lack of substantial evidence to support the Commission's order, so that additional cost evidence "is necessary to assure an adequate record," the Commission has a duty before it acts "to take affirmative action to require the development of an adequate record" (A. 354).

In referring to the Commission's powers to obtain evidence, the district court was simply emphasizing its holding that an order prescribing an inflation for the Northern railroads based upon the costs of handling North-South traffic must be supported by substantial evidence. Whether the Northern railroads supply the evidence,[8] or the Commission itself gathers the evidence, there must be substantial evidence to support the prescribed Northern inflation before the Commission's order can be sustained (see A. 1279-1290). The district court held that, because the evidence to support the inflation had not been obtained by *any* means, the inflation was unsupported by substantial evidence.[9]

Appellants would obscure the question presented by this case and decided by the district court. For example, Commission counsel state (ICC Brief, p. 3):

> "The question presented is whether, in ascertaining the relative costs of service in an interterritorial divi-

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[8] As the Court stated in *Interstate Commerce Commission* v. *New York, N.H. & H.R. Co.*, 372 U.S. 744, 760, n. 12 (1963):

> "Of course, when such an issue is raised, each carrier should bring forward the data relating to its own costs that are required for resolution of the issue."

[9] In *Boston & Maine R. Co.* v. *United States*, 162 F. Supp. 289, 298 (D. Mass. 1958), the district court set aside a Commission order and held that if the cost evidence is not sufficient, the Commission has the duty to take further evidence or "turn the matter over to its accounting staff for investigation." On appeal by other parties, the Commission declined to defend its order and advised this Court of its readiness to "'proceed in accordance with the terms of the remand". *Boston & Maine R. Co.* v. *United States*, 358 U.S. 68, 71 (1958). See also *Eastern Central Motor Carriers Ass'n* v. *United States*, 239 F. Supp. 591, 599, 601 (D. D.C. 1965); *Pacific Inland Tariff Bureau* v. *United States*, 129 F. Supp. 472, 486 (D. Ore. 1955). The Commission did not appeal either of these holdings as imposing any undue burden upon its administration of the Act.

> sions case, the Commission may rely on Rail Form A data as to territorial average costs, *adjusted* to more accurately reflect the costs of the particular traffic involved, or is required to develop more refined cost data." (Emphasis supplied).

This statement of the question ignores the dominant feature of this case, namely, that the Commission ordered a change from uniform divisions of uniform rates to a substantial inflation in the divisions of the Northern railroads, and that with respect to the few specific elements of cost which account for the entire Northern inflation, the Commission used territorial average costs *without any adjustment* and without evidence relating the higher Northern territorial average costs to the North-South traffic.

Appellants do not dispute the district court's statement that "the entire inflation is pegged on relative costs derived from Rail Form A" (A. 350). But counsel nevertheless present arguments that have no bearing upon the issues presented by this case. For example, Commission counsel urge: "The Commission plainly has the statutory authority to compute costs by adjusting and applying Rail Form A territorial unit data [to North-South traffic]" (ICC Brief, p. 17). No one, least of all the district court, challenges the statutory authority of the Commission "to compute costs by *adjusting* and applying Rail Form A" (emphasis supplied). The issue in this case arises from the fact that the entire inflation accorded the Northern railroads is produced by the Commission's use of Rail Form A territorial average costs for several specific cost elements as to which the Commission made *no adjustment at all,* and as to which there was no evidence relating the higher Northern average costs of all traffic to the North-South traffic, which

constitutes only 6 percent of all traffic in the North and 21 percent of all traffic in the South (A. 795-796).[10]

Appellants also obscure the issue by arguing that the district court has interfered with the administration of the Interstate Commerce Act by *requiring* the Commission to decide divisions cases on the basis of the costs of handling the specific traffic at issue (ICC Brief, pp. 3, 11, 12, 16; B&O Brief, pp. 5, 16, 18, 29, 33-34, 37). But the district court did not decide that these divisions should be based on the relative costs of North-South freight traffic. That was the Commission's decision.[11] As the district court stated: "The Commission stated its exclusive standard to be the relevant cost of handling the specific freight traffic to which the divisions apply" (A. 349). The district court

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[10] *Carolina & N.W. Ry.* v. *United States*, 234 F. Supp. 112 (W.D.N.C. 1964), affirmed, 380 U.S. 526 (1965), cited by Commission counsel for the proposition that this Court has approved "restated Rail Form A computations" (ICC Brief, pp. 18-19), has no bearing on the issue where, as here, the entire inflation is produced by several territorial average cost elements which were not "restated" by the Commission. In the case cited, the district court upheld the Commission's action in *making* an adjustment in the critical element of car costs to reflect the costs of the traffic at issue, dismissing a complaint that the Commission should not have "deviated," as it did (319 I.C.C. at 654), from the unadjusted Rail Form A average cost.

[11] This is not a case in which the district court has attempted to impose upon the Commission its own views with respect to the economics or any other feature of the standard selected by the Commission. Compare *American Commercial Lines, Inc.* v. *Louisville & N. R. Co.*, — U.S. — (decided June 17, 1968), where the district court had disagreed with the cost standard adopted by the Commission in passing upon rail rates reduced in competition with barge rates.

properly and necessarily[12] examined the record to ascertain whether there was substantial evidence to support the Northern inflation under the standard which the Commission itself had adopted. The Commission having selected as its exclusive standard the costs of handling North-South traffic, the question for judicial review was whether the inflation accorded the Northern railroads was supported by substantial evidence and reasoned findings relating that inflation to the costs of the North-South traffic at issue.[13]

As Commission counsel recognize, Rail Form A breaks down the total expenses of the carriers into a number of groups or elements, such as train crew costs, locomotive maintenance, car costs, and many others; and each element is subject to adjustment as required by the facts of a particular case (ICC Brief, p. 18, n. 13). In this case, the use of territorial average costs for a relatively few elements accounts for the *entire* inflation accorded to the Northern railroads (A. 864-865). The district court expressly recognized this significant feature of the case (A.

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[12] "A reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency." *S.E.C.* v. *Chenery Corp.*, 332 U.S. 194, 196 (1947); *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 168-169 (1962); *N.L.R.B.* v. *Metropolitan Life Ins. Co.*, 380 U.S. 438, 443-444 (1965).

[13] For this reason, Commission counsel's reliance upon *S.E.C.* v. *New England Electric System*, 390 U.S. 207 (1968) (ICC Brief, pp. 14, 23, 26), is misplaced. In that case, the lower court was reversed for an "unwarranted incursion into the administrative domain" where that court had disagreed with the agency on the basis of its own "fresh review of all the evidence" (390 U.S. at 211-212). This Court observed the statutory standard that administrative findings were conclusive "if supported by substantial evidence" (390 U.S. at 211). The district court in the present case has observed the same standard.

335) and directed its attention to the particular question of whether there was substantial evidence to support "the use of territorial averages accounting for the Northern inflation" in measuring the relative costs of North-South traffic (A. 349).

The district court found no substantial evidence or reasoned findings "relating any such inflation to the North-South freight traffic" (A. 349). Contrary to the overdrawn assertions of Commission counsel (ICC Brief, p. 22, n. 19), the district court did not require "slavish adherence to any particular exactitude." It did require that there be substantial evidence relating the prescribed inflation to the North-South traffic. Appellants make no effort to cite any evidence that even purports to show that the several territorial average cost elements which produce the entire inflation have any relation to the comparative costs incurred in handling the North-South freight traffic. Instead, appellants devote their discussions of the specific cost elements that produce the inflation to an attack on estimates made by the Southern railroads to adjust these costs (ICC Brief, pp. 38-48; B&O Brief, pp. 40-42). But even assuming for the purpose of judicial review that the adjustments suggested by the Southern railroads were properly rejected by the Commission, the use of the unadjusted territorial averages that produce the entire inflation remains unsupported by evidence relating such an inflation to the North-South traffic.

Contrary to appellants' repeated assertions to the contrary (ICC Brief, pp. 18, 20, 25; B&O Brief, pp. 19, 26-30), the decision of the court below is not inconsistent with the decision in *Chicago & N.W.R. Co.* v. *Atchison, T. & S. F. R. Co.*, 387 U.S. 326 (1967). In that case, a district court had set aside a Commission order on the ground that it failed to make findings as to the revenue needs of individual railroads. The United States and the Commission

appealed in order to defend the group basis of determining divisions. This Court held that the district court had erred (387 U.S. at 340-351), and went on to uphold the Commission's cost findings as well (387 U.S. at 356). The Court pointed out that the parties *attacking* the order (the Mountain-Pacific railroads) were the *beneficiaries* of an inflation in their divisions.[14] The Court reviewed the Commission's cost findings and upheld Commission's decision "to base its cost findings upon the special cost study and analysis prepared by the Mountain Pacific carriers," subject to "certain adjustments to the Mountain-Pacific analysis which, in the judgment of the Commission, more accurately reflected the true costs of the traffic involved" (387 U.S. at 352).[15]

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[14] The inflation granted by the Commission was expressly related to the different and higher level of rates west of the Rocky Mountains (387 U.S. at 357-358).

[15] The Northern railroads contend that the Commission's treatment of two of the seven cost elements that account for the entire Northern inflation in this case (car costs and empty return ratios) "was sustained by this Court" in the *C&NW* case (B&O Brief, p. 42, n. 16, 17).

With respect to car costs, the Court expressly stated in *C&NW* that it did *not* review the Commission's treatment of that cost element because "this issue related only to the Eastern divisions," which, as the Court emphasized, were "no longer in issue" (387 U.S. at 354).

With respect to empty return ratios, the Court sustained the Commission's treatment, quoting from the Commission's report in that case which showed that "[m]any special studies of empty-return movement were undertaken in these proceedings" (387 U.S. 352). One of these special studies, presented by the Midwestern railroads, was designed to show that the territorial average empty return ratios did, in fact, reflect the empty-return relationship applicable to the traffic at issue (I.C.C. Docket 31503, Exhibit MW-586, pp. 42-44). Thus, the record in that case did contain evidence relating the territorial average costs to the traffic in issue. No such evidence exists in the present case. Indeed, the Northern railroads expressly refused to make a study on this subject (see p. 60, n. 35, *infra*).

Appellants' arguments, including their mistaken reliance upon the *C&NW* case, all come down to the proposition that Commission orders relating to divisions or costs are simply beyond the scope of any effective judicial review (*e.g.*, ICC Brief, p. 19; B&O Brief, pp. 25-26).[16] This is not the law. Congress has empowered and directed the federal courts to provide effective judicial review and has specifically directed that administrative orders be set aside by the courts where not supported by substantial evidence or reasoned findings. Administrative Procedure Act, Sections 8(b) and 10(e).[17] This Court has emphasized that these provisions are meant to be enforced. *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 167-168 (1962).

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[16] The Northern railroads rely heavily on the pre-Administrative Procedure Act decision in *Illinois Commerce Commission* v. *United States*, 292 U.S. 474 (1934) (B&O Brief, pp. 25, 39, 43; also ICC Brief, p. 19), although that case had nothing whatsoever to do with the requirements of adequate findings or substantial evidence. It involved a Commission order directing "the removal of unjust discrimination against interstate commerce, resulting from disparity of the intrastate and interstate switching rates of interstate rail carriers in the Chicago Switching District" based on a specific cost study of switching movements in Chicago (292 U.S. at 476). That case would be analogous to the present case only if the cost study relied upon to measure Chicago switching costs had been developed from the average cost of all switching movements throughout the entire North.

[17] As Judge Prettyman held in reviewing a cost determination by another agency in *Mississippi River Fuel Corp.* v. *F.P.C.*, 163 F.2d 433, 439 (D.C. Cir. 1947):

> "The discretion which must be exercised is that of the Commission. Congress has confided that function to it. At the same time, Congress has forbidden arbitrary action and has imposed upon the courts a duty of review in that respect. Arbitrary action, if it means anything, means action not based on facts or reason. The discretion and judgment confided in the Commission must be exercised upon facts and for reason. The duty of review imposed upon the courts requires that the

The district court in the present case has performed its statutory duty of determining whether the inflation granted the Northern railroads was based upon substantial evidence and reasoned findings with respect to the cost of North-South traffic—the standard adopted by the Commission itself. Since appellants are unable to refer this Court to any evidence of record relating the territorial averages of all traffic to the costs of North-South traffic with respect to the several elements of cost which account for the entire inflation, it is manifest that the district court was correct in its holding.

II. REVIEW OF THE COMMISSION'S TREATMENT OF EACH OF THE SPECIFIC ITEMS ACCOUNTING FOR THE NORTHERN INFLATION REVEALS A LACK OF SUPPORT IN SUBSTANTIAL EVIDENCE AND REASONED FINDINGS.

As has been shown, the district court was correct in setting aside the Commission's order because of the lack of substantial evidence and reasoned findings relating the higher territorial average costs for the several cost items that accounted for the entire Northern inflation to the costs of handling the North-South traffic here in issue. The correctness of this holding is further demonstrated by analysis of each of the specific cost items in controversy.

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facts be found and the reasons stated. Otherwise, the courts cannot determine whether a given action is or is not arbitrary.

"The Congressional provisions extend to complicated, difficult matters as well as to simple questions. The courts cannot evade their responsibility merely because the subject matter is obscure. And neither can they be required to probe the minds of the agency for unfound facts or unexpressed reasons. The coordination of the two functions of administrative discretion and judicial review requires that the facts upon which the discretion is exercised, and the reasons, be clearly and completely stated. When the matter is complicated, the necessity is greater."

A. The Commission's Inclusion of Commuter Deficits in the Northern Railroads' Costs is Wholly Unjustified.

One of the important reasons why the Northern railroads' territorial average costs are higher than the average costs of the Southern railroads is that the Northern railroads' average costs are increased by the inclusion of suburban passenger deficits, whereas the Southern railroads do not have any substantial commuter operations.

The underlying facts are not in dispute. Through the use of average costs, the deficits attributable to both intercity passenger service and suburban commuter service are included in the cost computations for the Northern and Southern railroads. It is generally agreed that the intercity passenger deficits must be considered as part of the costs of providing freight service, for such deficits are usually the result of costs allocated to passenger operations from common facilities which must be maintained in order to provide freight service (A. 713-714).[18] Suburban passenger deficits, however, are quite another matter. The railroads which carry large numbers of people from their homes in the suburbs to their places of work in the cities often, if not exclusively, use separately constructed and maintained lines. These suburban commuter operations require facilities with no other use whatever.

At no time during the proceedings before the Commission did the Northern railroads even try to offer any sup-

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[18] The necessity of maintaining common facilities for freight service was recognized by the Court in *King* v. *United States*, 344 U.S. 254, 265 (1952):

> "In Florida, moreover, the discontinuance of railroad passenger service would not permit the discontinuance of high-speed tracks and equipment because of the need for fast freight schedules to transport perishable fruits and vegetables from Florida."

port for treating all commuter deficits as a part of the cost of freight service. Indeed, the position of the Northern railroads at that time emphasized the solely-related character of commuter service (Statement of Northern commuter railroads quoted at A. 714-715):

> "Another vitally important feature of railroad suburban service is the subject of wide misunderstanding by the public. This is the extent of railroad investment and railroad costs represented by fixed facilities, such as track. It is a widely held but entirely false belief that railroads use, for their suburban and commutation services, primarily those roadway facilities which they must necessarily have and maintain for their other operations. . . .
>
> "These notions are completely false as applied to railroads handling a substantial volume of suburban passengers. Reference to Exhibit J [a chart showing exclusive use of tracks for suburban service] exemplifies the situation which actually exists. . . .
>
> ". . . one-half of the track facilities in this territory are maintained solely because of the company's suburban service operations. A far larger proportion of other roadway facilities, such as stations, terminals, coach yards and repair shops, are maintained solely in connection with suburban service."

The sole reason given by the Commission for the inclusion of commuter deficits in Northern railroad costs is that "*Because* the suburban service deficit *includes common costs* which must be incurred to provide freight service or intercity passenger services, *such* costs are properly chargeable to those services to the extent they cannot be recovered from suburban operations" (325 I.C.C. at 78; A. 124) (emphasis supplied). This finding of the Commission justifies inclusion of suburban deficits to the extent, and only to the extent, that they relate to common costs.

But the Commission also found as a fact that "*many* individual items of suburban service can be considered *solely related* . . . to suburban service" (325 I.C.C. at 78; A. 124) (emphasis supplied). This finding was required by the uncontroverted evidence of record showing that commuter equipment, and many tracks, yards, stations and other facilities are solely related to commuter service and thus have nothing whatever to do with the cost of handling North-South or any other freight traffic. The Commission gave no reason for including any of these costs solely related to commuter service in determining the costs of North-South freight traffic.

Under the Commission's own basis for decision, the district court correctly found (A. 345):

> "The critical issue on this cost item was to determine how much of the railroads' cost of commuter service was in fact common with the cost of freight service and how much was solely related to commuter service. But, in accordance with its general approach to these issues, the Commission, by adopting Rail Form A, inflated the Northern railroads' freight costs by the entire commuter deficit of those railroads, without regard to the plain conflict between this action and its own finding that 'many individual items of suburban service can be considered solely related . . . to suburban service.'"

Contrary to the contention of Commission counsel that the district court was "substituting its own view" (ICC Brief, p. 42), the district court decided the case on the standard adopted by the Commission—the costs of North-South freight traffic—and further accepted the *Commission's* view that passenger deficits arising from common costs should be attributed to North-South freight traffic.[19] What the district

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[19] Much of the Northern railroads' argument (B&O Brief, pp. 23-24, 49 n. 24, 53-54, 55) constitutes an attack upon the position stated by the Commission that passenger deficits are included in freight costs *because* of common costs (325 I.C.C. at 78, A. 124).

court did not, and could not, accept was the unexplained and unjustified inclusion of costs "solely related" to commuter service.[20]

Appellants no longer even attempt to defend the attribution of the entire northern commuter deficit to the costs of freight traffic. Instead, they now attempt to explain the Commission's inclusion of commuter deficits unrelated to freight traffic on the ground that commuter deficits represent a kind of "overhead" which must be recovered by proportionate charges to other traffic.

Appellants point to the Commission's statement that the prescribed divisions are based upon fully distributed costs, which include allowances for "overhead," as indicating that the Commission itself included commuter deficits not on a relative cost theory, but on a revenue needs theory (ICC Brief, p. 44; B&O Brief, p. 48). There is no merit in this attempted defense of the Commission's treatment of the cost of commuter deficits. The Commission did not inflate the Northern railroad divisions on the basis of "revenue needs," since these were found to be the same in both terri-

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[20] The Northern railroads also argue that there are solely related deficits in intercity passenger services in the South (B&O Brief, pp. 53-54; see also ICC Brief, p. 44, n. 40). This argument was recited as a contention of the Northern railroads but was not adopted by the Commission as a ground for its decision (325 I.C.C. at 78; A. 123). Even if this theory were sound, it would not lead to the conclusion that passenger deficits in both territories which are unrelated to freight service should nevertheless be used to inflate freight costs. The obvious solution, if there were passenger deficits not related to freight operations in both North and South, would have been to exclude such deficits in both territories. Even under the Northern railroads' argument, the failure to exclude all solely related passenger deficits was prejudicial to the Southern railroads in view of the much greater effect of the commuter deficits in inflating the costs of the Northern railroads (A. 1291).

tories (325 I.C.C. at 15-16; A. 36-37). As the district court held (A. 345):

> "The complete answer to this contention is that the Commission did no such thing. The revenue need issue was hotly contested before the Commission, each group contending that its needs were greater—the Northern railroads, on the basis of lower rates of return; the Southern railroads, on the basis of their growing service responsibilities to an expanding economy. The Commission rejected both contentions . . ."

The stated basis for the Commission's order in this case was the relative costs of handling North-South freight traffic (p. 4, *supra*). The Commission's decision to include "overhead" in the costs in addition to out-of-pocket costs did not imply any departure from its standard that North-South freight costs are determinative. Under the Commission's own standard, the only allowance for "overhead" to be included would be those overhead items inherent in handling North-South freight traffic (such as officers' salaries, general office expenses and other overhead inherent in freight operations). Since the Commission recognized that "many individual items of suburban service" were "solely related" to that service (A. 124)—that is, completely unrelated to any kind of freight traffic—the entire commuter deficits could not be a part of the "overhead" that make up the costs of North-South traffic under the Commission's own standard.

The Commission's action in dealing with other cost factors makes it plain that its decision to include allowances for "overhead" referred only to such items of overhead as are related to North-South freight traffic. For example, the Commission specifically excluded the platform deficits realized or incurred by the Northern railroads in the handling of other traffic because such deficits were not related to

North-South freight traffic (325 I.C.C. at 56; A. 89). The Commission refused to include any part of these deficits as a part of the costs to be determined in this case, not because such deficits do not have to be made up if the financial integrity of the railroads is to be maintained, but because the Commission recognized that no part of these deficits is properly considered a part of the cost of North-South freight traffic (*ibid.*). The same is true with respect to the commuter deficits of the Northern railroads attributable to facilities and operations solely related to suburban service.[21]

Appellants also argue that since commuter deficits constitute a burden which might justify higher rates, such deficits should also be reflected in higher divisions for the railroads incurring the deficits on the theory that rates should be divided in accordance with the manner in which they are made (ICC Brief, p. 43; B&O Brief, p. 47). No such theory was adopted or even suggested by the Commission itself. Moreover, the theory that rates should be divided as they are made cannot be used to support the Commission's action in prescribing an inflated basis of divisions for the Northern railroads based upon commuter deficits or for any other reason because, notwithstanding the Northern commuter deficits, freight rates are no higher

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[21] Commission counsel themselves recognize the true function of the allowances for overhead and return in fully distributed costs when they point out that such allowances should be included in cost determinations only "if appropriate" (ICC Brief, p. 20) and that fully distributed costs can be restated "so as to exclude all or some constant cost items which should not be taken into account" (ICC Brief, p. 21). The inclusion of a constant cost would not be "appropriate" under the standard adopted by the Commission in this case—the costs of North-South freight traffic—whenever the item is unrelated to the transportation service for which costs are being determined. To include constant cost items not related to the service being measured is to prescribe divisions, not by any standard of costs, but by an allocation of general revenue needs.

in the North than they are in the South. Nor is there any increment in the Northern portion of the North-South freight rates which reflects higher Northern passenger or commuter deficits. On the contrary, the rate levels in both territories are shown by the record to be uniform; and the interterritorial rates being divided here are on the same uniform level.[22]

Appellants' reliance on *King* v. *United States,* 344 U.S. 254 (1952) (ICC Brief, pp. 42-43; B&O Brief, pp. 47, 50-52) is misplaced. *King* was a rate case, and this Court has recognized, citing *King,* that "the issues are quite different when, in a divisions case, it is argued that carriers in one part of the country should subsidize the passenger operations of carriers elsewhere." *Chicago & N.W.R. Co.* v. *Atchison T. & S.F.R. Co.,* 387 U.S. 326, 350 (1967). Moreover, in *King,* the rate increase did not purport to be related to the cost of any freight traffic, but was designed "to meet overall revenue needs" (344 U.S. at 264). And, as a factual matter, the *King* case related to an increase in Florida intrastate freight rates. There is no commuter service in Florida, and this Court had no occasion to consider, and did not consider, the treatment of deficits arising from costs solely related to passenger service.

Appellants' efforts to support inclusion of deficits resulting from costs solely related to passenger service as a part of freight costs are not only unsound in principle, but they are improper arguments to address to the Court. Since none of appellants' theories has been set forth by the Commission as a justification for its action, the advocacy of such

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[22] As previously shown (pp. 2-3, *supra*), the Commission ordered, and this Court upheld, uniform class rates for both North and South; and this uniformity of rates is in effect today. The Northern railroads admitted that they sought "disproportionate divisions of a uniform structure of rates" (A. 1543).

theories in this Court constitutes a plain violation of the fundamental principal that "a reviewing court . . . must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action . . ." *S.E.C.* v. *Chenery Corporation,* 332 U.S. 194, 196 (1947); *Burlington Truck Lines* v. *United States,* 371 U.S. 156, 168-169 (1962). This Court held in *United States* v. *Champlin Refining Co.,* 341 U.S. 290, 301 (1951) that "it is not the function of this Court to rescue the Commission by making findings *de novo* which the Commission itself was unable or unwilling to make."

Moreover, appellants misstate the question of transportation policy presented by commuter deficits when they ask this Court to accept the proposition that "[commuter] losses must be recovered from railroad freight operations if railroads are to remain solvent" (ICC Brief, p. 44; also B&O Brief, p. 46). The other policy choice, if commuter service is to be continued, is to place the financial burden of the deficits on the communities receiving the service instead of upon either the Northern railroad stockholders or the freight shippers in the North or the South. Although the Commission gave no explanation of any policy justifying its action in this case, the Commission has specifically addressed itself to the policy considerations underlying the treatment of commuter deficits in other cases and has arrived at a conclusion which is diametrically opposed to the theories advocated by appellants. Prior to its decision in this divisions case, the Commission had adopted the policy that commuter service should not burden freight operations (*Railroad Passenger Train Deficit,* 306 I.C.C. 417, 483 (1959)):

> "That where the railroads are unable to operate a particular local or commuting service at a profit, and

> where such service is essential to the community or communities served, that steps be taken by State and local authorities, or both, to provide the service paying the carrier the cost plus a reasonable profit."[23]

The principle that commuter service is a separate service that should not be subsidized by other services is consistent with Congressional policy as stated in House Report No. 1922, Committee on Interstate and Foreign Commerce, on the Transportation Act of 1958, 85th Cong., 2d Sess., p. 11 (1958):

> "It is obvious that in very great measure these passenger losses are attributable to commuter service. It is clear that where such necessary services cannot be made to pay their way, the interested communities have a very real interest in working out the problem. It would seem evident that if such urban or interurban commuting service must be preserved, losses incurred will have to be met in some way by the communities. It is unreasonable to expect that such service should continue to be subsidized by the freight shippers throughout the country."

The Commission has continued to express its policy that commuter deficits should be borne by the local communities, not freight shippers throughout the country, in its decisions[24] and in recent reports to Congress.[25]

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[23] This policy statement was transmitted to Congress in the Commission's 1959 Annual Report (p. 34). As shown in this policy statement, contrary to the present argument of the Northern railroads (B&O Brief, p. 40), the Commission itself has identified commuter service as a separate problem raising separate policy considerations.

[24] *New York, N. H. & H.R. Co. Loan Guaranty*, 312 I.C.C. 369, 372 (1960); *Pennsylvania R. Co.-Merger-New York Central R. Co.*, 327 I.C.C. 475, 526 (1966).

[25] Hearings before the Senate Subcommittee on Housing and Urban Affairs, Committee on Banking and Currency, on Solutions

Pursuant to this policy, commuter service is today subsidized by the local communities in each of the major commuter areas of the North.[26] Since these subsidies did

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to Problems of Improved Commuter Service in Mass Transportation, 90th Cong., 2d Sess. (March 26, 27, 28, 1968) (hereinafter cited as Hearings), pp. 213, 218-219, 220. The Chairman of the Commission summarized the policy of the Commission as follows (Hearings, p. 42):

> "We feel that the public must be willing to assist private carrier management, in appropriate circumstances, in a cooperative joint effort to revitalize and further improve essential rail commuter service. The appropriate public-private policy mix will vary with particular carriers and needs of the urban area. In some cases, direct operating subsidiaries or capital grants for new equipment and facilities will be required; in others, more equitable policies in the treatment of carriers' property for local tax purposes and a favorable local regulatory policy may suffice. It is perfectly clear that rail commuter transportation is a critical element in urban transportation and, if allowed to be eliminated, will impose heavy economic and social cost upon our urban areas and our population. It is for this reason that we believe that this type of joint private-public undertaking, much of which is already going on in many parts of the country, should be continued and expanded in years to come."

See also Report and Recommendation of Interstate Commerce Commission to Senate Committee on Commerce and House Interstate and Foreign Commerce Committee (June 25, 1968), pp. 4-6.

[26] In Boston, the Boston and Maine and the New Haven have been authorized to discontinue commuter service and the Massachusetts Bay Transit Authority has contracted with these carriers for the continuation of service (Testimony of Commission Chairman Tierney, Hearings, pp. 29, 39). In New York, the state has purchased and operates the Long Island Railroad (Testimony of William J. Ronan, Hearings, p. 130). Moreover, New York and Connecticut jointly are paying subsidies to the New Haven and, pursuant to an announced $80 million modernization program, are negotiating for long-term control of the New Haven's west end commuter service (Testimony of William J. Ronan, Hear-

not exist at the time the record in this divisions case was made, the practical effect of the Commission's action here is to provide a double subsidy for the Northern railroads, one from the local communities, consistent with the policy expressly articulated by the Commission elsewhere, and a second as a result of the Commission's unexplained action in this case of including the Northern railroads' pre-subsidy deficits arising from costs solely related to commuter service as part of the costs of North-South freight traffic.

The policy question inherent in the treatment of solely related passenger deficits is far too important to brush aside without explanation as the Commission did in this case. The Court recognized the intrinsic importance of the passenger deficit issue in *Chicago & N.W.R. Co.* v. *Atchison, T. & S. F. Ry. Co.*, 387 U.S. 326 (1967). In that case, in which

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ings, pp. 130, 136). In Philadelphia, the Southeastern Pennsylvania Transit Authority has entered into commuter service agreements with Penn Central and Reading (Testimony of Alan S. Boyd, Hearings, p. 6; Testimony of Robert W. Minor, Hearings, p. 56). In New Jersey, the State has contracted with Erie Lackawanna and Central Railroad of New Jersey for the performance of commuter service and has also instituted substantial tax reductions and capital improvement programs (Brief of the State of New Jersey, pp. 1-2, I.C.C. Finance Docket 23832, et al., June 7, 1968; Testimony of Chairman Tierney, Hearings, p. 39. See *Erie-Lackawanna R.R.* v. *United States*, 279 F. Supp. 316, 341-342 (S.D. N.Y. 1967), affirmed 389 U.S. 486 (1968)).

As illustrated by the $28 million federal grant for the improvement of New Haven commuter service, the federal government is increasingly providing assistance to northern communities by planning and funding commuter service (Testimony of Alan S. Boyd, Hearings, p. 6). See also Urban Mass Transportation Act, 49 U.S.C.A. §§ 1601-1611 (Supp.).

the Commission had *excluded* passenger deficits in considering both costs *and* revenue needs, the Court stated (387 U.S. at 350):

> "And while the Commission has sometimes acted to offset passenger deficits in freight rates cases,[29] the issues are quite different when, in a divisions case, it is argued that carriers in one part of the country should subsidize the passenger operations of carriers elsewhere."
>
> "[29] E.g., *Increased Freight Rates, 1948*, 276 I.C.C. 9, 35. See also *King* v. *United States*, 344 U.S. 254, 263-264."

The Court accepted the Commission's explanation of its action in excluding passenger deficits in that case, noting that (387 U.S. at 350-351):

> "If the Commission were to give controlling weight to passenger deficits in a divisions case, it might be appropriate to take more evidence on the issue and discuss it in greater depth than the Commission did here. But in light of the fact that, in this case, passenger deficits were of negligible relevance to the Commission's decision to increase the Midwestern divisions, we find no errors in the Commission's findings and procedure on this point . . ."

In this North-South case, however, the Commission's treatment of deficits arising from costs solely related to passenger service is far from being "of negligible relevance," and the Commission has not provided any discussion supporting the inclusion of such costs as part of the costs of North-South traffic.

In summary, the Commission has prescribed divisions of North-South freight revenues on the basis of costs which include passenger deficits. The Commission has explained why the deficits with respect to costs common to both freight and passenger services should be allocated as part

of the costs of North-South freight traffic, but has given no explanation why costs solely related to passenger service should be included. Section 8(b) of the Administrative Procedure Act requires reasoned findings upon such a material issue (5 U.S.C. § 557(c)), and exposition of Commission policy is especially required where, as here, the Commission has acted in a manner contrary to its own previously articulated policy. *Secretary of Agriculture v. United States,* 347 U.S. 645, 654 (1954).

B. The Commission Acted Arbitrarily and Without the Support of Substantial Evidence When It Ascribed 58 Percent Higher Costs to the Northern Railroads for Interchanging Freight Cars at the Territorial Border.

The Commission's treatment of the costs of interchanging North-South traffic at territorial border points constitutes a plain violation of the requirement that its findings and conclusions be supported by substantial evidence and reasoned findings.

The physical facts are simple and uncontroverted. Most North-South traffic moves in freight cars which are interchanged between Northern and Southern railroads at territorial border points. For example, a car moving between New Orleans and Philadelphia over the Southern Railway and Penn Central would be interchanged at Potomac Yard, immediately south of Washington, D.C. Potomac Yard is a joint facility which charges each railroad using the facility the same amount per car for performing the service of interchanging the car (A. 746-749). Another example would be a car moving between New Orleans and Cleveland over the Louisville & Nashville and Penn Central railroads. Such a car would be interchanged at Cincinnati,

a terminal area in which both the L&N and Penn Central maintain yards (A. 757-759). Railroad operating officers presented testimony reviewing all of the important interchange areas and showing that the interchange operations performed by the Northern railroads were no more costly than those of Southern railroads in interchanging the same cars at the same points.[27]

In the face of this uncontroverted evidence, the Commission prescribed divisions which include a separate allowance for the costs of "border interchange" which are 58% higher for the North than for the South.[28] This figure is based upon Rail Form A territorial average interchange costs reflecting all interchange services in the respective territories. Whatever might be the cause of the higher Northern costs on the average of all traffic, the bulk of which is intraterritorial traffic, the physical facts of the interchange of North-South traffic at the territorial border points show that the Northern railroads' costs could not be higher than the Southern railroads' costs of performing interchanges at the same border points.

The Commission made no findings and cited no evidence supporting any higher costs, much less 58 percent higher

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[27] This testimony covered all of the significant points at which North-South traffic is interchanged, i.e., Potomac Yard, Cincinnati, Evansville, Louisville, Elkhorn City, St. Paul, Richmond, Petersburg, Jarrett, and East St. Louis (A. 729-740; 741-745; 746-753; 757-761; 762-770; 771-775).

[28] In its initial report, "Terminal and border interchange" are shown as a combined figure (325 I.C.C. at 37; A. 63). From the appendix to the Commission's supplemental report, it can be calculated that the factor representing "border interchange" (also referred to as "cost of interchange at gateways") is 8.54 for the North and 5.41 for the South (325 I.C.C. at 456; A. 185) (line 11 ÷ line 23). 8.54 is 57.8 percent higher than 5.41.

costs, for the Northern railroads with respect to border interchanges. Instead, the Commission's discussion of the subject of the cost of border interchange criticizes the Southern railroads' "estimate" of the costs of such interchange, without in any way attempting to support its own use of 58 percent higher costs for the North.

This disposition of the cost of border interchanges would not be a lawful one, even if the Commission's "criticisms" of the Southern railroads' estimate of equalized border interchanges were sound, which they are not.[29]

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[29] In fact, the Commission's criticisms of Southern railroads' "estimate" are themselves arbitrary. The first three criticisms simply seek to minimize (but not to eliminate) the effect of the practice of equalizing switch engine hours as a factor which equalized costs of interchange at border points (325 I.C.C. at 81; A. 128). (This practice was emphasized by both Northern and Southern operating witnesses, A. 987, 757-758). But assuming that there are factors other than switch engine hours affecting relative costs of interchange in the same interchange areas, neither the Commission's report nor the Northern railroads' evidence even attempts to identify any factor which could make the Northern railroads' costs any higher, much less 58 percent higher, than the Southern railroads' costs of interchange in the same areas.

Nor does the Commission's final criticism fill the void created by this failure to suggest any factor possibly causing higher Northern costs. This criticism is that the assigning of costs of border interchanges to North-South traffic which differ from the average costs of all interchanges on all traffic throughout the North and South results in a distortion unless some corresponding adjustment is made in the cost of all the other interchanges included in the territorial averages (325 I.C.C. at 81; A. 129). The Commission expressed its concern that "some" dollars will be "left over and not assigned to anything" (*ibid.*). This is statistical nonsense in this case in which the North-South traffic constitutes only 6 percent of the total traffic of the North. The obvious answer to the problem raised by the Commission is to assign any balance to the traffic *other* than North-South traffic, which constitutes 94 percent of the total traffic of the North and which obviously governs the level of the Northern railroads' average costs in any event.

The Southern railroads made no claim before the Commission that their particular method for estimating the level of border interchange costs had to be accepted. The claim was that there was no substantial evidence to support any higher level of border interchange costs for Northern than for Southern railroads, whatever the precise dollar amount of the equal costs. The Commission's criticisms do not dispose of this claim, nor do they supply any support for its affirmative action in granting the Northern railroads a separate allowance for border interchanges which is 58 percent greater than the allowance given the Southern railroads for providing the same service at the same border points.

Appellants merely rely on the Commission's criticisms of the Southern railroads' estimates and do not even attempt to cite any evidence supporting the use of any higher, much less 58 percent higher, costs for the Northern railroads in interchanging traffic at territorial border points (ICC Brief, p. 46, n. 43; B&O Brief, p. 42). Thus, as this case stands, the only evidence related to border interchanges shows equality of costs. In the absence of any evidence whatever in this record to support the Commission's action in awarding the Northern railroads a 58 percent inflation on this cost item, that action must be set aside as unsupported by substantial evidence.

C. The Commission's Use of Territorial Average Car Costs 32 Percent Higher in the North Violates Both the Administrative Procedure Act and the Interstate Commerce Act.

Another important instance of the Commission's unlawful use of territorial average costs is reflected in its treatment of car costs (325 I.C.C. at 60-64; A. 94-101). Car costs embrace the costs associated with the railroad freight

car itself, including repairs, depreciation, and an allowance for return on investment.[30] Since each shipment of North-South traffic at issue in this case moves between the territories in the same freight car, which may be owned by a railroad in either territory or, indeed, by a Western railroad not even involved in this case, common sense would indicate that the car costs of Northern and Southern railroads would be equal.

However, the Commission did not base its order in this case on the cost of the cars handling North-South traffic. Instead, the Commission used the average cost of *all* per diem cars handling *all* traffic in each territory, although the majority of the cars included in the average costs in each territory are open-top cars that do not carry North-South traffic to any appreciable extent (A. 858-860). This use of territorial average costs for all cars instead of making a rational determination of the costs of the cars used in handling the traffic here at issue led the Commission to adopt car costs which are 32 percent higher in the North than in the South (325 I.C.C. at 60; A. 95) in the absence of any evidence that the higher Northern territorial average car costs have anything whatever to do with the relative costs of the cars handling North-South traffic.

A major reason that the average car costs of the Northern railroads are higher than the average car costs of the Southern railroads is that several of the coal-originating

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[30] The car cost issue as it arises in this case concerns "per diem" cars—that is, box, flat, hopper and gondola cars on which owning railroads receive a per diem rental for the use of the car. The cost of "mileage" cars (refrigerator and tank cars) raises no problem because the Commission used a uniform mileage charge in both North and South for such cars (A. 855). The preponderance of the per diem cars carrying North-South traffic are box cars (325 I.C.C. at 60; A. 95).

Southern railroads own fleets of hopper cars which are used to terminate coal on Northern railroads. These Southern railroads thus rent their open-top cars to Northern railroads far more often than the Northern railroads rent cars to Southern railroads. Thus, the record shows that the Southern railroads' annual car rental (per diem) net credit is more than seven times greater than the net balance of the Northern railroads—$23,987,115 as compared to $3,405,826 (A. 863).

The greater net per diem balance of the Southern railroads substantially depresses their average car costs. This is so because, as the Commission itself pointed out (325 I.C.C. at 63; A. 100):

> "per diem [car rental] charges have been based upon car costs computed on a reproduction basis insofar as depreciation and return on investment of the cars are concerned. This differs from the original cost basis used in Form A car cost computations for owned cars."

Because the reproduction cost of freight cars far exceeds original cost, a car-owning railroad receives rental payments which greatly exceed its car costs on that car computed on an original cost basis (A. 862). When these rental "profits" are credited to the car cost accounts, they lower the total costs in that account. Consequently, when unit car costs are determined by dividing the total car-miles of service performed by a railroad into the total costs in the car account, the car-owning railroads appear to have substantially lower unit car costs.[31] This is a reason why the Southern rail-

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[31] A dramatic example of the extent to which per diem rentals received on other cars reduce average car costs is the situation of the Clinchfield Railroad which, because other railroads regularly use the coal cars which account for most of the Clinchfield's business, actually shows a *negative* cost for the Clinchfield's average

roads' territorial average car costs are lower than the territorial average car costs of the Northern railroads.

Coal traffic is not involved in this case (325 I.C.C. at 55; A. 86), and the relative use of cars carrying coal, while significant in its influence on the territorial average cost of all cars in the North and in the South, has nothing whatever to do with the relative cost of the box cars that predominate in the handling of North-South traffic (325 I.C.C. at 60; A. 95).

While the territorial average car costs are strongly influenced by the car rental balance resulting from the Northern railroads' use of the Southern railroads' coal cars, car rental balances have just the opposite effect with respect to the North-South traffic here at issue. The Commission itself found that on North-South traffic "there is a greater relative use . . . of cars owned by official territory railroads than those of cars of southern ownership" (325 I.C.C. at 64; A. 100-101). Thus, on North-South traffic, it is the Northern railroads whose costs are reduced by the fact that the level of per diem rentals is higher than the cost of the cars. In this situation, the territorial average car costs of the Southern railroads, which are substantially reduced by car rentals on cars handling other traffic, cannot conceivably measure the car costs incurred on North-South traffic, as to which the Southern railroads themselves must make substantial car rentals payments.[32]

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car (A. 862). It would be preposterous to suggest, with respect to a movement of North-South traffic moving in a box car owned by the Clinchfield, or more likely a car on which the Clinchfield must pay rental charges, that the railroad nevertheless incurs less than no cost at all. Yet this is the arithmetic effect of applying the average cost of all cars to the cars carrying North-South traffic.

[32] The Commission itself had previously recognized that average car costs are depressed by net per diem balances. Thus, in *Louisville & N. R. Co.* v. *Southern Ry. Co.*, 319 I.C.C. 639, 654

The Commission did not even purport to find as a fact that the car costs associated with North-South traffic are 32 percent higher in the North. The Commission instead merely stated that "there are very real differences in the car costs in each territory and the causes are known" (325 I.C.C. at 63; A. 100). But the three "causes" listed by the Commission do not provide any rational support for a 32 percent inflation in the Northern car costs.

The first "cause" assigned by the Commission is "a difference in utilization of 39.4 car-miles per day in the North and 49.5 car-miles per day in the South" (325 I.C.C. at 63-64; A. 100). These figures are *not* related to North-South traffic. The Northern railroads' witness who presented these figures admitted that they represent territorial averages for "all traffic in all types of cars and without separation of line-haul and terminal" (A. 1027-1028). That is to say, the utilization figures employed by the Commission are the average miles per car computed by dividing all car miles by all car days in a territory whether a car is moving on line or standing in some terminal. It is arbitrary and irrational to defend the application of average car costs to North-South traffic by citing car utilization

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(1963), the Commission held that, because the *L&N* was a car-owning railroad, its average car costs, as computed under the Commission's "Rail Form A" original cost method, were depressed by car rental payments, computed on a reproduction cost basis. The Commission there held that it should "deviate from Rail Form A" in computing car costs for divisions purposes in order to nullify this essentially irrelevant factor (319 I.C.C. at 654). This decision was challenged on the ground that the Commission improperly departed from the average car costs, but the Commission was upheld on judicial review. *Carolina & Northwestern Ry. Co.* v. *United States*, 234 F. Supp. 112 (W.D.N.C. 1964), affirmed, 380 U.S. 526 (1965).

figures that relate to "all traffic in all types of cars." These average car utilization figures have no more relationship to North-South traffic than the average car costs. There is no finding, and no evidence, to indicate that the car utilization (car miles per day) of the Northern railroads is any less than that of the Southern railroads with respect to the cars handling the North-South traffic in issue.[33]

The second "cause" relied upon by the Commission to explain the average car cost differences as between the territories is "differences in tax and wage rates" (325 I.C.C. at 64; A. 100). There is no evidence of record to support any difference in tax rates on railroad freight cars. The evidence in the record relates to the tax rate per dollar of investment in all railroad property, and that evidence shows that the tax rates are *higher in the South* (A. 1295). The only evidence of differences in wage rates shows a 3 percent higher wage rate for maintenance of equipment in the North (A. 943), and this fails to take any account of the relative prices of materials in the South and in the North (see A. 1030-1031; 793-794). Moreover, a 3 percent differential, even if properly related to a part of the car costs, cannot justify a 32 percent inflation for the North for all car costs.

The third and final "cause" assigned by the Commission as an explanation for differences in car costs in the respective territories is "a difference in the relative amount of off-line use of owned cars in all territories," specifically, "a greater relative use in connection with the traffic here at issue of cars owned by official territory railroads than

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[33] The Northern railroads' own evidence indicates that the North-South traffic is handled in through trains in the North (A. 983-985), whereas traffic not at issue here but important to the Northern average experiences very low utilization of cars (A. 797-805).

of cars of southern ownership" (325 I.C.C. at 64; A. 100-101). But, as already shown, far from supporting the Commission's use of territorial average car costs, this fact clearly demonstrates the error of that action, for it shows that North-South traffic is unlike, not like, the total traffic from which the territorial averages are computed.

The above-described treatment accorded to the issue of car costs by the Commission is unlawful on at least three grounds. In the first place, because the Commission action in imputing 32 percent higher car costs to the Northern railroads is not justified by its own findings, this action violates the requirement of Section 8(b) of the Administrative Procedure Act that there be reasoned findings to support administrative action. Secondly, because there is no evidence in the record to support a finding of 32 percent higher Northern car costs in handling the same cars carrying North-South traffic, and because the record shows instead that this higher territorial average figure is the product of a car rental situation which is not characteristic of the North-South traffic here at issue, the Commission's use of the territorial average figure is arbitrary and without the support of substantial evidence, as required by Section 10(e) of the Administrative Procedure Act.

Finally, the Commission violated Section 15(6) of the Interstate Commerce Act by failing to differentiate the railroads' separate functions as car-owning or renting agencies (a rental transaction) and as transportation agencies. In a divisions case under Section 15(6), the responsibility of the Commission is to determine the costs incurred by the respective railroads "in the service of *transportation*" (emphasis supplied). This determination has nothing whatever to do with the separate problem of the financial results each railroad experiences in car

rentals. Yet, the territorial average car costs used here are dominated by the results of car rentals, and the Commission openly and mistakenly relied upon the results of car rentals to justify its use of such average figures.

This action was directly contrary to Section 15(6) for reasons that Commission counsel and the United States recently stated to this Court. In defending the Commission's action in adjusting average car costs to offset the effect of net per diem balances in the *L&N* case previously cited (p. 50, n. 32, *supra*), Government counsel replied as follows to the contention that territorial averages should have been used (Motion to Affirm of United States and I.C.C. in *Carolina & Northwestern Ry. Co.* v. *United States*, No. 838, Oct. Term 1964, pp. 9-10):

> "This argument confuses two wholly unrelated subjects, namely, *freight* revenues and *rental* revenues. Section 15(6) of the Act, as it applies here, deals with rate divisions on the basis of carriers' respective costs and revenues in providing *'the service of transportation'* (emphasis added). 49 U.S.C. 15(6). The L.&N. participates in a 'transportation service' only between the coal mines and Knoxville. Beyond the interchange point on the Southern's lines, L.&N. is merely renting its facilities to another railroad. Whether the L.&N. made or lost money on the rental transaction does not affect L.&N.'s costs in providing 'the service of transportation' on its own lines."

This Court affirmed the judgment of the three-judge court sustaining the Commission's action in the *L&N* case (380 U.S. 526 (1965)). In the present case, however, in failing to exclude the effect of the car rental income on the average costs of the Southern railroads, and in thus commingling the entirely separate rental factor with "the service of transportation," the Commission committed the very legal

error which it emphasized and carefully avoided in the *L&N* case.

D. The Commission's Determination Of Switching Costs Is Not Supported By Reasoned Findings Based Upon Substantial Evidence.

The district court found that the Commission had committed legal error in its treatment of the issue of "switching costs." The specific cost factor in controversy before the Commission was the switching service actually performed in originating and terminating North-South freight traffic. As the Commission elsewhere acknowledged in its report:

> "There is a great variation from one point to another in the amount of both terminal switching and interchange switching due to the physical layout of the tracks, volume handled, and other causes" (325 I.C.C. at 59; A. 94).

The factual question before the Commission was the measure of the switching costs actually associated with cars handling the North-South freight traffic in issue.

In line with their general cost approach, the Northern railroads placed their entire reliance upon the territorial average switching service for the average car in each territory. The Southern railroads, on the other hand, sought to develop the costs associated with the particular traffic in issue. However, the Southern railroads only had access to the data necessary to develop the switching service per car of North-South traffic for the service performed in the South, and, accordingly, the studies which they made, based upon a scientifically selected sample of North-South freight traffic (325 I.C.C. at 73; A. 115), were limited to the South. These studies showed that substantially greater

switching services were performed by the Southern railroads in originating and terminating North-South traffic than were performed in handling average traffic within the South (325 I.C.C. at 72; A. 114). In the face of these special studies, the Northern railroads continued to rely upon the territorial average switching costs which were substantially higher in the North (325 I.C.C. at 73; A. 116). Consequently, the record does not show the switching services performed by the Northern railroads in handling North-South traffic. Instead, the Southern railroads were obliged to make an estimate as to the cost of these services, which estimate, based on the best information available to the Southern railroads, showed that the territorial average switching costs did not accurately measure the costs of switching North-South traffic (A. 875-876, 883).

In another case, the Commission criticized the use of territorial average switching costs and stated that the parties in possession of the facts "should have made detailed switching studies to determine the switching minutes per car" (*Commodities—Pan-Atlantic Steamship Corporation*, 313 I.C.C. 23, 57 (1960)). However, in the present case the Commission rejected the Southern railroads' switching studies and used Rail Form A territorial average switching costs in prescribing the new divisions (325 I.C.C. at 77; A. 121). A basic reason for the rejection of the Southern railroads' studies was that "the adjustment in the North was not made on a basis comparable to that in the South, and here, where the relationship of North and South is of prime importance, this is a major defect" (325 I.C.C. at 76; A. 121). This treatment of the question of comparability was unlawful because it placed upon the Southern railroads the impossible burden of making switching studies in the North. And the absence of any independent

evidence in the record to support the applicability of territorial average switching costs leaves the Commission's order without the support of substantial evidence.

Commission counsel correctly state the issue presented to the Commission when they point out: "The Southern lines urged that their Rail Form A territorial average switching costs were depressed by the large proportion of volume movements of certain commodities in their territory to the point that those costs were not representative of North-South traffic which includes only a small amount of such commodities" (ICC Brief, p. 39). However, Commission counsel make no effort to explain how this issue was resolved with reasoned findings based upon substantial evidence. Instead, they simply quote from the Commission's report the very language in which the Commission refused to pass upon the issue because of the lack of comparable evidence (ICC Brief, pp. 39-40).

The Northern railroads seek to confuse the issue by reference to their train utilization study (B&O Brief, p. 32) and to the Commission's statement that North-South traffic "is a large and varied body of the traffic moving and coming from terminals in all parts of both territories" (B&O Brief, p. 40), intimating, but not saying, that the train utilization study constitutes independent evidence to support the application of territorial average switching costs to the North-South traffic at issue. This is plainly not the case. The fact that North-South traffic might at some time be hauled over every route in both territories would not lend any support to the use of average switching costs in the terminals in each territory, since the issue, as Commission counsel point out, is not whether there is some peculiar characteristic of North-South traffic which affects its switching costs, but whether the territorial averages for

the North and South are affected by differences in the characteristics of *intraterritorial* traffic that are not applicable to North-South traffic.

In *Boston and Maine R. Co.* v. *United States,* 208 F. Supp. 661 (D. Mass. 1962), affirmed, 371 U.S. 26 (1962), the Court reviewed a Commission decision in which the same Northern railroads had contended for the use of Rail Form A territorial average costs on the ground that the only comparable cost data as between Northern and Southern carriers were those on the basis of territorial averages (see 309 I.C.C. at 509). The Commission rejected the use of territorial average costs and prescribed instead the uniform divisional scale applicable to North-South traffic. The order was sustained on judicial review with specific reference to switching costs (208 F. Supp. at 675):

> "In the supplemental exceptions, dated March 9, 1959, filed by N.Y.C. to the proposed report of the examiner, it is stated (at page 24) that L&N's restatement of the northern railroads' cost study 'destroyed any possible comparison by adjusting the L&N costs without making similar adjustments in the N.Y.C. costs.' N.Y.C. went on to say that 'it would be unrealistic to expect the New York Central to study the movements at the 130 points involved' on its railroad. N.Y.C. argues that since the burden of proving the unreasonableness of existing divisions was upon the complainant L&N, it was incumbent upon the latter carrier to produce evidence of the relative costs of handling the traffic in question. L&N, however, did introduce in evidence its own actual costs in place of average costs. The costs put in evidence by N.Y.C. were unadjusted average costs for the northern railroads which did not reflect the actual costs. The Commission found that this evidence was not helpful in determining the costs of the particular traffic involved in this case. N.Y.C. now takes the position that the burden of adjusting the

> average costs presented in evidence by the *plaintiffs* [Northern lines] was on the L&N, even though the data necessary to make these adjustments were not available to the L&N and could only be produced by the plaintiffs themselves. We think this position is untenable."

The same position of the same Northern railroads is untenable here.

The decision of the court below in this case is thus in accord with the treatment of switching costs previously affirmed by the Court. In the absence of any evidence relating territorial average switching costs to the relative costs of the Northern and Southern railroads in handling the North-South traffic here in issue, the district court was clearly correct in setting aside the Commission's order.

E. The Commission's Determination of The Empty Return Ratios Applicable to North-South Traffic Is Wholly Unsupported.

A significant factor in calculating the cost of transporting a loaded freight car is the empty movement of freight cars associated with the loaded movement. This factor, stated in the form of an "empty return ratio" (the ratio of the empty mileage related to the loaded mileage of the traffic in question), is applied to the unit costs for loaded movements and has an important effect upon the determination of railroad costs. Even though the cost of hauling a loaded car in one territory might be exactly the same as the cost of hauling the same car in another territory, such uniformity of cost is drastically altered if a higher ratio of empty to loaded mileage is applicable to the costs in one territory. To an important extent, the higher costs of the Northern railroads result from the Commission's use of higher Northern territorial average empty return

ratios. The district court held that the Commission's determination to use these territorial average empty return ratios in developing the costs of North-South traffic was unlawful (A. 355). Again, an analysis of the Commission's statement of the issue clearly demonstrates that the district court's holding was correct.

Since the bulk of the North-South traffic moves in box cars (A. 95), the primary controversy over empty return ratios concerned the Northern railroads' use of territorial average empty return ratios for all box cars in determining the cost of the box cars carrying North-South traffic. The territorial average ratios are 39 percent in the North and 33 percent in the South (325 I.C.C. at 64; A. 102), meaning that the Northern average is 18 percent higher than the Southern average. The Commission used these ratios without any evidence at all that they are applicable to North-South traffic and in the face of evidence which showed that the application of the territorial averages to North-South traffic is inherently misleading.

A basic problem in dealing with territorial average box car empty return ratios is that numerous box cars are specially assigned to shuttle between particular points and thus have a 100 percent empty return ratio. Automobile parts manufactured in the Detroit area are carried almost exclusively in assigned box cars to automobile plants in New Jersey, Kansas, Texas, California and Georgia, and those box cars return empty to the Detroit area origin point (A. 746, 1011-1018). In contrast, most other box cars are in general service and experience much lower empty return ratios.[34] The result, as a matter of simple arithmetic, is

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[34] The Commission described this basic situation as follows (325 I.C.C. at 64; A. 102):

> "In this category of boxcars are general purpose cars which can be utilized by and are available to all shippers for loading

that the territorial average box car empty return ratio of any territory will be substantially influenced by the proportion of box cars which have a 100 percent empty return ratio. All other things being equal, the territory with the highest proportion of assigned cars to total box cars will have the highest territorial average box car empty return ratio. Thus, even if the North and the South in fact have the *same* empty return ratios on general purpose box cars, and the *same* 100 percent empty return ratio on assigned box cars, the application of the territorial average empty return ratio of all box cars would produce an artificial inflation for the North if the Northern railroads have a significantly higher proportion of assigned cars (A. 847, 1306-1308).

The record does not show the precise extent to which the higher average box car empty return ratios of the Northern railroads are actually the product of this purely statistical phenomenon. The Southern railroads did not have this evidence in their possession, and the Northern railroads did not come forward with it.[35] The Southern railroads did show that virtually all of the automobile

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all types of commodities not requiring special type equipment, and boxcars suitable for loading special commodities, which, though they may be suited for some type of return load, are in assigned service and thus returned empty, with some exceptions, to the point of loading. Included therein are cars used for transporting auto parts, which are specifically designed to handle such commodities."

[35] Indeed, the Northern railroads flatly rejected a proposal, made by the Southern railroads at the first hearing, that a joint study of box car empty return ratios be conducted (A. 991-994, 847-849). The Northern railroads refused to furnish the data for the box cars on their lines in the form requested, or to make any alternative proposal for separating the territorial average box car empty ratio.

parts manufacturing plants are in the Detroit area and that the Northern proportion of automobile parts traffic is substantially higher than the Southern proportion (A. 849). And the Southern railroads showed that the railroads which predominantly serve Detroit and handle a greater proportion of the automobile parts traffic report box car average empty return ratios substantially higher than even the territorial average for the North (A. 104).[36]

The Commission was plainly in error when it rejected the only factual showing with respect to the influence of assigned cars on the Northern averages which the Southern railroads were in a position to make. The Commission's response to this showing was as follows (325 I.C.C. at 66; A. 105):

> "The comparison is based on only three observations and is therefore too limited to be representative. At best, *it may be a coincidence or caused by some unknown factor,* and is not otherwise supported" (emphasis supplied).

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[36] The Northern lines were well aware that the proportion of special cars was greater in the North and that this fact inflated the average box car empty return ratio in the North to a greater extent than for the South (A. 1024-1026). Indeed, it was this knowledge of the impact of the Southern railroads' request for a special study of empty return ratios that dictated the Northern railroads' refusal to produce the facts, as their witness admitted (A. 1023):

> "When this request is made, it is made for a definite purpose. We have to consider the object when we consider whether we want to comply."

The Northern railroads thus frustrated the Southern railroads' efforts to obtain the basic data on box car empty return ratios and then criticized every effort of the Southern railroads to estimate the box car empty return ratios actually applicable to the North-South traffic in the absence of a study which only the Northern railroads could make.

Of course, the Northern railroads, and the Northern railroads alone, were in a position to show that an "unknown factor" was the cause of the unusually high empty return ratios of the railroads serving Detroit. Presumably, if such ratios could have been explained on any ground other than the high proportion of assigned cars that they handle, such explanation would have been offered. In the face of the Northern railroads' refusal to present evidence on this subject, the Commission nevertheless concluded (325 I.C.C. at 67; A. 106):

> "There are undoubtedly instances where specially equipped or directly assigned boxcars have a 100-percent empty return. . . . The five items above tend to show that these cars may have some effect on the empty return ratio, but they do not support a conclusion that any adjustment is warranted here as to the amount of the effect other than that reflected in the averages used."

If the high proportion of automobile parts traffic of the Northern railroads serving Detroit was not the cause of the Northern railroads' higher average box car empty return ratios, the Northern railroads and only the Northern railroads were in possession of the data necessary to explain this phenomenon. To impose upon the Southern railroads the burden of proof with respect to facts as to which the Northern railroads had the duty to come forward was unlawful (p. 23, n. 8, *supra*). But quite apart from any considerations of burden of proof, the Commission's rejection of the Southern railroads' explanation of the higher territorial average empty return ratio for the North does not support the Commission's order. In the absence of *any* evidence, whether submitted by the Northern railroads or otherwise obtained, showing that the empty return ratios with respect to box cars carrying North-South traffic are higher in the North, the Commission's action

in granting the Northern railroads an inflation in their divisions because of higher box car empty return ratios is not supported by substantial evidence.

The district court correctly recognized the essential unlawfulness of the Commission's treatment of empty return ratios (A. 346), quoting from Commissioner Murphy, who summarized the situation in his dissenting opinion as follows (325 I.C.C. at 54; A. 85):

> "The higher than average empty return ratios used for cars moving over the official lines is another instance where true costs have not been used. The official lines handle approximately 800,000 carloads of automobile parts annually which originate in the Detroit, Mich., area and are destined to assembly plants in various parts of the country, including New Jersey, California, and Georgia. Many of these cars are fitted with special devices to protect the automobile parts in transit. Because these cars carrying parts contain special devices and are assigned to particular plants manufacturing such parts in official territory, they normally experience an empty return movement which is, for all practical purposes, 100 percent. No adjustment is made in the cost data to cover the higher empty return costs of this type of equipment. Territorial average box car empty return ratios, as used in the report, overstate the costs of the official railroads when applied to Official-Southern traffic."[37]

[37] Commissioner Murphy's point is particularly significant because, in an earlier divisions case involving a Southern railroad and all Northern railroads, the Commission itself had criticized the Northern railroads for failing to adjust the territorial average empty return ratios because of the "cars specifically equipped for automobile parts, which cannot be used for return loading." *Louisville & N. R. Co.* v. *Akron, C. & Y. R. Co.*, 309 I.C.C. 491, 509 (1960) affirmed sub. nom. *Boston and Maine R. Co.* v. *United States*, 208 F.Supp. 661 (D. Mass. 1962), affirmed 371 U.S. 26 (1962).

Appellants object to this disposition of the issue by the district court, claiming that the district court failed to discuss "the reasons expressed by the Commission or the rationale supporting its conclusion" (ICC Brief, p. 38 n. 34; B&O Brief, p. 41). But the problem here is that the Commission did not express reasons or supply a rationale for its refusal to consider the impact of automobile parts traffic on the territorial average empty return ratios, and that is precisely why the district court held its action to be unlawful. The district court was eminently correct in quoting and relying upon Commissioner Murphy's opinion, since there has not been, and on this record there could not be, an answer to his criticism of the application of territorial average empty return ratios to North-South traffic.

The plain fact is that the Commission's action in using average box car empty return ratios as the measure of such

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The Commission seeks to distinguish this *L&N* case on the ground that automobile parts are "not at all dominant" in the present case, comprising only 33,983 cars of the North-South traffic (325 I.C.C. at 67; A. 106). Actually, this is as many cars as were involved in that entire litigation (309 I.C.C. at 493). Even if only 33,983 cars of North-South traffic are involved, there is no basis for using a territorial average which is higher in the North while conceding that 33,983 cars have a uniform 100 percent empty return ratio in both the North and the South.

Moreover, the Commission's statement is no answer at all to the basic problem created by the 100 percent empty return ratio of the assigned cars in the North which inflates the territorial average applied by the Commission to box cars in general service. Indeed, the relatively small number of such cars in the traffic in which Southern railroads participate as compared to other traffic handled by the Northern railroads is the very source of this problem, and this is the point Commissioner Murphy was making. It shows that the Northern railroads' territorial average empty return ratio for all box cars is higher than that of the Southern railroads for a reason that has no relationship to the general purpose box cars used in handling North-South traffic.

ratios on North-South traffic is not supported by substantial evidence, or any evidence at all, but it is directly contrary to the evidence.[38] The Northern railroads have not established and cannot establish, that their box car empty return ratios are any higher than those of the Southern railroads on North-South traffic. The whole claim here rests upon a statistical illusion, a classic example of the sort of thing to which Mr. Justice Brandeis was referring when he recognized that "averages are apt to be misleading." *United States* v. *Abilene & Southern R. Co.*, 265 U.S. 274, 291 (1924). It is also the kind of case to which Section 10(e) of the Administrative Procedure Act was directed in requiring that the courts set aside administrative orders not supported by substantial evidence.

F. The Commission's Resolution of the Issues With Respect to the Count of Cars Interchanged Was Unlawful.

The nature of the cost problem presented by the count of cars was summarized in the dissenting opinion of Com-

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[38] Refrigerator cars present essentially the same problem with respect to the empty return ratio cost factor as do the general purpose and assigned service box cars discussed above. Fresh meat moves in assigned refrigerator cars owned by the meat packing companies in much the same fashion as automobile parts move in assigned box cars. Because the proportion of fresh meat traffic is greater in the North than in the South (A. 851-852), these assigned refrigerators cars, like their box car counterparts, inflate the Northern railroads' average refrigerator car empty return ratios for a reason that has nothing to do with the North-South freight traffic at issue. Yet the Commission used territorial average refrigerator car empty return ratios without making any allowance at all for the impact upon these averages of such assigned cars.

missioner Murphy as follows (325 I.C.C. at 54-55; A. 86):

> "The improper counting of a car interchanged instead of terminated by the official lines affects the weighting of that car in computing switching costs. The official lines report a large volume of coal and ore terminated at port dumping facilities for loading onto boats as cars interchanged, while the southern lines report a large volume of phosphate rock hauled to ports for loading onto boats as cars terminated. These cars receive analogous services and should be treated as such. In both these instances the lading from the car is removed and the empty car is returned to the delivering carriers. The erroneous counting of cars terminated as cars interchanged on the official lines produces higher unit costs for official territory than for southern territory, both for origin and destination switching and for interchange switching."

No feature of this statement of the problem is questioned in the Commission's report. Instead, the Commission devotes its report to an attack upon the "estimate" used by the Southern railroads in an effort to correct the inconsistent counting of cars (325 I.C.C. 58-60; A. 91-94). The estimate in question was based upon certain reports made by the Northern railroads to the Commission (325 I.C.C. at 58; A. 92). The Northern railroads contended that "the information available is inadequate to correctly compute the adjustment" (325 I.C.C. 58; A. 92). The Commission accepted the "contentions" of the Northern railroads, and made no adjustment at all to correct the admitted inconsistency in the car count statistics underlying the average costs (325 I.C.C. 60; A. 94).

This was not a lawful disposition of the issue. Even assuming that the estimate made by the Southern railroads was inadequate, it was incumbent upon the Northern railroads to produce the data in their possession necessary to make an adjustment without resort to any estimate. Other-

wise, the Commission itself should have required the production of this data if, as it held, such data were necessary to a proper determination of the cost issues. Instead, the Commission permitted the Northern railroads to benefit from an inflation in their costs which was due in substantial part to a manifest inconsistency in the statistical count of cars, by accepting the Northern railroads' criticisms of the Southern railroads' effort to correct the statistics as a ground for making no adjustment at all. The Commission's action in granting an inflation to the Northern lines is not supported by substantial evidence where the inflation results from an admitted inconsistency in the count of cars interchanged.

G. The Commission's Treatment of the Constant Cost of Transit Commodities Was Unlawful.

This issue concerns the proper treatment of constant costs (including overhead costs of freight service) where the rates on raw materials are inseparably related to the rates on finished products. For example, pulpwood moves to paper plants within the South on rates which include little or no allowance for recovery of overhead costs (A. 881-882). The low rates on the inbound pulpwood are made at a very low level because they are related to the rates on finished paper products moving from the paper plants, including paper moving from the South to the North (A. 881).

When the Southern railroads urged an adjustment in the territorial average costs imputed to the North-South paper traffic to reflect the full costs of this traffic in the South, the Northern railroads again objected to the Southern railroads' position on the ground that a comparable adjustment would have to be made in the costs for the North (325 I.C.C. at 79-80; A. 126-127). But the Northern rail-

roads failed to come forward with any data showing that there is, in fact, a similar situation in the North. Indeed, the Northern railroads' own witness conceded that no such situation existed there (A. 1011). Yet the Commission upheld the Northern railroads' position and used average costs for both groups of railroads. On a record showing that no comparable situation existed in the North, the Commission's action was not supported by substantial evidence.[39]

III. THE COMMISSION HAS NOT LAWFULLY JUSTIFIED ITS ABANDONMENT OF UNIFORM DIVISIONS BETWEEN TERRITORIES HAVING UNIFORM RATES.

Beyond the question of the legal defects in the Commission's determination of relative cost of service and the unlawfulness of its treatment of particular cost issues, the

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[39] The Southern railroads' claim for inclusion of the deficits on pulpwood traffic as part of the cost of North-South traffic was based on the relationship between the rates on the inbound raw materials and the outbound movement of the finished products. *Pulpwood, North Carolina and Virginia to Cypress, Virginia*, 235 I.C.C. 11, 13 (1939). Assuming, however, that Commission counsel were correct in arguing that there is not a sufficient relationship between the inbound raw materials and the outbound traffic (ICC Brief, p. 47, n. 43), the fact remains that there is a pulpwood deficit borne by the Southern railroads (A. 881). If appellants were correct in their argument that commuter deficits, incurred wholly within the North and without any relationship to North-South traffic, "must be recovered from railroad freight operations if railroads are to remain solvent," as appellants argue (ICC Brief, p. 44; see also B&O Brief, p. 48), the same reasoning would apply to the deficits incurred by the Southern railroads on unrelated traffic. Appellants make no effort to reconcile their position on Northern commuter deficits with their position on the deficits borne by Southern railroads.

Commission committed a separate error in not justifying its abandonment of uniform divisions between the North and the South, particularly since those territories have uniform rate levels. On this issue, the district court pointed out (A. 351):

> "Furthermore, for many years prior to this case the Commission has consistently followed the view that the primary responsibility for meeting the cost and revenue needs of the railroads of any territory lies with the people and the industry of that territory. *New England Divisions,* 126 I.C.C. 579, 599 (1927); *Divisions of Rates, Official and Southern Territories,* 234 I.C.C. 175, 190 (1939); *Official-Southern Divisions,* 287 I.C.C. 497, 523 (1953); *Akron, Canton & Youngstown R. Co. v. Atchison, T. & S.F. Ry. Co.,* 321 I.C.C. 17, 51 (1963). In this very case, prior to re-opening, the Commission held that the primary division of revenues accruing from this traffic were to be made on an equal-factor scale. We recognize that the Commission is not perpetually bound by their 1953 holding, but we do believe that the Commission has special responsibilities in a case of this magnitude when it departs from its prior finding. (*Sec'y of Agriculture* v. *United States,* 347 U.S. 645)."

Appellants criticize this holding, suggesting: "[T]here is clearly nothing novel about one group of lines having proportionately higher divisions than the other on North-South traffic" (B&O Brief, pp. 61-62, n. 30), and pointing out that the Commission has power to change any of its decisions (ICC Brief, p. 54, n. 48). However, the district court expressly recognized the Commission's power to change its policies and decisions, holding only that when such a change is made, the Commission must explain the reasons for its action. This principle is plainly sound and fully supported by the decision of this Court in *Secretary of Agriculture* v. *United States,* 347 U.S. 645, 652-654 (1954), cited by the district court.

Appellants do not and cannot deny that in prescribing divisions on North-South traffic the Commission has regularly followed its policy of placing the primary responsibility for meeting the cost and revenue needs of any territory upon the people and industry of that territory. In 1939, the first time that the Commission prescribed a general basis of divisions on North-South traffic, the Commission ordered an inflation in the divisions of the Southern railroads on the express ground that the rates in the South were higher than the rates in the North. *Divisions of Rates, Official and Southern Territories,* 234 I.C.C. 175, 190 (1939):

> "In view of the factors which have been responsible for the measure of these rates, therefore, there is logic in the argument of the southern lines that 'the rates which contain something above the official level, because of the southern lines' participation, should be divided so as to give the increment in the rate to the southern carriers.'"

On that portion of the North-South traffic as to which the rate level in the South was not on a substantially higher level than in the North, no inflation was prescribed (234 I.C.C. at 191, 192-193):

> "In our view the existence of the increment or excess in the interterritorial rates may and should be taken into account by allowing the southern lines divisional factors on general traffic higher than those of the northern lines by a uniform percentage.
>
> • • •
>
> . . . Where no such increment is to be found in the rates . . . fair application of the principal demands that the divisions of each group of carriers be on the same basis."

Thereafter, the Commission found that the higher rate level in the South discriminated against the South and

prescribed a uniform level of class rates. *Class Rates Investigation, 1939,* 262 I.C.C. 447 (1945); 281 I.C.C. 213 (1951). The Commission's action was upheld by this Court in *New York* v. *United States,* 331 U.S. 284 (1947). In 1953, in recognition of its previous action in prescribing a uniform rate level, the Commission prescribed divisions on a uniform basis with no inflation for either Northern or Southern railroads. *Official-Southern Divisions,* 287 I.C.C. 497, 523 (1953). The same action was taken in *Official-Southwestern Divisions,* 287 I.C.C. 553, 580 (1953).

Measured against this long-established relationship between divisions and the relative rate levels in the two territories, what reason or basis does the Commission now advance for changing its method of determining the propriety of an inflation? There has been no change in the uniformity of the class rates prescribed by the Commission and upheld by this Court. And there was no showing by the Northern railroads that there is any higher rate level in the North which would justify an inflation in the Northern divisions under the Commission's long-established standard.

In citing past North-South divisions cases in which divisions inflations were prescribed (B&O Brief, pp. 61-62, n. 30), appellants disregard the critical fact that in those cases, differences in divisions were justified by different rate levels. If the alleged higher costs in the North were actually reflected in higher rates in the North than in the South, the situation would be very different. Under such a hypothesis, the Southern railroads and the Southern economy would have a competitive advantage over shippers in the North, an advantage which would offset the payment of inflated divisions reflecting the higher rate level in the North. This situation was just the reverse when the Southern railroads received inflated divisions due to a higher rate level in the South.

Now, however, the rates are uniform in the North and South. They were made uniform for the express purpose of relieving the Southern economy of the disadvantage of a higher rate level. *New York* v. *United States*, 331 U.S. 284 (1947). The Northern railroads do not suggest that they are willing to subject the North to the disadvantages of a higher rate level. The Northern railroads want it both ways. They would keep the rate structure uniform so that Northern shippers can compete with Southern shippers on an equal basis, but they would nevertheless impose upon the Southern railroads the burden of subsidizing the allegedly higher Northern costs. This puts the cart before the horse. Unless and until the Commission prescribes higher rates for the North, higher *territorial average* costs may not be used to take money from the Southern railroads and the economy which they serve. The Commission itself did not purport to base its order on costs representing the territorial average costs, but upon the costs of North-South traffic (p. 4, *supra*).

Nothing in Section 15(6) of the Interstate Commerce Act authorizes the Commission to regard divisions based upon relative costs as so obviously just, reasonable, and equitable, that their prescription follows as a matter of course and without the reasoned findings to explain such action as required by the Administrative Procedure Act. It is important to recognize that cost-oriented divisions, even if based upon the costs incurred in handling the traffic at issue, have an effect far beyond merely returning higher costs to the railroads which incurred them. Such a cost basis of divisions also divides the profits realized on the traffic involved in accordance with cost proportions, which means that the railroads with higher costs for performing the same services not only recover those costs, but also receive a greater share of the profits by virtue of

the existence of such higher costs. Thus, in this case, the Northern railroads are given an inflated share of approximately $140 million in profits realized in excess of all of the costs incurred by all of the railroads participating in the movement of North-South freight traffic, even under the cost findings of the Commission.[40]

On the face of the matter, the division of profits realized from the movement of freight traffic would seem to turn more upon considerations of revenue need than costs. Indeed, in *Akron, Canton & Youngstown R. Co.* v. *Atchison, T. & S.F. Ry. Co.*, 321 I.C.C. 17, 51 (1963), the Commission itself took the position that constant costs, as well as profits, "are significant in the consideration of revenue need." Under this approach, the revenues in excess of out-of-pocket costs would have been divided on the basis of revenue needs rather than cost considerations.

The arguments advanced by the appellants in this Court greatly strengthen this conclusion. For appellants attack the judgment of the district court requiring the Commission to determine the actual costs of North-South traffic in large part upon the ground that it is impossible to determine the actual costs of this traffic (ICC Brief, pp. 26-27; B&O Brief, pp. 33-34). The Commission has not itself suggested that no greater precision than unadjusted territorial averages is possible in costing a body of traffic. But if appellants were correct that it is impossible to determine the costs of North-South traffic with any precision, what then is the justification for the inflation accorded the Northern rail-

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[40] From the Commission report (325 I.C.C. at 25-26; A. 48-49), it can be calculated that total revenues on this traffic amount to $496,086,000 ($221,430,000 plus $274,656,000), while total costs as found by the Commission amount to $357,572,000 ($165,746,000 plus $191,826,000), from which figures the profit on the traffic appears as $138,514,000.

roads? This argument reduces this entire proceeding to a shell game. The Northern railroads ask for and receive an inflation in their divisions to offset allegedly higher costs of handling North-South traffic. But when the district court sets aside that order because the claim of higher Northern costs is not supported by evidence of the specific higher costs claimed, that judgment is criticized on the ground that it is impossible to determine specific costs. If the Commission cannot determine with reasonable reliability that the Northern railroads have higher costs on North-South traffic, there is no basis for abandoning the policy of uniformity in divisions of revenues.

Moreover, the Northern railroads would have no just claim to recover higher costs incurred, even if such costs had properly been shown to be related to the traffic at issue, where these higher costs are the product of such factors as those claimed and found by the Commission to exist in this case. The higher Northern costs found and relied upon by the Commission in this case are not based upon any showing of inherently more difficult transportation conditions in the North. Instead, the Northern railroads' cost inflation is based wholly upon higher costs claimed to have been incurred on the specific items previously discussed (pp. 30-68, *supra*). Thus, even if the Commission's cost findings are accepted as establishing everything which they purport to establish, we are left with nothing more than findings such as: that the cost of interchanging cars is higher for the Northern railroads than for the Southern railroads, even where interchange occurs at jointly owned freight yards; that the Northern railroads have substantially higher car costs on traffic that moves in the same cars in both territories; that it costs the Northern railroads more to switch the same cars than it does the Southern railroads; and so on.

It is simply not correct, at least in the absence of specific justification by the Commission, that higher costs based upon these sorts of factors should be recoverable in the form of an inflation in divisional factors, even if such costs were shown to be applicable to the particular traffic involved. The very first standard toward which the Commission's attention is directed by Section 15(6) is that of relative efficiency. Although the Commission here concluded in ultimate terms that the two groups of carriers are equally efficient (325 I.C.C. at 16-18; A. 37-39), it never explained, or even attempted to explain, how this ultimate statutory conclusion could be squared with its cost findings. In the absence of any justification, the Commission's specific cost findings impeach the conclusion of equal efficiency.

The only discussion of any of these problems in the Commission's report appears in connection with the rejection of the position of the Southern Governors Conference and Southeastern Association of Railroad and Utilities Commissioners (325 I.C.C. at 26-28; A. 50-51). That portion of the report falls far short of containing any rational explanation that would enable anyone to understand why uniformity of rate levels is regarded as immaterial in this case although the same factor has been regarded as controlling by the same Commission administering the same statute for a generation.

As the district court pointed out, the Commission is not perpetually bound by prineiples it has previously followed in prescribing divisions between the North and the South, but it does have a statutory duty to articulate a policy which justifies any such major and radical change as is involved here.

IV. THE DISTRICT COURT WAS CORRECT IN SETTING ASIDE THE COMMISSION'S ORDERS WITHOUT RESERVING JURISDICTION.

The Northern railroads also argue that the district court erred in failing to reserve jurisdiction so as to permit a retroactive "application of such divisions as the Commission might ultimately prescribe to all traffic moving subsequent to April 20, 1965" (B&O Brief, p. 57). Commission counsel made no such request and the Northern railroads themselves never asked the court below to reserve jurisdiction. To the contrary, the Northern railroads expressly agreed in the court below to re-settle all revenues accruing during this litigation in accordance with the pre-existing basis of divisions, in the event the Commission's orders were set aside. Thus, the order of the district court denying an interlocutory injunction states (A. 170):

> "In the event the plaintiffs are successful in permanently setting aside the order of the Interstate Commerce Commission of February 3, 1965, intervening defendants, The Baltimore & Ohio Railroad Company et al., will resettle their accounts with plaintiffs, on traffic covered by the order of the Commission, on the basis of the present divisions, on all shipments made on and after April 20, 1965, with interest at the rate of 5% per annum on the monthly differences between revenues based upon the divisions prescribed by the Commission and revenues based upon the divisions now in effect, the said interest to be calculated from the customary accounting monthly settlement dates."

This order expressly recites that these are conditions "to which the intervening defendants, The Baltimore and Ohio Railroad Company et al., have agreed by filing written consent with the Clerk of this Court" (A. 169). There can be no justification for permitting the Northern railroads to renege on an explicit undertaking.

The refund obligation to which the Northern railroads subjected themselves relates to nothing more than the inflation in their divisions which was unlawfully prescribed. Clearly, the Northern railroads are not entitled to an inflation where they have not supported such a claim with evidence.

There is nothing unfair to the Northern railroads in such a procedure. It leaves those railroads in the precise position in which they affirmatively placed themselves when they successfully resisted an interlocutory injunction by their specific agreement to refund revenues they never would have received if an interlocutory injunction had issued. Moreover, it leaves the Northern railroads in precisely the same situation with respect to their claim for an inflation as that in which the Southern railroads find themselves with respect to their claim that the structure of the pre-existing equal-factor divisions unfairly favors the Northern railroads.

Throughout the proceedings before the Commission, the Southern railroads contended that the equal-factor basis of divisions then in effect contained a terminal allowance which was excessive to the extent of 37 factors (A. 829-830). Because the Northern railroads are predominately short-haul carriers on North-South traffic, this excessive terminal allowance accords the Northern railroads some $7,426,000 a year more revenue from North-South traffic than those railroads would be entitled to under a properly constructed equal-factor scale (A. 329).

The nature of this unfairness in scale construction may be illustrated by a comparison of the previously existing divisional scale (287 I.C.C. at 552, col. 1), with the equal-factor scale which the Southern railroads showed to be properly constructed in the proceedings before the Commission (287 I.C.C. 552, col. 1; A. 829-830):

Miles	Pre-existing Uniform Divisional Scale		Same Scale Corrected to Deduct 37 Factors	
	North	South	North	South
50	65	65	28	28
100	77	77	40	40
150	89	89	52	52
200	101	101	64	64
250	113	113	76	76
300	125	125	88	88
350	137	137	100	100
400	149	149	112	112
450	161	161	124	124
500	174	174	137	137
550	186	186	149	149
600	198	198	161	161
650	210	210	173	173
700	222	222	185	185
750	234	234	197	197
800	246	246	209	209
850	258	258	221	221
900	270	270	233	233
950	282	282	245	245
1000	294	294	257	257

Under either of these scales, if the hauls in the North and South are the same (300 miles in each territory, for example) each territory would receive 50 percent of the revenue. But if the hauls are different, then the difference in the construction of the scales has a substantial effect on the shares of the revenues. For a 50-mile haul in the North and a 1000-mile haul in the South, the existing uniform divisional scale would produce a division of 18 percent for the 50-mile haul in the North. Using the corrected scale, the division for the 50-mile haul in the North becomes 10 percent. This is a difference of 8 percentage points, or $8 out of every

$100 of revenue, and this difference in the revenues occurs even though both scales are uniform scales for both North and South with no inflation for either territory.

In its report, the Commission agreed with the Southern railroads' contentions with respect to the improper construction of the pre-existing equal-factor scale (325 I.C.C. at 37; A. 63):

> "The new evidence adduced upon further hearing demonstrates that the foregoing contentions of the southern lines have merit, and we so find."

Accordingly, the new scales prescribed by the Commission, although even more favorable to the Northern lines by reason of the inflation in their factors, do not contain the excessive terminal allowances which were present in the pre-existing equal-factor scales.

In the district court the Southern railroads took the position that in setting aside the inflation prescribed for the Northern railroads, the court need not disturb the Commission's action in correcting the terminal allowance in the scales, because, in our view, that latter aspect of the order was severable. The Northern railroads strongly opposed this contention and succeeded in convincing the district court that if the order were to be set aside, it must be set aside in its entirety (A. 330).

Under these circumstances, the effect of the judgment below is to set aside the Commission's order and leave the Northern railroads with an equal-factor basis of divisions that benefits the Northern railroads at the rate of $7,426,000 per year because of a distortion in the construction of the equal factor scales already found to be unlawful by the Commission on the basis of the evidence. The Southern railroads will have every bit as much incentive to expedite a decision of the Commission to correct a defect in the

divisional scales which they have already proved as the Northern railroads will have in attempting to obtain an inflation which they have not proved. Since there is nothing about this situation that is inequitable to the Northern railroads, there is no reason for this Court to disturb the form of judgment to which the Northern railroads agreed in the district court.

Nor, in a case in which the Commission's order has been held to be unlawful, is there anything inequitable about remanding the case to the Commission simply because the proceedings began some years before. The Northern railroads suggest that because of the lapse of time since this case was started before the Commission, this Court should sustain an otherwise unlawful order (B&O Brief, pp. 20, 30, 56). The Court has never sanctioned the notion that lapse of time justifies denying an aggrieved party effective judicial review.[41] And it would be grossly inequitable to burden the Southern railroads with reduced divisions where the Northern railroads, despite full opportunity to prove their case, failed to produce evidence to support any Northern inflation on North-South traffic.

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[41] The cases relied upon by the Northern railroads are inapposite. In three of the cases, the question was whether judicial review of a particular issue should be granted in this Court or in a lower federal court, not whether effective judicial review should be denied altogether. *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 621 (1966); *Chicago & N.W. R. Co.* v. *Atchison, T. & S. F. Ry. Co.*, 387 U.S. 326, 356 (1967); *Permian Basin Area Rate Cases*, 390 U.S. 747, 823-824 (1968). In the remaining case cited, *Illinois Central R. Co.* v. *Norfolk & Western R. Co.*, 385 U.S. 57, 75 (1966), the question was whether, upon holding that the Commission order was valid on the record as made, the Court should nevertheless remand the case to the Commission to take evidence of "present conditions." No such question is involved in this case, in which the district court has remanded the case to the Commission because it found that the order was not lawfully supported by the record (A. 354).

The duration of the most recent phase of the controversy, beginning with the Northern railroads' petition for an inflation in 1956, is chargeable to the Northern railroads and the Commission, not the Southern railroads.[42] Realistically, the struggle between the Northern and Southern railroads over divisions of freight rates was carried on for generations prior to this most recent phase. It was resolved in 1953, consistent with the landmark decision ordering uniformity of rates in *New York* v. *United States*, 331 U.S. 284 (1947), by the prescription of a uniform and equal basis of divisions. The Commission has not entered a lawful order, supported by evidence, changing those uniform divisions, and there is no reason to assume that the Commission will abandon equal divisions when the case is reconsidered on remand.

CONCLUSION

The district court has properly applied the standards of the Administrative Procedure Act in reviewing the Commission's order in this case. It has emphasized—not undermined—the Commission's responsibilities. The district

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[42] Although the Northern railroads filed their petition for inflated divisions in November of 1956 (A. 373), they did not present their first witness until November of 1959 (A. 415). The Southern railroads completed the presentation of their evidence in July of 1960. The record was closed in February of 1961, but the Examiners' report was not served until July of 1963, and the Commission's report and order were not served until March of 1965.

Contrary to the contentions of the Northern railroads (B&O Brief, pp. 16-17), the district court did not hold that the Commission must make new traffic and cost studies. While observing that evidence was becoming more and more vulnerable to the charge of staleness, the district court specifically stated that this observation did not "indicate that it would necessarily be an abuse of discretion for the Commission not to re-open the investigation to receive later operating figures . . ." (A. 356).

court, in remanding the cause to the Commission, has not restricted the Commission in its use of Rail Form A costs or any other factor so long as their application under the standard adopted by the Commission is supported by evidence: No new limits or standards have been imposed on the Commission's discretion. There is only the requirement that its orders be based upon findings which are supported by evidence.

This case has been remanded to the Commission for further proceedings consistent with requirements of the Administrative Procedure Act. The United States, which is charged by statute with the responsibility for defending orders of the Commission, has not appealed this disposition of the case.

Accordingly, the judgment of the district court should be affirmed.

Respectfully submitted,

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No. 13—Consolidated with No. 15

IN THE

Supreme Court of the United States

October Term, 1968.

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,

Appellants

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.,

Appellees

On Appeal From the United States District Court for the Eastern District of Louisiana, New Orleans Division

REPLY BRIEF FOR APPELLANTS.

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No. 13—Consolidated with No. 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,

Appellants

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

REPLY BRIEF FOR APPELLANTS.

Appellants, generally herein called "Northern railroads", will first answer the brief of the Southern railroads, to the extent necessary and will thereafter answer the brief of the Southern Governors' Conference, et al.[1]

1. After stating that this case has been remanded to the Commission for further proceedings consistent with the requirements of the Administrative Procedure Act, Southern railroads say on page 82 of their brief: "The United States, which is charged by statute with the responsibility for defending orders of the Commission, has not appealed this disposition of the case." At page 7, Southern roads again bring this matter to the attention of the Court. In the court

I. Reply to Southern Lines' First Point, That "The Inflation" Was Not Supported by Substantial Evidence or Reasoned Findings.

It should be said, at the outset, that the Southern lines' assertion that the Commission did not make adequate findings is simply incorrect. In addition to its general findings about its cost determinations, Appendix B to its report (A. 87-129) contains a detailed discussion of the disputed cost adjustments and shows specifically the reasons that led the Commission to reject the adjustments which it did reject. Northern lines believe that the Court will find in that Appendix an unusually thorough statement of findings in support of the action taken with respect to these disputed cost points.

The cost evidence upon which the Commission acted in the proceeding here under review was that resulting from Southern lines' application of regional unit costs for Official and Southern territories (as adjusted in five respects advocated by Southern lines) to the exact units of transportation involved in the North-South traffic, as disclosed by Southern lines' traffic study. The Commission found that these costs "adequately reflect the costs which are attributable to the traffic at issue" (A. 49-50), and are "reasonably accurate and reliable for purposes of determining the relative contribution by the groups on a cost-of-service basis . . ." (A. 78).

It may be noted in summary form, that the following facts before the Commission supported these findings:

The case involved transportation between the whole of Official Territory and the whole of Southern Territory, be-

below the United States urged that the order of the Commission should be sustained. Lest the Court be misled into believing that the United States has changed its position and now agrees with the decision below, Appellants desire to state that they have been informed by the Attorney General that the reason that the Department of Justice did not prosecute its appeal was that it could make no special contribution to the defense of the order involved and that the order could be adequately defended by counsel for the Interstate Commerce Commission.

tween all stations and over all railroads in each territory, and related to virtually all commodities. The initial indication that territorial unit costs were appropriate was thus quite strong. And this conclusion was confirmed by previous rulings of the Commission that territorial costs are proper for use in a case such as this involving "the calculation of relative costs for transporting all traffic, or important and well-defined segments of traffic, by territorial groups of carriers." *Class Rate Investigation, 1939*, 262 I.C.C. 447, 693 (1945).

The percentage of the total traffic of the railroads involved was about two and one-half times as great as the percentage of total traffic involved in the *Class Rate* case [2] and a much greater percentage of all traffic than the percentage of total traffic in other important cases (e.g. *Class Rates, Mountain-Pacific Territory*, 296 I.C.C. 555 (1955) where the traffic involved was only 1% of the total traffic) (p. 614) and in cases wherein Southern lines used Form A

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2. Appellees say with relation to this point that in the *Class Rate* decision the Commission's effort was to ascertain, by the use of costs, whether territorial conditions justified differences in the class rates. This simply emphasizes that it regarded territorial costs as being appropriate for application to class rate traffic as an important and well-defined segment of traffic being transported by territorial groups of carriers between all points. As the Court pointed out in reviewing the Commission's order in that case, the orders "affect class rates and class rates alone" and that ". . . this proceeding pertains only to class rates, which move but a small percentage of the traffic"; 331 U.S. at 330 and 343.

On p. 19 of their brief the Southern lines say that in *Increased Freight Rates, 1967*, 332 I.C.C. 280, the Commission held that territorial average costs have little value in determining the costs of handling particular segments of traffic. It will be noted from the quotation on pp. 19 and 20 of that brief that in support of the quoted language the Commission cited *Louisville & N.R. Co. v. Akron, C. & Y. Co.*, 309 I.C.C. 491, the very case which, in the order here under review, the Commission distinguished from the situation here presented, contrasting the very limited scope of that case (*Louisville & N.R. Co.*) with this territory-wide divisions case embracing "a large and varied body of traffic . . ." (A. 106).

territorial costs as representative (A. 796, A. 953-957).

Another fact of significance is that in the initial (January 12, 1953) report in the proceeding in which the order here under review was issued, the Commission found that the Northern lines' territorial cost studies based upon Form A must be regarded as "adequate proof" of the relative costs (except that the Commission believed that the facts would change with respect to certain maintenance items) (287 I.C.C. 497, 525, 526).

The record also established that the North-South traffic is an inseparable part of the whole, utilizing the transportation facilities and services of Northern lines and, in the witness's opinion, of Southern lines, in the same way as other traffic (A. 575). This conclusion was supported by studies showing the intermingling of the North-South traffic with traffic in general in such operations as switching, transfer movements, mine runs, yard and classification service, interchange service, local freight service, through freight service, car float and lighterage service, and yard terminal service, and it related to both loaded and empty cars (A. 548-582). While the witness testified directly as to operations on Eastern railroads, he established his knowledge of the methods by which railroad operations are conducted generally, and testified that, in his opinion, the same interdependence and commingling of traffic would apply on the Southern lines as well (A. 542, 543, 575).

Southern lines state in their brief that the witness who presented this evidence knew nothing about "empty return ratios or the other cost elements that cause the inflation in Northern costs" (fn. 1, pp. 15-16); but the fact is that at the record reference given by Southern lines (A. 986) the witness who had testified that "Eastern lines are fully justified in attributing to the Official-Southern traffic the average costs of handling all traffic" (A. 576) stated, on cross-

examination, that he included within the term "costs", such things as interchange costs, wages, fuel, maintenance of way, car repairs, depreciation and return (A. 985).[3]

The Commission also had before it the fact that the great part (89.45%—Appellants' Brief p. 32) of the costs submitted by the Southern lines as representing the cost of North-South traffic were the territorial average costs, a fact which strongly suggests that the territorial costs were representative of the North-South traffic. Finally, it had before it the Northern lines' evidence in opposition to each of the adjustments proposed by Southern lines (A. 893-904; A. 911-931; A. 933-959).

It is manifest that all of the foregoing constituted "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" and "be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury" (*Consolo v. Federal Maritime Comm'n.*, 383 U.S. 607, 620 (1966)).

Southern lines argue, however, that the higher Northern costs result from a relatively few elements of service and that the Northern lines did not show that such higher costs had any relation to the North-South transportation. In effect, they here argue that Northern lines were bound to make a special case as to those factors which were higher for Northern than for Southern lines.

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3. It should be noted that the Southern lines stated with relation to this witness that "The Northern railroads did introduce a 'train utilization study' designed to show that the North-South traffic moves in the same trains as other traffic . . ." (p. 15). The "train utilization study", however, was *only one of two studies* which the witness submitted. He testified that "The first of these studies may be termed a train utilization study . . .", and that "The studies in the second group . . .are illustrative of the commingling of traffic and the interdependence of trains comprising the general transportation network" (A. 545). Southern lines do not mention the studies in the second group (A. 548-582).

The mere fact that a given factor resulting from the application of a cost formula may be higher for one group than the other does not give rise to a requirement that more proof be adduced with respect to the representative character of that element than is needed with respect to such elements of costs as are the same for both groups. The Northern lines' evidence, the factual situation as to the scope of the proceeding, and the Commission's precedents all strongly show that the average unit costs (applied to a proper traffic study of this precise transportation) were reasonably accurate for use as to the North-South traffic. Southern lines attempted to adjust them for the improvement of their case, but they did not succeed with respect to all of the adjustments thus proffered.

They now contend that even if their adjustments were properly rejected by the Commission, the use of the cost factors from Form A which "produced the entire inflation" (i.e. which were higher for Northern than for Southern lines) "remains unsupported by evidence relating such an inflation to North-South traffic" (Southern lines' brief, p. 27). The Northern lines showed to the satisfaction of the Commission that the Southern lines' adjustments which were rejected, were faulty and based upon assumptions and it was shown that they were inferior to the Form A costs and, as shown above, that the territorial costs were reasonable and reliable for use as to the North-South traffic. Northern lines had no greater duty with respect to those costs which were higher than with respect to those which may have been the same. While stated in terms of substantial evidence, the Southern lines' contention to the contrary, represents, in essence, simply another way of saying that the courts, rather than the Commission, shall determine the degree of refinement required in the complex matter of transportation costs, and shall determine what

weight shall be given to the evidence and what conclusions shall be drawn therefrom. This the Court has repeatedly said it would not sanction, and as recently as in *Chicago & N.W. R. Co. v. Atchison, Topeka & S.F. R. Co.*, 387 U.S. 326 (1967), which involved exactly the problem that is involved here.

II. The Appellees' Purported Distinction of Chicago & N.W. R. Co. Is Invalid.

The Northern lines urged in their opening brief (pp. 26-30) that the recent decision in *Chicago & N.W. R. Co. v. Atchison, T.&S.F. R. Co., supra,* constitutes an unusually strong precedent for the reversal of the District Court in the present appeal. In purported answer to this point, the Southern lines say in their brief (28) that "The Court pointed out that the parties *attacking* the order (the Mountain-Pacific railroads) were the *beneficiaries* of an inflation in their divisions." [Italics by Southern lines.] This attempt at distinction is obviously no distinction at all. The parties attacking the order suffered a substantial reduction in their divisions and the fact that their new divisions were still higher ("inflated") than those of the Midwestern lines is not a fact of significance. An order must be supported by substantial evidence whether or not it involves either party's getting or retaining an "inflation".

The Southern lines do not answer the statements in Northern lines' brief (pp. 28 and 29) to the effect that the costs upon which the Commission acted in *C.&N.W.* were basically the average costs of handling all traffic. They quoted two phrases from this Court's opinion in *C.&N.W.* to the effect that the Court upheld the Commission's decision to base its cost findings upon the "special cost study and analysis" prepared by the Mountain-Pacific carriers, subject to certain adjustments which "in the judgment of

the Commission, more accurately reflected the true costs of the traffic involved'' (p. 28). But, that the special cost study consisted of Form A territorial costs with some adjustments allowed and some disallowed, as in the present case, is a fact not mentioned in the Southern lines' discussion of *C.&N.W.* As pointed out in our opening brief (pp. 28-29), the Southern Governors' Conference et al., Appellees in the present case, stated in their *amici* brief to this Court in *C.&N.W.* (pp. 2-3) that the Commission's cost findings in that case, and in the present case, reflected the very same approach, that in the *C.&N.W.* order the Commission relied ''almost exclusively upon the average costs of handling all traffic in these territories'' and that ''there, as here, virtually every objection to reliance upon such territorial averages was brushed aside without either findings or evidence to support such action'' (pp. 2 and 3).

The nature of the cost evidence in *C.&N.W.* as being substantially similar to that involved in the present appeal, with the same arguments against its use having been urged, was also made clear by the brief of the Appellees (Mountain-Pacific railroads, represented by the same principal counsel as Southern lines here) to this Court in that case (p. 90):

> ''The underlying problem is that, for important elements of cost, the Commission's 'restatement' uses the *average* costs of *all* traffic handled by the respective groups of railroads, as contrasted with the costs of handling the transcontinental traffic at issue. The Commission's report concedes that the 'principle, which is correct,' is to determine the costs of handling the transcontinental traffic at issue (R. 1010). But the Commission's 'restatement' of costs nevertheless uses average costs in many important respects, an approach which grossly overstates the costs of the Midwestern

railroads, particularly in their capacity as intermediate (bridge) carriers of transcontinental traffic."

From every substantial standpoint, Northern lines' contention that *C.&N.W.* should control the decision in this case remains unanswered.

III. Reply to Appellees' Point Concerning Specific Items of Cost.

A. The Commuter Deficit.

In Northern lines' opening brief it was pointed out (pp. 44-45) that the Southern lines insisted that passenger deficits be included as part of the constant costs[4] in arriving at the cost of the North-South freight service and that as a result of considering passenger deficits the Southern lines' annual revenues from the prescribed divisions are greater by at least $1,389,000 than if passenger deficits had not been included in the costs. Now Southern lines argue that the Commission made no findings relating to the North-South traffic so much of the commuter deficit as resulted from costs solely related to commutation service. In Northern lines' opening brief (p. 48) it was pointed out that it is of the very nature of constant costs that they are not incurred in the performance of particular services to which they are assigned. It was also shown (p. 53) that the Commission's consideration of overall passenger deficits resulted in the assignment of Southern lines' solely related passenger costs to the freight service involved, but that this was not true as to such costs of Northern lines, since Northern lines'

4. This Court noted in *American Lines v. L. & N.R. Co.*, 392 U.S. — (1968) at p. —, note 3, 88 S. Ct. 2105, 2107, that the Commission defines fully-distributed costs as the out-of-pocket costs "plus a revenue ton and revenue ton-mile distribution of the constant costs, including deficits . . ."

passenger revenues exceeded their solely related passenger expenses.

Realizing their inconsistency in insisting that the solely related passenger costs pertaining to commutation service were improperly considered because of the alleged absence of a finding relating them to freight service, and their benefiting from the Commission's having considered their own solely related passenger costs without any such finding, the Southern lines state that (fn. 20, p. 34 of their brief):

> "The obvious solution, if there were passenger deficits not related to freight operations in both North and South, would have been to exclude such deficits in both territories. Even under the Northern railroads' argument, the failure to exclude all solely related passenger deficits was prejudicial to the Southern railroads in view of the much greater effect of the commuter deficits in inflating the costs of the Northern railroads (A. 1291)."

This appendix reference is to a figure of $1,502,181 (A. 1291) which is given as representing the amount by which Southern lines' cost of performing the freight service involved would be reduced by the exclusion of their solely related passenger deficit. This figure they compared with a higher figure said to represent Northern lines' suburban deficit. The calculation which produces this figure ($1,502,181) appears in a footnote in the Southern lines' exceptions to the Examiner's recommended report (A. 1356-1357). It is surprising that the Southern lines should cite this figure to this Court, in view of what it conceals:

(1) While approximately 44.8% of the figure shown by Southern lines as representing Northern lines' suburban deficit represents return on investment[5] (A. 873), in calcu-

5. A. 873. The amount shown for return ($36,500,000) is 44.8% of that figure plus the remaining part ($44,869,450) of the Suburban deficit, a pro rata part of which was allocated to North-South traffic.

lating their own solely related passenger deficit, the Southern lines include nothing for return although it is obvious that they have many millions of dollars invested in passenger stations, locomotives, cars, coach yards, and other passenger facilities;

(2) While the Northern lines' suburban deficit figure relied upon by Southern lines includes rents and taxes, along with operating expenses (V. S. 40, p. 21; A. 872-874), their figure for their own solely related passenger deficit allocated to North-South traffic includes nothing for these items, not even for taxes on such things as passenger stations or the payroll taxes on the wages of the train crews, station and other passenger service employees. It simply matches passenger revenues with operating expenses (Ex. R. 13; A. 980-981);

(3) While the Southern lines' adjustment for Northern lines' suburban deficit was based upon figures for the year 1957 (V. S. 14, Ex. D and E; A. 719-720), their adjustment for their own solely related passenger deficit employed figures for the year 1956 (A. 1356-7). The passenger deficits of both groups of lines were substantially higher in 1957 than in 1956 (Ex. R. 13; A. 980-981). Having used Northern lines' suburban deficit for 1957, Southern lines clearly should have used their 1957 solely related passenger deficit in making adjustment for that factor. Had they done so, that deficit as apportioned to the North-South traffic (and without including anything for return on investment, rents or taxes) would have been $2,798,236.00 (see the Appendix hereto). This plus Southern lines' allocation of $377,070 to the North-South traffic for the Southern suburban deficit totals $3,175,306, as compared with Southern lines' calculation of a Northern suburban deficit of $2,830,575 for the North-South traffic (A. 1291).

From the foregoing it will be seen that, over and above everything else, in the light of the admission of Southern lines' counsel (Tr. 16; A. 229 and Southern lines' brief, p. 34, fn. 20) that the Southern lines' solely related deficits should be excluded from their costs if the commuter deficits of the railroads are to be excluded, the matter of the Commission's treatment of passenger deficits, including suburban deficits, manifestly did not prejudice the Southern lines.[6]

On p. 34 of their brief Southern lines infer that Northern lines argue that since the Commission included allowances for "overhead" it included commuter deficits "not on

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6. On p. 32 of their brief the Southern lines quote from the Commission's decision a sentence reading:

> "Because the suburban service deficit includes common costs which must be incurred to provide freight service or intercity passenger services, such costs are properly chargeable to those services to the extent they cannot be recovered from suburban operations, * * *."

The words "such costs" obviously refer to the costs represented by the suburban deficit; it is only the deficit which is charged to the freight service, the excess of the costs over the revenue, not the entire costs themselves.

The Southern lines argue that the only allowance to be included under "overhead" would be for officers salaries, general office expenses and other overhead inherent in freight operations. This is a surprising contention from parties who insisted that the passenger deficit be included as part of the constant costs. The term "constant costs" and "overhead burden" or "overhead expenses" have essentially the same meaning—*American Lines v. L. & N.R. Co.*, 392 U.S. —; 88 S. Ct. 2105 (Appellants' brief, p. 44).

Southern lines' argument based upon the Commission's exclusion of platform costs (So. Br. 35-6) is unsound. The Commission found that in the situation involved unloading had become the responsibility of the shippers (A. 88). When the carrier performs the service for the shippers and the charges which it established do not cover costs, the Commission simply declined to include the deficit in the North-South costs. Exercising its discretion in this manner with respect to platform costs obviously did not prevent it from considering passenger deficits as part of constant costs, as the Southern lines insisted it should.

a relative cost theory, but on a revenue needs theory", and the Southern lines say that this is not correct because the Commission found the revenue needs the same in each territory. The revenue needs which the Commission refused to allow were general revenue needs *over and above fully distributed costs.* (See Appellant-Railroads' brief p. 49). As the Southern lines stated in their brief to the Commission (pp. 198-199)

> ". . . the nature and operation of the so-called 'revenue needs' test must be examined in relation to the vital cost of service issue. Since the costs include allowance for overheads and return, divisions based on relative costs reflect '*a due proportion* of the burden of maintaining the financial integrity and credit of the carrier.' *New England Divisions,* 66 I.C.C. 196, 199. Accordingly, and by definition, a separate claim based upon 'revenue needs' is a claim for a disproportionate share of the revenues, a share in excess of the 'due proportion' of the financial burden reflected in the cost evidence.

At p. 36 of their brief, the Southern lines argue that Appellants contend that the "rates should be divided in accordance with the manner in which they are made." This matter was discussed in the Commission's brief (p. 43), the point being made that passenger deficits were included in fixing the level of the joint freight rates on North-South traffic and that in considering passenger deficits in fixing the divisions, the Commission merely divided the rates in conformity with the factors which went into determining their level. Southern lines argument (p. 37) that ". . . the rate levels in both territories are shown by the record to be uniform; and the interterritorial rates being divided here are on the same uniform level" is false. They are here referring only to class rates. Only about 1% of all carload

tonnage moves on class rates in the Eastern United States; *Eastern Central Motor Carriers Association v. B.&O. R. Co.*, 314 I.C.C. 5, 17 (1961).

Rate levels within the North have become higher than those within the South. *Official Southern Divisions*, 287 I.C.C. 497, 523; *Increased Freight Rates, E.W. and S. Territories, 1956*, 300 I.C.C. 633, 686. It is clear therefore, that the rates of the Northern lines which actually move the great body of the traffic are higher than those of the Southern railroads. Moreover, the mere fact that class rates are uniform would not require the exclusion of deficits from consideration in fixing divisions. Total passenger deficits were taken into consideration in making those class rates even though they are uniform (*Class Rate Investigation, 1939*, 262 I.C.C. 447, 573).

The passenger deficit considered by the Commission in fixing the level of freight rates is the entire passenger deficit. The Commission considered overall rates of return from all operations (see, for example, *Increased Freight Rates, 1948*, 276 I.C.C. 9), and the increase in operating expenses due to wage, price and tax increases attributable to all services (see, for example, *Increased Freight Rates, 1948*, 276 I.C.C. 9, at 20-24, and *Increased Freight Rates, E.W.&S. Territories, 1956*, 300 I.C.C. 633, at 641-647, 657-658. Since the entire passenger deficit was taken into consideration in fixing freight rates, it would manifestly be unfair in dividing the freight rates to eliminate part of the deficit, a part which bears more heavily upon one group than the other.[7]

Southern lines argue that there is another policy choice in dealing with suburban deficits, that is to place the

7. Southern lines say (Br. 30) that there is no commuter service in Florida and that this Court had no occasion to consider the treatment of deficits arising from costs solely related to passenger service in *King v. U.S.*, 344 U.S. 254. There the Court sustained an order requiring that Florida intrastate rates be brought up to the inter-

financial burden of the deficits on the communities receiving the service. In support of their assertion that the Commission has "adopted the policy" that commuter service should not burden freight operations, they quote (p. 38) from *Railroad Passenger Train Deficit,* 306 I.C.C. 417, 483 (1959) to the effect that where railroads are unable to operate a particular "local or commuting" service at a profit, and where such service is essential to the community, steps should be taken by state and local authorities to provide the service paying the carrier the cost plus a reasonable profit.

What is thus represented to be the adoption of a "policy" by the Commission, is in fact, one of a series of "recommendations" to others (306 I.C.C. at 482). There is a great difference between making a recommendation and adopting a policy.

It should also be noted that the Commission did not state that from and after the making of that recommendation it would no longer include deficits resulting from the performance of such services in the constant costs allocated to freight service. Finally it should be observed that the Commission's recommendation applied to local train service as well as commuter, yet the Southern lines included all of their local passenger service deficits in ascertaining the cost of performing the North-South freight service here at issue.

At p. 39 of their brief the Southern lines quote from a House Report to the effect, *inter alia,* that it would seem evident that if commuter service must be preserved losses incurred will have to be met "in some way" by the com-

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state level. That level had been fixed on the basis of including the entire passenger deficits of the Southern Region lines. Whatever commuter deficits those lines (including the Illinois Central, which has a large commutation operation) incurred was considered in fixing that rate level; and no distinction was made between solely related and common costs. Id. 265-266; *Increased Freight Rates, 1948,* 276 I.C.C. 9, 40.

munities, and that it is unreasonable to expect that such service should continue to be subsidized by the freight shippers. Plaintiffs contend that this shows Congressional policy. The very next sentence of the report goes on to state:

> "There are substantial losses, however, occurring in passenger service beyond those attributable solely to commuter service. Where this passenger service * * * cannot be made to pay its own way because of lack of patronage at reasonable rates, abandonment seems called for." (pp. 11-12)

It is interesting that the Southern lines are not urging that in this paragraph the Congressional policy as to non-commutation passenger service was abandonment and that, therefore, the Commission erred in including deficits incurred in the performance of passenger service other than commutation, i.e., the kind of passenger service that Southern lines provide.[8]

The Commission has not departed from its policy or practice of including a proportionate part of the entire passenger deficit in determining freight service costs, which is all it has done here. Moreover, policy questions are for the Commission and do not present legal questions.[9]

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8. This Court said with reference to deficit passenger trains operated by the Southern Railway, "The problems raised by the discontinuance of trains Nos. 7 and 8 cannot be resolved alone by reference to appellee's loss in their operation but depend more upon the predominantly local factor of public need for the service rendered." *Alabama Comm'n. v. Southern R. Co.*, 341 U.S. 341.

9. On pp. 39 and 40 of their brief Southern lines state that the Commission has continued to express its "policy" that commuter deficits should be borne by the local community. They fail, however, to refer to the fact that the Commission has made the same declarations with respect to non-commutation passenger service. See, for example, *New York, N.H. & H. R. Co., Discontinuance of Trains*, 327 I.C.C. 151 (1966) at pp. 219-223.

The Southern lines' contention based upon the *Chicago & North Western* case (their brief, pp. 39-40) is answered in our opening brief at p. 54.

The Southern lines also argue that the commuter service is today subsidized by local communities in the North and that since these subsidies did not exist at the time the record in this case was made, the practical effect of the Commission's action is to provide a double subsidy.

If Southern lines believe that there has been a material change in the facts since the record before the Commission was closed, the proper procedure would be for them to file a petition with the Commission for further hearing. The order under review is at all times subject to change under Section 16(6) of the Interstate Commerce Act (49 U.S. Code 16(6). Moreover, it should be noted that factors which the Commission considered and which affect the passenger deficit of the Southern lines have undergone a change. They have discontinued a large number of trains, as have other railroads throughout the country. It is clear that if consideration of *any* changed facts is desired by any party the proper procedure is not to set aside the Commission's order but for the party desiring to present argument on the basis of the changed facts to petition for further hearing and modification of the order by the Commission. *Tagg Bros. v. United States,* 280 U.S. 420, 443-445 (1930).

B.-The Commission's Treatment of the Gateway Interchange Issue Was Lawful in All Respects.

Beginning at p. 43 of their brief, the Southern lines argue that the Commission's treatment of the costs of interchange at territorial border points is not supported by substantial evidence and reasoned findings. They state (p. 44) that ". . . the Commission prescribed divisions which include a separate allowance for the costs of 'border interchange' which are 58% higher for the North than for the

South." They leave the false impression that the only interchanges involved are at border points, whereas, in fact, interchanges on North-South traffic are made throughout Official and Southern territories.[10] The Commission used the Northern and Southern territorial costs at all points where North-South traffic was interchanged, whether at territorial borders or at junctions in the South or in the North.

In an effort to show that these costs for interchange services throughout the respective territories did not reflect relative interchange costs of Northern and Southern lines at certain individual territorial gateways, Southern lines presented statements of their operating officers describing generally the operations and various local practices respecting equalization of engine time or the bearing of certain interchange expenses at such gateway points, concluding that the interchange operations performed by the Northern railroads at the several gateways were no more onerous than those of the Southern railroads at the same points (Southern lines' brief, pp. 43-44).

With this background the Southern lines, upon brief and exceptions to the Commission, took the simple average of the Northern and Southern territorial average interchange costs, applied it to an estimated number of cars interchanged between Northern and Southern railroads at such territorial gateways and thereby obtained a figure of

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10. For example, a shipment from Boston to Miami might be routed via the New Haven to New York, then interchanged by car float across New York Harbor to the Jersey Central, thence carried to Bound Brook, N.J. and interchanged to the Reading, thence to Philadelphia and interchanged to the B. & O., thence to Potomac Yard and interchanged to the R. F. & P., thence to Richmond and interchanged to the Atlantic Coast Line, thence to Jacksonville and interchanged to the Florida East Coast for carriage to Miami. Of all the interchanges in this route, Southern lines discussion leaves an impression of the existence of only one, that at the territorial gateway, Richmond.

$797,043, which they asserted, represented the amount by which Northern costs were overstated and Southern costs were understated, a combined difference of $1,594,086 (SL Brief, p. 146, A. 1054-5; SL Ex. pp. 104-105, A. 1349-50). Nevertheless, Southern lines did not themselves attempt to adjust their cost study to reflect these figures (SL Brief, p. 146). Instead, they included this item with other considerations of a catch-all character addressed to the general consideration of the Commission apart from their proposed specific cost adjustments (SL Brief, pp. 136-158). Thus, Southern lines, in summing up concerning these catch-all items, stated (SL Brief, p. 158; A. 1057):

> "These factors affecting costs must be considered by the Commission in prescribing just, reasonable and equitable divisions for future application to the traffic involved in this proceeding. The Commission may not refuse to give effective consideration to these differences in costs established by the evidence *simply because it has not been possible to measure them precisely in dollars and cents.*" (Emphasis supplied.)

The Northern lines rebutted this testimony, and the Commission found that:

(1) Equalizing the number of engine hours performed on the other lines' rails does not equalize interchange service because each carrier performs a major part thereof on its own rails.

(2) Although many important gateways were cited by the Southern lines' witnesses, not all were included and the proportion of cars passing through unequalized gateways was not shown.

(3) The cost of engine time is not equal in the two territories.

Then the Commission found that there was another, and major, criticism of the proposed adjustment. It found that since Rail Form A territorial costs produce an average cost for all the service units in the territory, such as interchange handlings, when greater or lesser costs than the Form A costs are assigned to particular items, correspondingly lesser or greater costs must be assigned to the remaining units. Thus in proposing the territorial gateway adjustment the Southern lines did not attempt to show to what extent their cost of the other interchanges on the traffic involved would be decreased nor to what extent the Northern costs of the other interchanges would be increased (A. 129).

For all of the reasons indicated above, the Commission refused to accept the proposed adjustments (A. 129).

The Southern lines now argue that they made no claim before the Commission that their method for estimating the level of border interchange costs had to be accepted.[11] They state that there was no substantial evidence to support a higher level of border interchange costs for Northern than for Southern railroads, whatever the precise dollar amount of the equal costs. But contrary to Southern lines' statement that the Commission granted "a separate allowance for border interchanges which is 58 percent greater" for the Northern lines than for Southern lines (Brief, p. 46), the Commission granted no such separate allowance; it dealt with all the interchanges of the Northern lines and all the interchanges of the Southern lines and applied the territorial average interchange cost for the respective territories to all such Northern and Southern interchanges,

11. But at p. 105 of their Exceptions they stated that: "This overstatement in Official territory costs and understatement in Southern Region costs totals $1,594,086 (referred to by the Examiners as '$1.6 million' (sheet 58). A proper restatement of the costs of handling Official-Southern traffic should reflect such equalization of the interchange costs at the territorial gateways."

respectively. Its action in doing so was sustained by the facts, discussed in (1) above, showing justification for the use of territorial average costs. Moreover, Southern lines did not rebut the use of the costs so supported by introducing figures so unreliable that even they disclaimed reliance thereon (Brief, p. 46). Nor did they, by bringing forth such figures cast any burden upon the Northern lines to search for other facts relating to operations of the Northern and Southern lines which might be used in substitution for the territorial figures which the Commission, as the expert body, found satisfactory.

C. The Commission's Use of Territorial Average Car Costs Is Sustained by Adequate Findings and Evidence.

In the case before the Commission, when dealing with car costs the Southern lines abruptly departed from the position which they had so emphatically maintained with respect to other proposed cost adjustments, namely, that the costs should be more refined than territorial averages in order to bring them closer to the North-South traffic. As to car costs, they proposed the average costs for all railroads in the United States in substitution for the territorial car costs of the Northern and Southern lines (A. 94-95). The Commission rejected their proposal—finding that "The use of a national average car cost conceals territorial differences in cost which are important in the consideration of divisions between the two involved territories (A. 101).

In their present brief the Southern lines do not even mention the fact that they had urged the substitution of average United States car costs for those of the railroad groups involved in the litigation. They now abandon any attempt to justify the use of United States average car costs, and rest their attack on the ground of an alleged lack of evidence and findings to support the Commission's use

of territorial costs. The Commission's thorough analysis of the evidence and the contentions regarding car costs are found at A. 94-101.

Southern lines' first basis for contending that the territorial average car costs were not representative of the North-South costs was that the composition of the car fleets of Northern and Southern railroads, respectively, differed from the proportions by types of the cars used in transporting freight between the North and the South, because the car fleets contain substantial proportions of open hopper cars, whereas the cars in predominant use in the North-South traffic are box cars. Before the Commission Southern lines argued (br., pp. 70-75) that the cost of owning and maintaining hopper cars is greater than that of owning and maintaining box cars, and that the lesser utilization of railroad cars on Northern lines is due to hopper cars and not box cars.

The Northern lines answered these contentions by showing that (1) the cost of a box car is greater than the cost of open hopper and gondola cars (V.S. 76, p. 11; A. 918-919). This means that the cost element represented by rate of return is greater on box than on hopper or gondola cars and that the depreciation base is also greater on box cars. This would mean that the presence of a greater proportion of open hopper and gondola cars in the North and the South would serve to reduce the territorial average car costs, thus understating box car costs rather than overstating them. Since the proportion of these open top cars is greater in the North than in the South (V.S. 39, p. 45; A. 858) the comparison would not be unfavorable to Southern lines.

Secondly, so far as the element of repairs is concerned, it was shown that the Southern lines' chief cost witness in this case testified in another recent case that the cost of

car repairs is higher on box cars than on open top cars (V.S. 76, p. 11; A. 918).

Third, with respect to utilization, the Southern lines admitted that (Exceptions, p. 25; A. 1293) "Low utilization of the average car in the North could explain the 32 percent higher territorial average car costs in the North * * *", and Northern lines' evidence showed that the North-South traffic is handled the same as traffic in general, and intermingled with it, on Northern lines. Moreover, the utilization of open hopper cars is higher in the North than in the South (V.S. 76, Appendix B, A. 931; 325 I.C.C. at 63, A. 99), and therefore the lesser overall utilization of cars within the North is not due, as Southern lines have asserted, to Northern lines' greater gondola and hopper car traffic.

The Commission found these cost and utilization figures to be "uncontroverted" (A. 100). It also found that differences in utilization and in costs per year for repairs, depreciation and return are insignificant as between types of cars (A. 96).

The other contention raised by Southern lines against the use of territorial car costs was that those costs were affected by per diem credits and debits and that in figuring the return element in the per diem rate the base is cost of reproduction, whereas in the Form A formula the base for rate of return is original cost. As to this the Commission pointed out that the method by which the per diem rate is arrived at is not the important thing. The important thing is that dollars are collected by the owning road and paid by the using road and that these dollars are just as truly a part of car costs as any other costs connected with the provision and use of cars (325 I.C.C. at 62-63; A. 97-98). Thus, when a railroad uses a car owned by it for transportation over its line, and at other times receives money for its use

on the lines of other carriers the money so received should obviously be used to offset the costs of providing the car. The Commission so found (A. 98).[12]

And it further found (A. 100):

> "We recognize that per diem charges have been based upon car costs computed on a reproduction basis insofar as depreciation and return on investment of the cars is concerned. This differs from the original cost basis used in Form A car cost computations for owned cars. As explained above, the Form A method necessarily includes per diem in the car costs, and is appropriate in situations where, as here, the issues involve divisions of rates on almost all commodities handled in different types of cars, although mainly boxcars, and between numerous carriers throughout both territories."[13]

These findings by the Commission are obviously determinations by an expert body on complex administrative

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12. "All of the items entering into the Rail Form A car costs represent actual expenses, and therefore, any difference in the car costs between the two territories, whether caused by per diem or other items, is not a discrepancy but is a reflection of the actual situation, and this difference (because it is actual) should be considered in the comparison of the relative costs of the two territories." (A. 98).

13. The net credit and debit balances given on p. 48 of Southern lines' brief for the Northern and Southern railroads relate to their entire operations, which include debits and credits among themselves and with Western and Canadian lines (A. 863).

As "A dramatic example" of the effect of per diem rentals on car costs, Southern lines refer to the situation of the Clinchfield Railroad, as to which it says that the effect, under Rail Form A, of offsetting per diem rentals against costs is to say that that railroad incurs "no cost at all." (Footnote 31, pp. 48-49) Southern lines' evidence simply said that the effect on the Clinchfield was to produce "negative unit costs for return" on investment in cars, and not a negative car cost.

facts; *Chicago & N.W. R. Co. v. Atchison, T.&S.F. R. Co.*, 387 U.S. 326 (1967).[14]

At p. 51 of their brief, the Southern lines say with reference to the Commission's finding that among the causes for the difference in car costs as between the North and the South are "differences in tax and wage rates" (A. 100), that there is no evidence to support any difference in tax rates on railroad freight cars and that the evidence shows that the tax rates are higher in the South. The evidence of higher taxes in the North than in the South embraces all taxes, other than federal income and payroll taxes (V.S. 80, Ex. F-4; A. 951) and included taxes relating to cars. To make the comparison between the Northern and Southern lines, the total tax figures were expressed in dollars per mile of road, but they applied to cars, to car shops, and other items of property. With reference to the higher wage rates in the North, the Southern lines intimate (Brief, 51) that prices of materials in the South are higher than in the North. There is no evidence to support any such intimation.

On p. 51 of their brief, the Southern lines say that the third cause assigned by the Commission as an explanation for the differences in car costs is " 'a difference in the relative amount of off-line use of owned cars in all territories' ". In the Commission's report the sentence ends with a period after the word "territories". In the Southern lines' brief, however, a comma is substituted for

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14. The Commission did not say "We are approving car costs 32 percent higher for the North than for the South." It approved the use of the car costs as they were determined on the basis of the formula which it found proper. Moreover, when Southern lines assert that the Commission did not have evidence to support the use of car costs "which are 32 percent higher in the North than in the South" it should be noted that the 32 percent figure represents only a hypothetical example made up by Southern lines and has no relation to the hauls as they actually are in this case (A. 912-913).

the period after the word "territories" within the quotation marks, and then the Southern lines follow it by saying "specifically, 'a greater relative use in connection with the traffic here at issue of cars owned by official territory railroads than of cars of southern ownership' (325 I.C.C. at 64; A. 100-101)." The word "specifically" and its implications are those of Southern lines, not of the Commission. The word used by the Commission to begin the sentence concerning the greater relative use of Official Territory cars was "Moreover", which is quite different from "specifically". The discussion on pp. 51 and 52 of Southern lines' brief can in no way detract from the Commission's statement of the causes of the difference in territorial car costs as including "a difference in the relative amount of off-line use of owned cars in all territories".

The last alleged error urged by Southern lines is that in a divisions case the Commission's responsibility is to determine costs applicable to transportation and that this has nothing to do with the "separate problem" of the financial results which railroads experience in car rentals. The word "transportation" is specifically defined to include cars by Section 1(3)(a) of the Interstate Commerce Act, 49 U.S.C. 1(3)(a), and under Section 1(10) of the Act the use, movement, and interchange of cars is included in the definition of "car service", and a duty to observe reasonable rules and regulations with respect thereto is imposed by Section 1(11). The contention that payment for the use of cars interchanged in the course of transportation is a matter not to be noticed in the fixing of divisions is superficial in the extreme and runs counter to the Commission's finding of the reliability of Rail Form A costs in *Class Rate Investigation, 1939*, 262 I.C.C. 447, 639 (its order in which was sustained in *New York v. U.S.*, 331 U.S. 284), and the consideration and use of Rail Form A in literally hundreds of other cases. With reference

to Southern lines' argument (Br. 49, n. 32) based on *Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639 (1963), it may be observed that the Commission found the factual situation to be such as to disallow that case as a precedent here.[15]

The Commission's use of territorial car costs is legal in all respects and is sustained by adequate evidence and detailed findings.

D. The Commission's Determination of the Switching Cost Issue Was Lawful in All Respects.

Southern lines contended that their territorial switching costs were depressed by the presence within the South of a number of commodities moving in large volume and which, they stated, have lower than average switching minutes per car. They offered evidence purporting to show the effect of said volume movements and made an adjustment in the Form A switching costs for the Southern

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15. "We distinguish the situation here from that presented in *Louisville & N. R. Co. v. Southern Ry. Co.*, 319 I.C.C. 639, sustained in *Carolina & N.W. Ry. Co. v. United States*, 230 F. Supp. 581 (W.D.N.C. 1964), wherein an adjustment for reproduction costs was made. There the sole commodity at issue was coal (not involved here), only a certain kind of car was used and such equipment was owned exclusively by the originating carrier, the traffic moved intraterritorially over only specified segments of each carrier's lines, and the car costs of the destination carrier consisted solely of the per diem charge." (A. 100)

Southern Lines' exceptions to the Recommended Report in the present case notes (p. 28):

> "Southern Railway System lines do not agree that there is any inconsistency between using original costs in Rail Form A and the use of actual per diem debits and credits. Furthermore, the Southern Railway maintains that, in computing the costs of car ownership, it is proper to credit the excess of per diem credits over cost of ownership to the cost of ownership of the cars involved."

lines, which they followed with a different adjustment for Northern lines. The effect of the proposed adjustment was to increase their switching minutes and, therefore, costs, substantially more than they increased those of Northern lines (A. 113-121).

In this Court Southern lines appear to contend that the action of the Commission in disallowing the adjustment was due entirely, or almost so [16] to their failure to present evidence as to switching in the North comparable to their special switching studies in the South. But this is not correct. The Commission found that their switching studies in the South had weaknesses, both in the sample and in the studies themselves (A. 121). These are set forth in detail in the Commission's thorough analysis of this point at pages A. 113-121.

Southern lines also contend that the Commission's treatment of the "question of comparability" was unlawful because it places upon Southern railroads the impossible burden of making switching studies in the North (p. 55). However, since the switching studies within the South were found to be unsound, the making of special studies by Northern lines within the North for "comparability" would have been futile. Moreover, the Commission was satisfied with the territorial switching costs and, therefore, there would have been no purpose in making additional switching studies throughout the North.

The decision in *Boston & Maine R. Co. v. United States*, 208 F. Supp. 661 (1962) upon which Southern lines rely is inapposite. The traffic involved in that case was largely composed of vehicle parts and electric appliances moving

16. On p. 55 of their brief, they said that "A basic reason" for rejection of their studies was that the adjustment in the North was not made on a comparable basis to that in the South; but when they get to the next page they imply that the Commission held against them "because of the lack of comparable evidence . . ."

to or from only one place. The L. & N. gave evidence of its switching costs at the localities involved and there was no finding that its studies were defective, as the Commission found with respect to Southern lines' switching studies in the present case (A. 121). And the Commission found that the average switching cost in the North was not helpful in that case (208 F. Supp. at 675), which comprised but a very narrow segment of traffic.[17]

Southern lines argue that there is no evidence in the record to support the applicability of territorial average switching costs. There was the evidence that this case involves virtually all commodities and all stations and railroads in the North and the South, as well as evidence that the traffic is intermingled with all other traffic. The Commission concluded that (A. 121):

> "Territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic moving to and coming from terminals in all parts of both territories. In our opinion, and we so find, the depressing effect, if any, of volume switching commodities on the average would affect both territories and, for purposes of comparison, would be largely offsetting."

E. The Commission's Disposition of the Issue Concerning Empty Return Ratios Was Lawful in All Respects.

At the beginning of the discussion of this subject in their brief before the Commission, the Southern lines stated, at pp. 46-47:

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17. Southern lines also cite (brief, p. 55) *Commodities-Pan Atlantic Steamship Corp.*, 313 I.C.C. 23, 57 (1960) as a case in which it was indicated that detailed switching studies should have been made by the parties in possession of the facts. This case also involved a narrow segment of traffic moving to and from specialized terminals.

> "The Northern lines' cost study and Southern lines' cost study each purports to use empty return ratios applicable to the types of cars handling Official-Southern traffic. The differences between the parties arise only in respect to the data used for box and refrigerator cars and present the issue as to which study uses the most reliable measure of the empty return experienced by the types of cars which actually handle the traffic here at issue.

And again at p. 51:

> "* * *. The issue is one of fact—whether the refinements of empty return data used by the Southern lines within the several categories of box and refrigerator cars, provided more reliable data for application to the Official-Southern traffic than the average data produced by the 1956-1957 seven-day study and used by the Northern lines."

It is submitted that no question could be more of an administrative question peculiarly within the competence of the Commission than the determination of the "fact" issue as to "which study uses the most reliable measure of the empty return experienced by the types of cars which actually handle the traffic here at issue." After extensive analysis the Commission directly determined that issue, finding that the Southern lines' data were not as sound an estimate of the empty return incurred by the Official-Southern traffic as were the Commission's seven-day study ratios (A. 110).

That the Southern lines' attack on this conclusion is without foundation may readily be demonstrated.

A study conducted under an order of the Commission (a study based upon a seven-day sample covering a 12-

month period in 1956-1957) developed a box car empty return ratio of 39% for the Northern lines and 33% for the lines of the Southern Region. These ratios were used by Northern lines. The adjustment proposed by Southern lines in this case was to reduce the Northern lines' ratio from 39% to 30%, and to reduce their own, more modestly, from 33% to 30% (A. 102).

Contrary to the impression given in the Southern lines' brief (pp. 58-65) their adjustment for Northern lines did not rest simply upon their contention relating to the use of special equipment in transporting automobile parts. Rather, the adjustment was accomplished in three independent stages. Only the first of these purported to eliminate the claimed influence of special cars for automobile parts traffic upon empty box car miles in the North (A. 108). The second stage of their reduction in the Northern lines' ratio was sought to be justified by an alleged imbalance in the directional flow of traffic between Official territory and Canada (A. 108).

The third stage of the adjustment did not have even the pretense of factual support. It was based upon the witnesses' assumption that there are more movements of assigned cars in the North than in the South because of the greater industrialization in the North (A. 108). The witness admitted that he had made no calculation to support this theory. He agreed that "it is an assumption" (Tr. R. 1694-95; A. 1001-1002).

Each of these stages was carefully analyzed by the Commission. It summarized the evidence presented by Southern lines in support of their vehicle parts adjustment under five points (A. 102-4). The first of these was dismissed as being merely a computation showing what the effect would be if certain assumptions are made and without

any evidence that the conditions assumed actually exist (A. 104, Para. (a)).

The second point, a table of Southern lines purporting to show that Northern lines own more special device cars than Southern (A. 103), was criticized because it failed to take into consideration the fact that cars are interchanged among territories and "It is the car-miles in each territory which affect the empty ratio, and the relative ownership does not necessarily coincide with the relative number of car-miles" (A. 105, Para. (b)).

Southern lines' third point was represented by some figures purporting to show that they participate to a much more limited extent in vehicle parts traffic than do the Northern lines (A. 103-104). As to this, the Commission found that the use of the relationship between carloads and revenues pertaining to vehicle parts to the total "manufactures and miscellaneous" group of commodities does not measure the relationship of special box cars to total box cars "for the reason that many boxcars carried commodities other than manufactures and miscellaneous, and vehicle parts do not all move in special boxcars" (A. 105, Para. (c)).

The next point related to the Southern lines' showing of empty return ratios of box cars for certain Detroit lines in comparison with other Northern lines and the Southern lines and the percentage of vehicle parts to total box car traffic handled by each of the groups of lines (A. 104). Southern lines' brief (p. 61) would seem to suggest that this was the Commission's sole ground for rejecting their "factual showing". The Commission found this to be based on only three observations and too limited to be representative (A. 105, Para. (d)).

The last of this group of five points of Southern lines was an attempt to show statistically the effect on empty

return ratios of the elimination of vehicle parts traffic (A. 104). It was by this step that the first stage of the adjustment—reducing Northern lines' ratio from 39% to 34.66% —was achieved (A. 849, A. 866). The Commission found this statistical evidence (1) to be based on certain assumptions, such as that vehicle parts move only in special cars and that all special cars have a 100% empty return, which "assumptions have not been proven" and, in fact, 12% of the vehicle parts move in other than box cars; (2) the individual steps taken to arrive at the answer "contain estimates or approximations with a wide margin of error"; and (3) the "equating factors for revenue are also only very rough approximations" (A. 106, Para. (e)).

The Commission concluded, *inter alia,* that the five items above "tend to show that these cars may have some effect on the empty return ratio, but they do not support a conclusion that any adjustment is warranted here as to the amount of the effect other than that reflected in the averages used" (A. 106).[18]

The Commission thereafter analyzed the Southern lines' contention concerning Canadian traffic and found that the figures given "do not indicate that Canadian traffic has a greater empty return ratio than other traffic" (A. 107).

The Commission's conclusion as to the three stages was in these words:

> "In light of the foregoing, we find that: (1) the adjustment for special device cars of 4.27 percentage points is not adequately supported; at best, it is merely

18. In Footnote 37 on p. 63 Southern lines cite *Louisville & N. R. Co. v. Akron, C. & Y. R. Co.,* 309 I.C.C. 491 (1960) as a case in which the Commission criticized the use of territorial empty return ratios. The Commission distinguished that case from the present case (A. 106) as being factually different and pointed out, *inter alia,* that the entire traffic involved in the case was largely composed of vehicle parts and electric appliances moving to and from Louisville.

illustrative; (2) that the adjustment for Canadian traffic is in error; and (3) that the last adjustment of 2.53 percentage points is purely an unsupported assumption."

The issue as tendered by the Southern lines, whether their data or that relied upon by Northern lines, was "more reliable" for application to the Official-Southern traffic was directly decided by the Commission:

> "For the reasons discussed above, we find that the empty return ratios for both box cars and refrigerator cars developed by the special studies of the Southern lines are not as sound an estimate of the empty return incurred by the official-southern traffic as are the 7-day study territorial empty return ratios. The latter reflect the compilation of actual data reported by the railroads on a comparable basis in each territory under an order of this Commission." (A. 110)

Southern lines now say that there was no substantial evidence to sustain the Commission's use of the box car ratios resulting from the 7-day study. The appropriateness of applying those ratios was demonstrated, as before indicated, by the fact that the issues relate to all traffic between all of Official and all of Southern territory, by the evidence showing that this huge block of traffic is the product of all of the myriad of operating conditions which influence the loaded and empty movement of railroad equipment (V.S. 8, A. 541-582, and V.S. 73, A. 893-904), by the Southern lines' use in this case of the figures produced by the same 7-day study on traffic moving in all types of equipment other than box and refrigerator cars, and by the fact that movements of auto parts in assigned cars takes place between Official and Southern territories, as well as elsewhere and, as the

Commission found, is therefore reflected in the average figures for Official and Southern railroads (A. 106).[19]

F. The Commission's Resolution of the Issue With Respect to Count of Cars Interchanged Was Lawful in All Respects.

The Southern lines introduce their discussion of this issue by a quotation from the dissenting opinion and then say, "No feature of this statement of the problem is questioned in the Commission's report. Instead, the Commission devotes its report to an attack upon the 'estimate' used by the Southern railroads in an effort to correct the inconsistent counting of cars" (Br. 65-66).

The quotation from the dissenting opinion begins with the sentence "The improper counting of a car interchanged instead of terminated by the official lines affects the weighting of that car in computing switching costs." It ends with a like sentence: "The erroneous counting of cars terminated as cars interchanged on the official lines produces higher unit costs for official territory than for southern territory . . ." (Br. 66).

The fact is that the majority report disagreed with the dissenter's assumption that the count of cars was "im-

19. Southern lines stated (Brief, p. 60, fn. 35) that Northern lines rejected a proposal for a joint study of box car empty return ratios. Southern lines sought data in the hands of Northern lines consisting of thousands of wheel reports, and it was clear (1) that the proposed study would have no value, and (2) that whereas the Commission's 7-day study embraced sample days spaced throughout a 12-month period, the 3-day study suggested by the Southern lines would have covered but a span of 18 days, an obviously unrepresentative period and also one which was affected by a strike. A new study spaced throughout a year would have delayed the case, and the Northern lines, as well as the Commission, found the existing data satisfactory. It may be noted that the study proposed by Southern lines was of all traffic on Northern and Southern lines, not just Official-Southern traffic (A. 991, 992).

proper" or "erroneous". The Commission quoted from the evidence of Northern lines on this point:

> "This traffic has been counted as interchange traffic for many years. The rates on this traffic are different than the rates on traffic originated or terminated at the same ports. Evidence was introduced to show that the switching characteristics of the port service on this traffic are more akin to interchange than to terminal service.". (A. 94)

The Commission concluded, *inter alia*, that (A. 94):

> ". . . the contentions of northern lines have merit, and that a change in the classification of this traffic for costing purposes in this case is not justified."

Contrary to the statement in Southern lines' brief that the Commission devoted its report to an attack upon the estimate used by Southern lines in an effort to correct what the dissenting opinion called an erroneous counting of the cars as interchanged, the report is entirely clear that the Commission rejected Southern lines' contention that the cars in question were improperly classified.

The Commission also found that the estimates which Southern lines proposed for the correction of what they regarded as an improper classification "lacks sufficient probative force" (A. 94). Those lines now argue (Br. 66): "Even assuming that the estimate made by the Southern railroads was inadequate, it was incumbent upon the Northern railroads to produce the data in their possession necessary to make an adjustment without resort to any estimate."

Southern lines petitioned for the data desired by them to make an adjustment in the figures classifying the cars in question as interchange traffic. Northern lines consented

to Southern lines having access to the data (A. 1037). Southern lines represented that this data "provides adequate detail for the adjustment reflected in the Southern lines' cost study . . ." (Southern lines' brief before the Commission, p. 109.)

G. The Commission Acted Lawfully in Rejecting Southern Lines' Addition of Pulpwood and Phosphate Rock Constant Costs to Their Cost of Handling North-South Traffic.

This section of Southern lines' brief deals with the Commission's rejection of an adjustment proposed by Southern lines for the addition of over $7,800,000 to their costs to make up for the full share of constant costs which, they say, are not recovered on intra-south shipments of wet phosphate rock and pulpwood.

The movements are wholly intraterritorial within the South. Southern lines' theory in proposing this adjustment, however, was that the movement of pulpwood, for example, into paper mills is on rates that are made low so that the paper products which are made from the pulpwood will be induced to move outbound by rail, and paper products do move from the South to the North. They stated, for example, that the relationship between the inbound movement of pulpwood and the outbound movement of paper products was essentially a "transit" relationship and that, therefore, to the extent that the revenues for the transportation of the pulpwood inbound to the paper mill did not cover the total of out-of-pocket plus constant costs attributable to that local transportation, the deficit in constant costs should be charged to the North-South traffic and added to the Southern lines' costs in this case. The Northern lines argued, among other things, that there was no such transit relationship as the Southern lines had postu-

lated as an essential part of their argument.[20] They also pointed out that they were not parties to the rates involved, that they had no control whatever over their level or any other aspect thereof. The Commission's power as to divisions is to prescribe the division of *joint* rates (49 U.S.C. § 15(6)).

The Commission disagreed with Southern lines' essential theory and was unable to find that the pulpwood and wet phosphate rates within the South are so related to the interterritorial rates that there is a sound basis for the adjustment proposed by Southern lines (A. 128). Southern lines in no way attack that determination. Indeed, their brief does not even hint that it was made. They pretend that the Commission decided the point on the ground that there were comparable situations in the North and they argue that Northern lines failed to come forward with facts concerning similar situations in the North notwithstanding which the Commission "upheld the Northern railroads' position and used average costs." As indicated above, this does not accurately represent the Commission's disposition of this point.

IV. Southern Lines' Argument That the Commission Has Not Justified Its "Abandonment of Uniform Divisions Between Territories Having Uniform Rates" Is Without Merit.

Under their Point III the Southern lines urge that the Commission erred in not "justifying" its abandonment of uinform divisions between the North and the South "particularly since those territories have uniform rate levels" (Br. 68-9).

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20. A description of a proper transit arrangement is contained in *Board of Trade v. United States*, 314 U.S. 534, 537-538 (1942).

In arguing the point the Southern lines say (p. 72):

> "Nothing in Section 15(6) of the Interstate Commerce Act authorizes the Commission to regard divisions based upon relative costs as so obviously just, reasonable, and equitable, that their prescription follows as a matter of course and without the reasoned findings to explain such action as required by the Administrative Procedure Act."

These are the same parties who urged in their brief before the Commission in the present case that (p. 249):

> "The Divisional Scale Must Reflect Cost Relationships in Order To Produce Fair Divisions on Official-Southern Traffic."

At pages 254-5 of that brief the Southern lines quoted this statement and stated that they endorsed it:

> "The Commission's objective should be to ascertain the relative amounts of service rendered by each group of lines as reflected in their relative service costs and to let that standard govern the distribution of the revenues. Scales of pro-rating factors based upon relative costs automatically make appropriate provision, on an average basis, for both the terminal and line-haul services rendered."

The Southern lines carried that contention into a formal proposal for the prescription by the Commission of specific scales based upon Southern lines' contentions of what the relative costs were. At page 271 of their brief before the Commission, they stated:

> "The divisional scales proposed by the Southern lines are constructed directly from the costs developed in their cost study. The proposed scales are incorporated in the proposed findings attached to this Brief."

These scales are found in the Appendix (p. A-3) to said brief (A. 1071). Reference thereto will show that, in recognition of their claimed higher costs, Southern lines proposed scales higher for themselves than for Northern lines. They had no concern for "uniformity in divisions based upon uniformity in rates."

Having urged the Commission to predicate the prescribed divisions on the basis of relative costs, it is manifest that the Southern lines cannot now be heard to say that the Commission committed an error of law in so doing. They purport to rely upon § 8(b) of the Administrative Procedure Act. The pertinent provision thereof is that all decisions shall include a statement of findings and conclusions as well as the reasons or basis therefor "upon all material issues of fact, law, or discretion presented on the record." There was no issue when the party now complaining about the matter urged the Commission to do the very thing about which complaint is being made.[21]

Wholly independent of the fact that the Commission did what Southern lines urged it to do in prescribing divisions on the basis of relative costs, it should be noted that the factual basis upon which Southern lines predicate their argument is unsound. Contrary to the statement on page 70 of Southern lines' brief to the effect that the Commission's decision in *Divisions of Rates, Official & Southern Territories*, 234 I.C.C. 175 (1939), "prescribed an inflation in the divisions of the Southern Railroads on the express ground that the rates in the South were higher on such traffic than

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21. On p. 73 of their brief Southern lines argue that the prescribed divisions also divide profits realized on the traffic and that the division of profits would seem to turn more upon consideration of revenue needs than costs. Divisions divide rates, regardless of the amount of revenue produced thereby. And this argument is in conflict with Southern lines having insisted before the Commission that the rates should be divided on the basis of relative fully-distributed costs.

the rates in the North" and allowed Southern lines a higher division only where interterritorial rates were higher than those within Official Territory, it may be noted that in that case (1) the Commission prescribed divisions on vegetables from Florida over 50% higher for Southern lines than for Northern, yet there is not the slightest indication in the report that the rates from the South to the North were 50% higher than vegetable rates within the North or even that there were any significant vegetable rates within the North; (2) the Commission prescribed as to all existing rates, on general traffic, divisional factors 25% higher for Southern than for Northern lines except on only three categories of traffic, denatured alcohol, cast iron pipe, and export and import rates between Central Territory and certain Southern ports. Notwithstanding the fact that there were countless rates between the North and the South that were on the same level as those within the North, the Commission excepted only these—among all the then present rates—from its order that the Southern lines should have 25% higher divisions.

At page 192 of its report in that case the Commission said that it considered the 25% difference in the prescribed divisional factors "fair in the light of all the facts before us." Among those facts were the evidence as to service costs, the discussion of which started at page 186 and ran over to page 190, with a conclusion, on page 189 that:

> ". . . transportation costs on the traffic here considered may properly be considered to be higher in the South, and that, although the exact degree of difference is indeterminable, it is not negligible, as the northern lines argue."

Then, in the next case (the first decision in the instant docket) the Commission said, concerning the earlier case (287 I.C.C. at p. 524):

> "The element of cost was given weight in our 1939 report upon a showing that from 1932 to 1936 the cost per revenue ton-mile in the South was about 16 percent higher than that in the North."

Moreover, with respect to the Commission's having prescribed divisional factors on citrus fruit which were 85% higher for Southern than for Northern lines, this Court said the factor of financial need appeared to have been given much weight. (*Baltimore & O. R. Co. v. United States,* 298 U.S. 349, 361.)

Southern lines are incorrect in their statements or implications that equal divisions between Official Territory and the South and between Official Territory and the Southwest were prescribed in the 1953 decisions because equal (class) rates were prescribed. The Commission made it clear in those reports that it was not the equal class rates, as such, but the facts behind the prescription of equal class rates—the findings as to equality of costs at that time—that induced the prescription of equal divisions; *Official-Southern Divisions,* 287 I.C.C. 497, 523, 526; *Official-Southwestern Divisions,* 287 I.C.C. 553, 578.

The major premise of Southern lines' proposition that the present order of the Commission, in reflecting cost relationships, constitutes a departure from a long-standing standard of fixing North-South divisions in relation to rate levels is, therefore, shown to be unfounded in fact. That the Commission has not adopted any such policy or standard, either as to North-South divisions or generally, is shown also by its report in *Atlantic Coast Line R. Co. v. Arcade & A.R. Corp.,* 198 I.C.C. 375, at 378-379:

> "At several places in defendants' petition we are charged with serious error in not following and respecting *principles* said to have been laid down in

our decisions or those of the Supreme Court dealing with divisions. It may well be doubted whether decisions in prior cases may properly be said to be a *source of principles governing divisions, which are rather to be sought in the statute empowering us to fix divisions.* Examination of our prior decisions will show that we have at all times asserted it to be our duty to consider each divisional controversy coming before us strictly on its own merits without regard to any fixed basis or general standard of divisions . . ." (Emphasis added.)

In essence, the Southern lines are arguing that equal class rates require equal divisions. As previously shown, class rates are of extremely minor importance from the standpoint of the amount of traffic moved thereon. The general body of rates is higher in the North than in the South.[22]

Even more important is the fact that the class rates were prescribed on the basis of territorial cost relations as of 1939 (27 years ago) in *Class Rate Investigation, 1939,* 262 I.C.C. 447 (1945). There has been a tremendous change since that time. It would be arbitrary in the extreme to take those class rates and then reason that because class rates are equal, divisions must be equal. To do this would involve ignoring the evidence of record with respect to current facts in favor of facts existing twenty-seven years ago as reflected in the little-used class rates.

In addition to the invalidity of Southern lines' contention on the grounds discussed above, it is invalid as a matter of law. Mere inconsistency with a prior decision is not a valid basis for setting aside a later decision of an administrative agency. *William N. Feinstein & Co. Inc. v,*

22. See *supra,* p. 14.

United States, 317 F. 2d 509, 512 (1963); *Manufacturers Ry. Co. v. United States,* 246 U.S. 457, 482 (1918); *Virginia Ry. v. United States,* 272 U.S. 658, 665 (1926); *Baltimore & O. R. Co. v. United States,* 298 U.S. 349, 359 (1936).

In *Secretary of Agriculture v. United States,* 347 U.S. 645 (1954) the Court required the Commission to explain "its departure from prior norms" (347 U.S. 653). The prior norm in that case was virtually a rule of law. Here, however, the Commission is asked by Southern lines to explain why it departed from a past decision establishing a uniform scale on a purely factual basis, in favor of a scale based on relative costs. This is a matter for the Commission's administrative determination on the record before it. Its departure from the prior scale is not a departure from a prevailing rule. *Atlantic Coast Line R. Co. v. Arcade & A. R. Corp.,* 194 I.C.C. 729.

The final argument advanced by Southern lines is that if the Commission correctly found that the Northern lines had relatively higher costs, then *ipso facto* the Northern lines must be deemed relatively inefficient as compared with the Southern lines and the Commission's finding that the two sets of carriers were equally efficient is contradictory and inconsistent. Obviously, higher costs may be incurred for any number of reasons having nothing to do with relative efficiency, e.g., higher wages, higher taxes, number and size of cities served with their influence on terminal operations, etc. Southern lines made no claim of inefficiency, as such, before the Commission. The only matters they raised with even remote relevance thereto were decided against them (A. 38). And, of course, they claimed that their costs were higher than those of Northern lines without any suggestion that they—Southern lines—were inefficient.

V. Reply to the Contention That the District Court Was Correct in Not Reserving Jurisdiction.

At p. 55 of Northern lines' principal brief in this Court it was pointed out that in view of the large sum of money involved those lines would have to proceed with great caution, that they believed that the Commission's order would be sustained but suggested that in the unlikely event that there should be a remand, the prescribed divisions should be permitted to continue in effect subject to possible readjustment following the remand proceedings.

Beginning at p. 76 of their brief, the Southern lines argue that Northern lines agreed to conditions requiring them to resettle all revenues accruing during this litigation in accordance with the preexisting basis of divisions "in the event the Commission's orders were set aside."

The order of the District Court containing the conditions to which Northern lines agreed provides that in the event the Southern lines are successful in "permanently setting aside" the Commission's order Northern lines will resettle their accounts on shipments made on and after April 20, 1965, with interest at 5% on the difference between revenues based on the divisions prescribed and revenues based upon the old divisions (A. 169-171).

If the Commission's order should be found deficient in such a way that the deficiency would not go to the merits of the whole order it would be unjust to set it aside permanently, or to set it aside at all. It might be found deficient, for example, with respect to the Commission's rejection of only one cost adjustment that was advocated by Southern lines and refused by the Commission. In such circumstances it would be unjust to deprive Northern lines of the entire relief to which the Commission found them entitled. It would, therefore, be unjust to enter an order permanently setting aside the Commission's order.

As noted at p. 57 of our opening brief, in *Secretary of Agriculture v. United States*, 347 U.S. 645 (1954), the case under review was remanded to the Commission for further proceedings, but without invalidating the Commission's order or enjoining its enforcement, thus leaving the unloading charges fixed by the Commission's order in effect pending completion of the remand proceedings. A similar procedure here, in the event of remand, would protect the interest of all parties by assuring the application of such divisions as the Commission might ultimately prescribe to all traffic moving subsequent to April 20, 1965, the effective date of the divisions now being applied.

On p. 57 of their initial brief Northern lines suggested an alternative to the procedure just mentioned, namely, a direction to the District Court to retain jurisdiction to make an equitable resettlement of the divisions in the event that upon remand the Commission in a valid order prescribed new divisions for the Northern lines more favorable than the old divisions.[23]

VI. Reply to the Brief of the Southern Governors' Conference et al.

The brief of the Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners, hereinafter called the "Conferences",

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23. In their argument on this general point Southern lines contend that the preexisting scale was found to be defective to their prejudice and appear to urge that the settlement of revenues on the basis of the preexisting divisions would, nevertheless, give Northern lines the benefit of that preexisting scale. The Commission's conclusion to revise the scheme of the scales was made, however, only in the light of its conclusion to be guided by the relative costs in its general determination (A. 63) and, as the District Court pointed out:

> "It cannot be known what the Commission would have done with respect to giving weight to that argument if it were viewed independent of the other facts which induced the Commission to prescribe the divisional bases which it did prescribe."

makes many assertions as to facts but the brief is characterized by an unusual paucity of references to evidence in support of such assertions.

The brief also contains repeated assertions to the effect that although *New York v. United States* had made it clear that there were no inherent differences in transportation conditions in the North and the South, Northern railroads refused to accept equality with the South (p. 4), that in seeking cost related divisions Northern lines did so pursuant to "their aim of obtaining a preference for the North" (p. 4), as a part of the "overall strategy pursued by all of the Northern interests" (p. 4, n.) to obtain preferential treatment in rail transportation charges and, quoting from a speech of Mr. Thurman Arnold, made 27 years ago, that the East had been exploiting the South and treating it as a colony (p. 42). The Northern railroads accepted the Commission's decision granting equality of class rates in *Class Rate Investigation, supra,* and did not join in the appeals (decided in *New York v. United States*) from that decision. Cost relationships have changed since that time and fully justify those railroads seeking higher divisions.

Extravagant claims to the effect that this case is of vital importance to the South and will erect territorial trade barriers (Conference Br. p. 13) and that this case represents an effort to obtain a preference for the North have no foundation whatever. Indeed, recognition of the higher costs of Northern railroads, to the extent that such would be pertinent at all in the fixing of rates, could only mean that the rates within the North would be higher than within the South and between the two territories. The situation would be just the reverse of that which existed as to class rates prior to the decision in *Class Rate Investigation, supra.* Moreover rates and divisions are governed by different statutory criteria and the rates are subject to many

competitive factors which influence their level and relationships. Shippers, including those in the South, pay rates, not divisions.

A. There Is No Sound Basis for Requiring the Commission, as a Prerequisite to Prescribing Cost-Related Divisions, to Find That the Costs Reflect Inherent Territorial Advantages and Disadvantages.

Section 15(6), which empowers the Commission to prescribe divisions and requires that it give "due consideration" to specified elements, puts upon the Commission no such restriction concerning its use of relative costs as Interveners ask this Court to impose.

No judicial construction of Section 15(6) supports Intervenors' theory.[24] On the contrary, the cases clearly establish that it is the exclusive province of the Commission to make findings of fact, to draw inferences therefrom and to evaluate and determine the weight to be given the evidence of record. See *New York v. United States, supra,* at pp. 49-50; *Chic. St. P. M. & O. R. Co. v. United States,* 322 U.S. 1, 2, 3 (1944); *Alton R. Co. v. United States,* 315 U.S. 15, 23 (1942).

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24. While the Conferences do not attempt to define what they would include within the scope of "natural" or "inherent" territorial disadvantages, it may be noted that they would exclude therefrom such matters as differences in wage rates (p. 27) (this and all other references in this footnote are to the pages of the Conferences' opening brief in the District Court), differences in tax rates (p. 27), differences in car utilization (p. 27), higher empty return ratios (p. 25), higher switching costs (p. 25), higher interchange costs (p. 25), economic conditions (p. 22), differences "which can be and will be eliminated by the normal working of economic forces", without limitation as to time. Thus, under "inherent territorial advantages and disadvantages" the Interveners would apparently exclude virtually everything that might affect relative costs except physical or "natural" conditions such as topography, grades and curves, and climatic conditions.

The Conferences rely upon *New York v. United States* as supporting their contention that, as a prerequisite to the prescription of divisions on the basis of relative costs, the Commission was obliged to find that the costs of Northern lines reflected inherent territorial disadvantages (A. 51). *New York v. United States* imposes no such requirement. In that case the Commission found that conditions as between the respective territories did not justify the then existing differences in the class rate structures (331 U.S. at 315). The Court pointed out (at pp. 315-16) that:

> "In reaching that conclusion it first inquired whether the differences in the costs of furnishing the railroad service in the several rate territories justified the existing differences in the levels and patterns of the class rate scales."

Thus the Commission looked to the costs as the primary evidence of relative transportation conditions affecting the rates involved; it did just the opposite of what the Interveners now claim, namely, that it imposed a requirement that costs could not be used without in some way validating them by reference to territorial conditions.

In the present case the Commission stated (A. 51):

> "Relying on *New York v. United States,* 331 U.S. 284, 315 (1947), the interveners also take the position that natural disadvantages must be found in the North before we may increase the divisions of the northern railroads. In essence, however, other factors being equal, cost differences generally are the product of, and reflect, the inherent advantages and disadvantages that go to make up the respective overall transportation conditions in the two territories. Cf. *Louisville & N.R. Co. v. Southern Ry. Co.,* 319 I.C.C. 639, at pages 646-47."

Obviously the most important of the other "factors" that could affect this matter would be the factor of efficiency. At A. 39 the Commission found that:

> ". . . the northern lines' cost of service is not shown to be affected by purported waste or inefficiency. More affirmatively, we find that both groups are being operated efficiently and that neither group should be considered as more or less efficient than the other."

The Commission found, in addition, that the other factors required to be considered by the statute, as well as the other facts, were substantially equal (A. 79 and A. 80).

These findings of the Commission disposed of the Interveners' argument and completely satisfied the requirements of the Administrative Procedure Act.[25]

Very much like the Commission's statement in the present case to the effect that cost differences generally reflect the inherent advantages and disadvantages that go to make up overall transportation conditions is the following from this Court's opinion in *New York v. United States, supra,* at 348-49:

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25. It will be noted that the Commission made reference to *Louisville & N. R. Co. v. Southern Ry. Co.,* 319 I.C.C. 639, at A. 51. There the Commission, consistent with its conclusion here, said, after describing contentions concerning operating conditions:

> "While an appraisal of the evidence regarding physical operations indicates that both the complainant and the defendant operate in mountainous terrain, there is no need to determine whether such transportation conditions are more favorable or onerous to one than to the other. The nature of the physical transportation circumstances is concededly reflected in the cost of operations. In this respect, the cost data hereinafter discussed form a sounder basis for a determination of the issue raised than any conclusions to be drawn from the numerous factual statements regarding operating conditions."

This decision was upheld in *Carolina & Northwestern Ry. Co. v. United States,* 234 F. Supp. 112; affirmed, 380 U.S. 526.

> "Revenue needs, *like costs of rendering the transportation service,* are germane to the question whether differences in territorial rate structures are justified by territorial conditions. They are amongst the standards written into § 15a; *they reflect the totality of conditions under which the carriers in the respective territories operate.*" (Emphasis added.)

In addition to the fact that there is no such legal requirement as the Conferences contend, the factual basis of their argument is completely unsupported. It cannot be stressed too greatly that there is nothing in the record to substantiate the sweeping claim of the Conferences, repeated over and over again, that the higher costs of the Northern lines are the result of over-capacity and consequent waste. There is simply no evidence comparing the Northern and the Southern lines from any standpoint of overcapacity. Moreover, the record in the instant case contains ample evidence of differences in Northern and Southern territorial conditions which are not related to overcapacity but which reflect themselves in cost consequences. Thus, by way of examples, Eastern lines operate in a more populous territory where they have shorter hauls and a greater proportion of terminal to line-haul service (V.S. 5, 6 & 7; A. 493-496, 504, 518-520, 523-525, 532); as shown in V.S. 69, at pages 5 to 8 (A. 890-892), railroad terminal expenses tend to rise much faster than line-haul costs; wage rates and taxes are higher in the North than in the South (A. 938-940). As demonstrated in V.S. 80, Section F, if the Northern lines in 1956 had the benefit of Southern lines' wage and tax bases they would have realized savings of $168,598,737 (A. 939-940).

The presence or absence of over-capacity as affecting relative territorial costs can be indicated by making com-

parisons of fully distributed costs and out-of-pocket costs, which latter eliminates fixed costs (50% of the return on road property as well as 20% of all expenses, taxes and rents).[26] When comparison is made of Eastern District and Southern territorial costs on an out-of-pocket basis the Northern proportion of total costs is *larger* than when using fully distributed costs (V.S. 3, Ex. B, p. 14; A. 454).

In fact, the claim of Northern lines' over-capacity is founded upon Interveners' generalizations concerning merger activity in the North. However, the Commission found "the southern lines themselves have noted that mergers are now going forward in all territories, including the South" (A. 39). It is a matter of common knowledge that all major Southern railroads have been parties to merger negotiations. This includes such important lines as the Illinois Central and Gulf, Mobile & Ohio, and the already approved mergers of the Central of Georgia and Southern Railway and of the Seaboard Air Line and the Atlantic Coast Line, the latter carrier, of course, already being in control of the Louisville & Nashville.

The Commission found that if and when the proposed mergers are ultimately approved and finally consummated "in both groups the savings produced thereby will be then reflected in the respective unit costs." It then stated: "The economies hoped to be effected thereby and the savings expected are not ascertainable for future operation to the degree required for any specific adjustment here of the cost studies of record. We find upon this record that the northern lines' cost of service is not shown to be affected by purported waste or inefficiency" (A. 39).

Nothing could be more a matter for determination by the administrative body than that dealt with in the conclu-

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26. See *American Lines v. L. & N.R. Co.*, 392 U.S. —, (1968) fn. 4, p. —, 88 S. Ct. 2105, 2108.

sions that expected savings are not ascertainable for future operation to the degree required to adjust cost studies of record. These findings together with the findings under "Importance to the Public" at A. 50 and A. 51 are all the findings that the Commission was required to make in disposing of the Conferences' point.

B. The Conferences Contention That the "Principle" of Local Responsibility Requires Equal Divisions Notwithstanding the Higher Costs of One Group of Railroads Is Unsound.

Under this point the Conferences argue (Br. 32 et seq.) that they contended before the Commission that whether or not the Northern lines' higher costs were the product of inherent disadvantages, "the imposition of any part of that cost burden on the South" would be improper unless "the North were found to be unable to support its own cost burden." The conferences urge that the effect of the Commission's decision will be to increase the rates of Southern shippers or diminish their service (Br. 37-38). They contend that the Commission failed to rule on this point and that such failure constitutes a violation of the Administrative Procedure Act.

This argument of the Conferences means that a shipper who happens to live in Boston, and who ships to Detroit, for example, would be required to pay not only the cost allocable to his own shipments but enough, in addition, to make up the amount by which a rate paid by a shipper from Atlanta to Detroit, for example, is reduced below the cost allocable thereto in recognition of the higher costs of the Northern line which participates in the shipment. The man in Boston is a user of the Northern railroads and so is the man in Atlanta (whose shipment moves, for example, by the L.&N. to Cincinnati, thence the B.&O. to Detroit).

Neither customer of the railroad is any more responsible for those railroads than the other. Each is simply a patron thereof.

The Conferences indicate that "the principle" that each territory is primarily responsible for carrying its own "cost burden" is established in *New England Divisions,* 126 I.C.C. 579, 599 (1927) and, on p. 33 of their brief, they quote therefrom about the dangers in the assumption that deficiencies in local earnings must inevitably be made up on interchange business. But this had nothing to do with relieving shippers or carriers of another territory from paying rates, or having divisions, related to the cost of a railroad whose services the shipper uses. In that decision, Commissioner Eastman first quoted from *United States v. Abilene & Southern R. Co.,* 265 U.S. 274, at pp. 284-85, wherein it was stated that it is settled that in determining divisions the Commission may, in the public interest, take into consideration the financial needs of a weaker road and that it may be given a division larger than justice merely as between the parties would suggest in order to maintain it in effective operation.

Then the decision continued (126 I.C.C. at 599):

> "If the operating costs of the New England roads per ton-mile are twice those of their connections, their revenues per ton-mile must of course be approximately twice as much also, in order merely to produce an approximate parity in operations, without even considering investments. If on the one-third of their tonnage which is local to New England they are unable to receive revenues which are twice those of the Trunk Lines on local business, then their divisions must be enough more than twice those of the Trunk Lines per ton-mile to make up the difference."

It is clear, therefore, that in *New England Divisions* the Commission simply declined to push its "financial need" power to the extent desired by the complainants. It was in no way indicated that where divisions are prescribed without reliance on the financial need doctrine but merely to achieve justice as between the parties the Commission might not make divisions on a cost-related basis but, instead, must require the shippers of the territory wherein the railroad operates to bear not only the costs attributable to their own shipments but a part of the cost attributable to the traffic of those who ship from the territory wherein railroad costs are lower.

The Commission here rejected any reliance upon the financial need doctrine (A. 78-79). It was completely within its discretion to employ a relative cost basis as a common standard of measurement reflecting "what justice merely as between the parties would suggest . . ."[27]

Indeed, as was pointed out above, the Southern lines urged in the present case that the Commission should prescribe the divisions on exactly that basis.[28]

None of the Commission cases cited by the Conferences at pages 33-35 of their brief support their suggested "prin-

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27. The quoted phrase is from *U. S. v. Abilene & So. Ry. Co., supra,* at p. 285; and is also used in *B. & O. R. Co. v. United States,* 298 U.S. 349, 370.

28. The primacy of relative costs as the initial indicator of justice as between the parties is indicated by numerous expressions of the Commission. For example, in *Akron, C. & Y.R. Co. v. Atchison, T. & S.F. Ry. Co.,* 322 I.C.C. 491, at 506, the Commission concluded:

> "In the prescription of just and equitable divisions the matter of rate level is not controlling since our objective is to prescribe fair proportions of revenue whether the rates be on a high or a low level. In fixing such proportions it is the relative contribution of the parties, in terms of costs, that furnishes the initial indication of what is just and equitable among the carriers."

This Court held that the Commission's orders in that case were valid. *Chicago & N.W. R. Co. v. A.T. & S.F. R. Co.,* 387 U.S. 326. See also *New England Divisions,* 66 I.C.C. 196, 198 and 199 (1922).

ciple of primary local responsibility through equality of divsions . . . " which they assert "has been consistently followed by the Commission for more than thirty years."

Thus, in *Official-Southwestern Divisions,* 287 I.C.C. 553, 579 (1953), while recognizing that acceptance of relative transportation costs in 1948 at face value "would necessarily support the contention of the eastern lines that the divisional factors to be prescribed should be weighed 10 percent in their favor," the Commission concluded:

> "Upon all the evidence bearing on operating costs we believe it would be unsafe to conclude that in the future there will be any appreciable difference in the average cost levels of the southwestern and eastern lines."

For similar reasons the 1953 decision in *Official-Southern Divisions,* 287 I.C.C. 497-526, does not support the Conferences' alleged "principle". In none of the other cases cited in which the Commission prescribed equal-factor divisions did it recognize the existence of higher costs in the East, but refuse to give effect thereto because of the "principle" for which the Conferences contend. *Divisions of Rates, Official and Southern Territories,* 234 I.C.C. 175 (1939), is not such a case, since the Commission there regarded the costs within the South as then being higher than in the North (234 I.C.C. 175, 189).

With respect to the Conferences' point about the necessity for findings, it should be noted that although the Commission is not required to make subordinate findings on every collateral contention advanced, *Minneapolis & St. Louis Ry. Co. v. United States,* 361 U.S. 173, 193 (1959), their finding that the continued maintenance of divisions which, all other things being equal, do not reflect the relative costs of service would not suggest justice as between

the parties (A. 51), is clearly sufficient with respect to the present contention of the Conferences.

The last five pages of discussion under this point (Point III) of the Conferences' brief discusses alleged economic facts which are in no way pertinent to the point urged by them. It, therefore, needs no reply although much of what is said is in conflict with the Commission's conclusions under the heading "Economic Trends" in its report in this case (A. 31-33). One interesting statement in the report (A. 32) is the following:

> "A southern respondent in 1960 represented 'that the South's economic development since World War II has outpaced the national rate of growth in practically every category you can name.'"

With reference to the Conferences' statement concerning the inadequacy of the rate of return of Southern railroads (Br. 38), it may be noted that in the recent case cited by them, *Increased Freight Rates, 1967*, 329 I.C.C. 854 (1967), the Commission found that rates of return on net investment for the Eastern and Southern railroads were as follows:

Year	*Eastern district*	*Southern district*
	Percent on net investment	
1950	3.63	5.31
1951	3.47	4.74
1952	3.86	5.27
1964	2.56	4.01
1965	3.32	4.16
1966	3.54	4.45
12 months to March 31, 1967	3.15	4.44

The suggestion that the Commission's decision in the present case would result either in a substantial diminution in the quality of rail service within the South or a "substantial increase in rates", and all the speculative consequences thereof which are alleged by the Conferences, are hollow in the extreme. The Commission's estimate of the amount of the revenue reduction to the Southern lines as a result of the order here under review ($7,948,000, A. 80) is only 62/100 of 1% of the freight revenue of the Southern lines ($1,280,900,000, A. 776) for the year in which the Commission's calculations were made (1956). After an appropriate adjustment for income taxes therefor, it would appear that the reduced revenue might be somewhere in the neighborhood of 4/10 of 1% of the gross freight revenue of Southern lines. It is difficult to understand, therefore, how Southern lines could be envisaging "a substanstial increase in rates" as a consequence of this divisions order. The Commission considered the Southern lines' contentions and found that the prescribed divisions "can result in no unlawful injury to the South" (A. 51).

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the judgment of the District Court should be reversed and the cause remanded to that court with instructions to dismiss the complaints.

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September 1968

APPENDIX

This is a reproduction of a footnote on page 119 of Southern lines' Exceptions to the Examiners' Recommended Report, showing Southern lines' calculation of the amount of their solely related passenger deficit for 1956 to be allocated to Official-Southern (North-South) traffic.

The figures under the year 1957 were added by Northern lines. The record references given in Plaintiffs' table apply also to the figures added by Northern lines.

• The portion of the so-called "solely related" passenger deficit for the year 1956 included in the costs assigned to Official-Southern traffic, and excluded in the Southern lines' restatement of costs in these Exceptions, is computed from the record as follows:

			1957
1.	Solely Related Passenger Deficit, Southern Region, Year 1956 (Exhibit R-13)	$11,302,132	19,959,810
2.	Portion of Solely Related Passenger Deficit related to distance (.70† times line 1)	$ 7,911,492	13,971,867
3.	Portion of Solely Related Passenger Deficit unrelated to distance (.30† times line 1)	$ 3,390,640	5,987,943
4.	Ton-miles, Southern Region, Year 1956 (V.S. 3, Ex. A, p. 15)	93,914,726,000	89,166,854,000
5.	Tons originated plus terminated, Southern Region, Year 1956 (V.S. 3, Ex. A, p. 22)	509,992,564	480,343,351
6.	Solely related passenger deficit per ton-mile (line 2 ÷ line 4)	.00842¢	.01488 ¢
7.	Solely related passenger deficit per ton (line 3 ÷ line 5)	.66484¢	1.17412 ¢
8.	Ton-miles of Official-Southern traffic south of break points (V.S. 40A, Ex. K)	15,625,356,000	
9.	Tons of Official-Southern traffic originated or terminated in South (V.S. 40A, Ex. K)	28,055,721	
10.	Portion of solely related passenger deficit related to distance allocated to Official-Southern traffic (line 6 x line 8)	$1,315,655	2,448,494
11.	Portion of solely related passenger deficit unrelated to distance allocated to Official-Southern traffic (line 7 x line 9)	$ 186,526	349,743
12.	Total portion of solely related passenger deficit allocated to Official-Southern traffic (line 10 + line 11)	$1,502,181	2,798,236

† 70-30 is the approximate allocation of passenger deficits as between distance and unrelated to distance under Rail Form A. Changing this factor would have no appreciable effect on the result of this calculation since such a change would not change the total amount of the solely related passenger deficit allocated to Official-Southern traffic, but would have only a minor effect on the relationship between terminal and line-haul costs.

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IN THE

Supreme Court of the United States

No. 13, October Term, 1968

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,
Appellants

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,
Appellees

On Appeal From the United States District Court for the Eastern District of Louisiana, New Orleans Division

PETITION FOR REHEARING RELATING SOLELY TO THE TERMS OF THE JUDGMENT AND ORDER TO BE ENTERED BY THIS COURT

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December 1968

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IN THE

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No. 13, OCTOBER TERM, 1968.

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,

Appellants,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

PETITION FOR REHEARING RELATING SOLELY TO THE TERMS OF THE JUDGMENT AND ORDER TO BE ENTERED BY THIS COURT.

These Appellants respectfully petition the Court for rehearing for the purpose of providing by its judgment and order that the District Court—in order to prevent inequity, unnecessary expense, and a multiplicity of actions—shall hold the case in *statu quo* pending the Interstate Commerce Commission report on remand. The following reasons are shown in support thereof:

After many years of litigation upon petition of Northern lines for an increase in their share of freight revenues on traffic handled jointly with Southern lines, the Interstate Commerce Commission granted Northern lines increases, solely on the basis of their higher costs. The District Court found that seven cost items accounted for those higher costs (A. 343), and it ruled that the Commission's decision was legally deficient with respect to all seven (A. 348, 349). This Court, however, concluded that the Commission's findings were adequate with respect to four of the items and deficient with respect to only three thereof (Opinion of Nov. 12, 1968, pp. 6-8), as to which the Commission on remand was to make "specific findings" (p. 6). The opinion concluded that the judgment of the District Court be modified and, as modified, affirmed (p. 6).

The divisions prescribed by the Commission's order went into effect on April 20, 1965 upon the District Court's denial of an interlocutory injunction. That order of denial provided that the railroads would be obliged to resettle their interline accounts on the basis of the pre-existing divisions as to all traffic moving after April 20, 1965 if the Commission's order should be "permanently set aside" (A. 169-171, 359). The District Court's judgment, after hearing on the merits, provided that the Commission's order be set aside and the cause remanded to the Commission, and judgment has been stayed pending disposition of the present appeals (A. 358-359).

It is respectfully submitted that until the Commission makes the specific findings on the three cost issues as directed by the opinion of this Court, it cannot be known whether a permanent setting aside of the order would be appropriate.

If the Commission's order were to be permanently set aside at this time and, after consideration on remand, the Commission should make valid findings sustaining the previ-

ously prescribed divisions (or some other basis higher for Northern than for Southern lines), the following expensive and wasteful transactions would result:

1. Northern lines would be obliged to pay over to Southern lines in excess of $25 million plus interest at 5% on past shipments;

2. On current shipments the railroads would be obliged to rearrange their interline accounting procedures on North-South traffic (about a million cars annually) and apply the pre-existing divisions in lieu of those prescribed by the Commission's order;

3. The refund of the $25 million and the changeover from the prescribed to the pre-existing divisions on current business would entail a large amount of accounting work and expense, with Northern lines bearing the Southern lines' changeover expenses as provided in the District Court's order of June 3, 1965;

4. Thereafter, following the Commission's making of valid findings reaffirming its prior conclusions (or approving some other divisions higher for Northern than for Southern lines) the $25 million (or the other appropriate amount) would, in equity and justice, have to be reshifted, this time from the Southern lines to the the Northern lines, and the accounts of current business would have to be resettled and the money attributable thereto retransferred. This would entail still more accounting expense, and this, together with the accounting expenses previously paid over to Southern lines, would now have to be refunded to Northern lines.

5. In the absence of the relief here sought, a multiplicity of actions would be required to recover the moneys due under the facts of paragraph 4 above. See *B.&O. R. Co. v. United States*, 279 U. S. 781 (1929).

Under Section 15(6) of the Interstate Commerce Act, the Commission is without authority to prescribe divisions retroactively except in circumstances not here present. *Brimstone R. R. Co. v. United States,* 276 U. S. 104, 117-123 (1928); *United States v. Baltimore & Ohio R. Co.,* 284 U. S. 195 (1931).

In view of the foregoing, it is respectfully submitted that, in addition to providing (as now contemplated by this Court's opinion) for remand to the Commission with instructions to make specific findings on the three cost items found deficient, this Court's judgment should instruct the District Court to hold the case, staying its final decree, until the Commission issues its report on remand.

The decisions of this Court clearly support the propriety of such an order.

In *Morgan v. United States,* 298 U. S. 468 (1936), 304 U. S. 1 (1938), 307 U. S. 183 (1939), a number of agencies performing stockyard services sued to set aside an order of the Secretary of Agriculture prescribing reduced charges for their services, and the District Court had issued a temporary restraining order enjoining enforcement of the reduced charges but upon the condition that the difference between those and the old charges be paid into Court pending final disposition of the case. This Court held that the Secretary had not accorded to Appellees the full hearing required by the Act, and the case was remanded for further proceedings before the Secretary. Thereafter, before the Secretary acted on remand, an appeal was taken from an order by the District Court requiring distribution of the fund to the market agencies. In 307 U. S. 183, at 190, this Court stated the questions involved, including the question ". . . whether, in the exercise of its discretion, the court should retain the fund until such time as the Secretary, pro-

ceeding with due expedition, shall make his final determination and order." Then the Court went on to state:

> "In answering these questions there are two cardinal principles which must guide us to our conclusion. The one is that in construing a statute setting up an administrative agency and providing for judicial review of its action, court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. . . . The other guiding principle is that in reviewing the action of the Secretary and in similarly reviewing the action of the Interstate Commerce Commission in conformity with the provisions of the Urgent Deficiencies Act, the district court sits as a court of equity, see *Ford Motor Co. v. National Labor Relations Board,* 305 U. S. 364, 373; *Inland Steel Co. v. United States,* 306 U. S. 153; and in exerting its extraordinary powers to stay execution of a rate order, and in directing payment into court of so much of the rate as has been found administratively to be excessive, it assumes the duty of making disposition of the fund in conformity to equitable principles."

The Court concluded (at page 198):

> "A proceeding is now pending before the Secretary in which, as we have seen, he is free to determine the reasonableness of the rates. His determination, if supported by evidence and made in a proceeding conducted in conformity with the statute and due process, will afford the appropriate basis for action in the district

court in making distribution of the fund in its custody. *Atlantic Coast Line R. Co. v. Florida, supra,* 312-313, 317. Due regard for the discharge of the court's own responsibility to the litigants and to the public and the appropriate exercise of its discretion in such manner as to effectuate the policy of the Act and facilitate administration of the system which it has set up, require retention of the fund by the district court until such time as the Secretary, proceeding with due expedition, shall have entered a final order in the proceedings pending before him."

Addison v. Holly Hill Company, 322 U. S. 607 (1944) was an action by employes of a canning company to recover minimum wages under the Fair Labor Standards Act. The Act had no application to persons employed in processing agricultural products in the area of production. After plaintiffs recovered below, this Court ruled that the Administrator had exceeded his authority in defining the area of production with relation, in part, to the number of persons employed by a given company. The Court held, therefore, that the case should be remanded to the Administrator for a redefinition of the area of production. Although the money involved had not been paid into Court, the District Court was instructed by this Court to "hold the case" until the Administrator "by making a valid determination * * * with all deliberate speed acts within the authority given him by Congress" (p. 619).

In *Atlantic Coast Line R. Co. v. Florida,* 295 U. S. 301 (1935), intrastate charges had been collected by a railroad in accordance with an order of the Interstate Commerce Commission later held invalid because not supported by adequate findings. Thereafter the Commission, upon new evidence and new findings, made the same order it had made

before. Shippers who had paid the higher rates sued to recover the excess over the old charges on shipments that moved during the period when the first order was in effect. Notwithstanding the defect in the Commission's first order, in view of its having supplied the necessary findings upon the reopening of the case, recovery was denied.

A result similar to that achieved in the cases just discussed was brought about in *Secretary of Agriculture v. United States*, 347 U. S. 645 (1954), wherein this Court concluded that the Commission's findings were inadequate to show the basis for its approval of charges for unloading freight. It vacated the judgment of the lower court which had upheld the Commission and it remanded the case to the Commission for further findings, but without setting the Commission's order aside. The increased rates which had been approved by the Commission therefore continued to be charged while the Commission gave consideration to the matter on remand.

The propriety of the relief sought by this petition is thus well established in the precedents of this Court.

CONCLUSION.

In view of the foregoing, Appellants, the Northern railroads, respectfully pray that the Court enter an order remanding this case to the District Court with instructions

(a) to enter an order providing that its judgment is modified to conform to the opinion of the Supreme Court;

(b) to remand the case to the Interstate Commerce Commission for specific findings on the three items of adjustment of average territorial costs as to which this Court held the Commission's findings to be deficient; and

(c) to stay its final decree pending consideration by the Commission upon remand, and thereafter to make such further order or orders as may in equity and justice be required with respect to the resettlement of accounts as between Northern and Southern lines on the basis of valid findings made by the Commission in the remand proceedings.

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December 1968

CERTIFICATE OF COUNSEL.

I hereby certify, pursuant to Rule 58(1) of the Rules of this Court, that the foregoing petition for rehearing is presented in good faith and not for delay.

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} No. 13

On Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division

REPLY TO PETITION FOR REHEARING ON BEHALF OF SOUTHERN GOVERNORS' CONFERENCE ET AL.

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February, 1969

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ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*, *Appellees*.

No. 13

On Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division

REPLY TO PETITION FOR REHEARING ON BEHALF OF SOUTHERN GOVERNORS' CONFERENCE ET AL.

The Southern Governors' Conference and the Southeastern Association of Railroad and Utilities Commissioners urge denial of the petition for rehearing filed by the Northern railroads in this case on the ground that the relief sought herein has no basis in law and is contrary to the public interest.

Although the Northern railroads seek to convey the impression that their petition essentially deals only with an administrative problem of avoiding unnecessary accounting expense, the relief sought in the petition would substantially reverse the decision which this Court has rendered on the merits of this case and would completely deprive these appellees of any of the benefits of this Court's decision for the foreseeable future. Throughout the proceedings in the case, the basic issue has been whether the Northern railroads have proved their right

to an inflated share of the revenues from North-South freight traffic. As representatives of the public interest, we have contended that the record contains no evidence to support such an inflation, and that, in the absence of such evidence, the divisions prescribed by the Interstate Commerce Commission constitute an unjust discrimination against the South.

Both the district court and this Court recognized the soundness of this contention. The district court emphasized the gravity of a divisional structure that would place the South at a disadvantage and pointed out that the Commission has special responsibilities when considering the establishment of such divisions (270 F. Supp. at 711):

> "For many years prior to this case the Commission has consistently followed the view that the primary responsibility for meeting the cost and revenue needs of the railroads of any territory lies with the people and the industry of that territory. New England Divisions, 126 I.C.C. 579, 599 (1927); Divisions of Rates, Official and Southern Territories, 234 I.C.C. 175, 190 (1939); Official-Southern Divisions, 287 I.C.C. 497, 523 (1953); Akron, Canton & Youngstown R. Co. vs. Atchison, T. & S. F. Ry. Co., 321 I.C.C. 17, 51 (1963). In this very case, prior to reopening, the Commission held that the primary division of revenues accruing from this traffic were to be made on an equal-factor scale. We recognize that the Commission is not perpetually bound by their 1953 holding, but we do believe that the Commission has special responsibilities in a case of this magnitude when it departs from its prior finding."

This Court pointed out that an abandonment of uniformity in divisions without evidence to justify the resulting discrimination against the South could put the South in the same disadvantaged position which it occu-

pied prior to the establishment of uniform class rates for traffic moving to, from and within the South (393 U.S. at 91-92):

> "We agree with the District Court that there is no substantial evidence that territorial average costs are necessarily the same as the comparative costs incurred in handling North-South freight traffic. If we were to reverse the District Court, we would in effect be saying that the expertise of the Commission is so great that when it says that average territorial costs fairly represent the costs of North-South traffic, the controversy is at an end, even though the record does not reveal what the nature of that North-South traffic is. . . . If indeed that lax procedure were sanctioned in a North-South divisions case, whose solution turns solely on costs, the class rate discrimination in favor of the North and against the South which we condemned in *New York v. United States*, 331 U.S. 284, could well flourish in another form."

The Northern railroads' petition for rehearing flies directly into the teeth of both of these holdings. On the assumption that nothing more is involved here than the ownership of money as between two groups of railroads, the petition urges that the Northern railroads be permitted to retain the fruits of the discrimination from which the South has suffered for the last four years and that this discrimination be continued indefinitely into the future until the Commission rehears this whole controversy and issues a new order. In view of the holdings of the district court and of this Court, there can no longer be any question that the relief sought by the Northern railroads would have a profound impact upon the South. Retention by the Northern railroads of the revenues collected under the Commission's invalid order would obviously add to the harm already inflicted upon the South by the discriminatory divisional structure which has impeded needed development of rail services in the South

since the Commission's order became effective. An indefinite continuation of that discriminatory divisional structure would leave the South subject to the trade barrier effects of such a structure, even though the harmful and discriminatory nature of that structure has been established by the opinion of this Court. There can be no justification for such a perpetuation and institutionalization of this discrimination against the South.

The fundamental principle that should govern the Court's disposition of the petition for rehearing is the principle that all sections of the country are entitled to equal treatment in the matter of railroad rates and divisions unless and until a firm basis in fact and transportation policy has been established to justify different treatment. This is precisely the principle which this Court applied in *New York v. United States*, 331 U.S. 284 (1947), in upholding the requirement of uniformity in class rates between the North and the South. In that case, the Court rejected attacks upon an interim order of the Commission removing discrimination, even though the Court conceded that conditions may have changed so as to warrant "adjustments in the new permanent uniform scale" that would eventually determine interterritorial class rate relationships (331 U.S. at 350). The Court did not preclude efforts to justify a re-imposition of discriminatory class rates; however, it made it clear that until a justification for discrimination had been established on the basis of substantial evidence embodied in valid findings of the Commission, the principle of uniformity must be observed.[1]

---

[1] It is noteworthy that the claims of a justification for discrimination were never pressed in the *Class Rates* litigation and that the uniform class rate scale prescribed in that case is still in effect.

In view of the unchallenged finding of this Court in this case that the Northern railroads have not proved their claim to a higher basis of divisions than the Southern railroads, the same principle requires an immediate re-establishment of uniform divisions and the return of revenues collected under the discriminatory divisional structure that has been in effect for the past four years. The South can never be made completely whole from the harm that has already been inflicted upon it by this discriminatory structure, money that could have been invested to bring about improved rail service in the South has been withheld from the Southern railroads, and the adverse impact of this reduction in railroad investment has already necessarily begun to run through the Southern economy. However, an immediate return of these revenues can repair some of this harm and prevent the infliction of further harm. The Southern railroads' investment program for this year are not yet firmly set, and at least one railroad is awaiting the return of the revenues involved in this case before it finalizes its program (see *Traffic World*, November 16, 1968, p. 20). Plainly, the Southern economy should not be deprived of the benefit of such investments and further subjected to the disadvantage of a discriminatory divisional structure imposed without evidentiary justification.

The decision of this Court in *Morgan v. United States*, 307 U.S. 183 (1939), relied upon as the principal support for the petition for rehearing, does not justify the relief sought by appellants. The *Morgan* case rests upon the principle that a court reviewing administrative action should further, not frustrate, the statutory policy which the administrative agency was created to implement. As the Court put it in *Morgan* (307 U.S. at 191):

> "[I]n construing a statute setting up an administrative agency and providing for judicial review of

> its action, court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. Court and agency are the means adopted to attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action."

Accordingly, the decision in *Morgan* to give retroactive effect to an administrative order requiring reductions in rates was placed squarely upon "the meaning and application of the provisions of the Packers and Stockyards Act" (307 U.S. at 188) which specifically provided for reparations. The present situation is precisely the opposite, since Section 15(6) of the Interstate Commerce Act specifically precludes retroactive adjustment of divisions of voluntarily established joint rates. If this Court were to give retroactive effect to an administrative order prescribing divisions, it would effectively repeal this provision of Section 15(6) and introduce chaos into the whole rate-making procedures for North-South traffic.[2]

---

[2] The public interest in facilitating the movement of freight over through routes and on joint rates would be seriously threatened by the creation of equity procedures which circumvent the Congressional policy against retroactive divisions orders. Carriers voluntarily enter into, and maintain, joint rates because they can be sure of the divisions; and because, considering the level of the joint rate and the divisions thereof, the performance of freight service on that joint rate is a profitable enterprise. However, if the divisions which the other participating carriers offer are presently inadequate or uncertain because they might be changed retroactively in the future, a carrier has the option of refusing to enter into the joint rate, and instead offering service on a separate rate. The shipper thus would have to pay combination rates—that is several rates to separate carriers—rather than a single joint rate to the participating carriers. Transportation on these multiple rates is almost always more expensive to shippers—both because the sum of the components is generally higher than a single rate covering the same service, and because the multiple rate system requires more administrative expense.

This would have incalculable effects upon the economy of both the South and the North, which are in no way justified by the principle stated in *Morgan* that courts should cooperate with administrative agencies to achieve statutory aims.

In fact, the *Morgan* principle leads to precisely the contrary conclusions here. In *Morgan*, the goal of effectuating the purposes of the Packers and Stockyards Act led the Court to use its equitable powers to give retroactive effect to a rate reduction that had been justified by evidence but set aside solely because of procedural defects. Here, the purpose of the Interstate Commerce Act would be frustrated by such relief. In *New York v. United States*, 331 U.S. 284 (1947), this Court made it clear that the basic statutory purpose of the Interstate Commerce Act was the removal of discrimination (331 U.S. at 296):

> "The principal evil at which the Interstate Commerce Act was aimed was discrimination in its various manifestations. Louisville & N. R. Co. v. United States, 282 U.S. 740, 749, 750."

In the context of this case, the *Morgan* principle thus plainly means that neither the Interstate Commerce Commission nor any reviewing court should countenance any form of discrimination unless and until a firm and lawful basis for such discrimination has been established.

The other cases cited by appellants are simply additional examples of the same principle. In each case, the action of the Court rested upon and was designed to implement the policy of the particular statute involved. Hence, these decisions do not provide a guide for dealing with a situation which turns upon the non-discrimination policy of the Interstate Commerce Act. Appellants cite no case, and there is none, in which discrimination has been given retroactive effect or permitted to continue to exist before a justification for that discrimination has been established under the Interstate Commerce Act.

CONCLUSION

For the foregoing reasons the petition for rehearing is without merit and should be denied.

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REPLY TO PETITION FOR REHEARING ON BEHALF OF SOUTHERN RAILROAD APPELLEES

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February, 1969

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On Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division

REPLY TO PETITION FOR REHEARING ON BEHALF OF SOUTHERN RAILROAD APPELLEES

Preliminary Statement

In their Petition for Rehearing the Northern railroads seek to retain over $25 million in divisions collected under an order of the Interstate Commerce Commission which this Court has held to be unsupported by substantial evidence. They also seek to continue to collect higher Northern divisions under that same invalid order. The stated justification for these requests is that it would be expensive to reestablish the previously effective equal-factor basis of divisions.

The petition rests entirely on the premise that if upon remand the Commission again gives the Northern railroads a higher basis of divisions, North-South divisions would have to be retroactively adjusted in accordance with the

Commission's new order (Petition, p. 3). This premise is never established in the Northern railroads' petition and is, in fact, demonstrably false.

The principles which govern the disposition of this petition are clear, having been recognized by the Northern railroads themselves in the district court, where they proposed and consented to the provision of the district court decree which imposed upon them the obligation to restore these revenues to the Southern railroads if the Commission's order were found to be unlawful. But for their agreement—which the Northern railroads now would have this Court rescind—the Commission's 1965 order would have been enjoined pending judicial review, the inflation in the Northern railroads' divisions would not have gone into effect, and the sums the Northern railroads now seek to retain would now be in the posession of the Southern railroads.

As we shall also show in this reply, the Northern railroads seek an order which, in addition to repudiating their agreement in the court below, would violate the policy of the Interstate Commerce Act and would frustrate rather than further the aims of equity.

I. EQUITY SHOULD NOT RELIEVE THE NORTHERN RAILROADS OF THEIR OBLIGATION TO RETURN THE MONEY COLLECTED UNDER THE COMMISSION'S INVALID ORDER.

A basic deficiency in the Northern railroads' Petition for Rehearing in this case arises from the total failure of the petition to deal with the promise which they made in the district court to return to the Southern railroads the money collected under the Commission's order of February 3, 1965, if that order were subsequently held to be invalid. The Northern railroads admit that the district court's order of

June 3, 1965, denying an interlocutory injunction in this case, "provided that the railroads would be obliged to resettle their interline accounts on the basis of the pre-existing divisions as to all traffic moving after April 20, 1965, if the Commission's order should be 'permanently set aside' (A. 169-171, 359)" (Petition, p. 2).

However, the Northern railroads do not inform the Court that this protective condition was included in the order denying the injunction because they proposed it as an alternative to an interlocutory injunction; nor do they inform the Court that this obligation was made effective upon the filing of written consent by the Northern railroads.[1] In none of the cases relied upon in the Petition for

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[1] The order of the district court denying the application of plaintiff Southern railroads for an interlocutory injunction provides as follows (A. 169-170):

"3. The foregoing denial of the application for interlocutory injunction and dissolution of the temporary restraining order is subject to the following conditions, to which the intervening defendants, The Baltimore and Ohio Railroad Company, et al., have agreed by filing written consent with the Clerk of this Court:

"A. In the event the plaintiffs are successful in permanently setting aside the order of the Interstate Commerce Commission of February 3, 1965, intervening defendants, The Baltimore and Ohio Railroad Company et al., *will resettle their accounts with plaintiffs, on traffic covered by the order of the Commission, on the basis of the present divisions, on all shipments made on and after April 20, 1965,* with interest at the rate of 5% per annum on the monthly differences between revenues based upon the divisions prescribed by the Commission and revenues based upon the divisions now in effect, the said interest to be calculated from the customary accounting monthly settlement dates.

* * *

"C. Upon the happening of the event specified in para-

Rehearing was there a consent decree providing for resettlement, and the Northern railroads do not even discuss the controlling principle that a decree entered by consent is not subject to general review by an appellate court. As this Court held in the leading case on consent decrees, *Swift & Co.* v. *United States,* 276 U.S. 311, 324 (1928):

> "Decrees entered by consent have been reviewed upon appeal or bill of review where there was a claim of lack of actual consent to the decree as entered, . . . or of fraud in its procurement; . . . or that there was lack of federal jurisdiction because of the citizenship of the parties. . . . But 'a decree, which appears by the record to have been rendered by consent, is always affirmed, without considering the merits of the cause.' *Nashville, Chattanooga & St. Louis Ry. Co.* v. *United States,* 113 U.S. 261, 266."

This Court has applied this principle to a decree containing a commitment to return revenues collected pending review of an order of the Interstate Commerce Commission. In *Chicago, Milwaukee, St. P. & P.R. Co.* v. *Illinois,* 356 U.S. 906 (1958), the Milwaukee Railroad had sought and received from the Commission an order increasing intrastate rates on the ground that the existing low intrastate rates constituted an undue burden on interstate commerce. The State of Illinois sought judicial review, and the district court set aside the Commission's order for want of adequate findings and for reliance on evidence improperly received (146 F.Supp. 195 (N.D. Ill. 1956)). Pending ap-

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graph A . . . hereof, intervening defendants, The Baltimore and Ohio Railroad Company et al., shall be required to reimburse plaintiffs for their reasonable expenses for accounting change-overs incurred as a result of this denial of the application for interlocutory injunction." (emphasis supplied)

peal, the district court stayed its judgment setting aside the Commission's order on the condition, agreed to by the Milwaukee in open court, that the amount of the increase in rates would be refunded in the event the judgment of the district court were affirmed (see 168 F.Supp. at 707; 355 U.S. at 302, note 2). On appeal, this Court affirmed the judgment setting aside the Commission's order on the ground of inadequate findings, modified the district court's judgment to the extent that it held the Commission had considered improper evidence, and remanded the case to the Commission for further proceedings. *Chicago, Milwaukee, St. P. & P. Co.* v. *United States,* 355 U.S. 300, 307-309 (1958). Thereafter, the Milwaukee sought in the district court to delay the refund of the increased rates "pending the further proceedings before the Commission contemplated by the judgment of this Court" (356 U.S. at 907). The district court denied the Milwaukee's request and ordered an immediate refund. The Milwaukee applied to this Court for a writ of supersedeas, which was denied without opinion (356 U.S. 906).[2]

There can be no question that the decree entered with the consent of the Northern railroads in this case requires immediate return to the Southern railroads of the revenues collected as a result of the Commission's invalid order of February 3, 1965. The decree specifically states that resettlement will be "on the basis of the present divisions," not some basis that the Commission might prescribe in a

[2] Mr. Justice Frankfurter, dissenting with three other Justices, was of the opinion that the Milwaukee should have been relieved of its resettlement obligation on the ground that statutory policy and the public interest so required. For reasons discussed *infra* (pp. 12-24), such considerations operate in just the opposite direction in this case and provide further reasons for enforcement of the Northern railroads' agreement, not for its rescission.

future order following remand. The commitment was to resettle in the event the Southern railroads were successful in "permanently setting aside the order of the Interstate Commerce Commission of February 3, 1965." The North now attempts to play on the word "permanently" (Petition, p. 2), but that word simply contrasted the action of the district court on the merits of the request for a permanent injunction setting aside the Commission's order of February 3, 1965, with the request for an interlocutory injunction which was under consideration at the time the consent decree was entered.

The Commission's order of February 3, 1965, has now been held to be unsupported by substantial evidence both by the district court (A. 349) and by this Court (393 U.S. at 91). As required by Section 10(e) of the Administrative Procedure Act,[3] the final judgment of the district court (A. 357), affirmed by this Court (393 U.S. at 96), sets aside the Commission's order.[4] This holding has not been challenged by the Northern railroads in their Petition for Rehearing. Thus, the Commission's order of February 3, 1965, will never—under any circumstances—go into effect. If the Northern railroads ever succeed in proving that they are entitled to a higher basis of divisions than the Southern railroads, it would have to be by virtue of some new order of the Commission based upon a different record contain-

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[3] "The reviewing court shall . . . set aside agency action . . . found to be . . . unsupported by substantial evidence. . . ." (5 U.S.C. § 706)

[4] The modifications in the judgment ordered by this Court went to the several specific findings required on remand, not the conclusion that there was a lack of substantial evidence to support the Commission's order (as discussed at pp. 17-21, *infra*). A far more fundamental difference between the grounds of decision adopted by the Supreme Court and those relied upon by the district court was not sufficient to relieve the Milwaukee Road of its agreement (p. 5, *supra*; 356 U.S. at 908-909).

ing evidence necessary to support such an order. The validity of any such future order could not operate to resurrect the one which has been invalidated in the present proceedings.[5]

The Northern railroads' own pleadings in the district court make it abundantly plain that their agreement was to restore the uniform basis of divisions once the Commission's order was set aside, even if (as the Northern railroads erroneously assume in ignoring the Court's holding that there was a fundamental lack of substantial evidence) the judgment setting it aside rested only on the inadequacy of findings with respect to three important cost items (Petition, p. 2). When Appellants appeared before the district court in opposition to the Southern railroads' application for interlocutory injunction, they urged that if the Commission's order of February 3, 1965, were found to be deficient with respect to a single cost item, the order would have to be set aside in its entirety and would have no further effect. The Northern railroads took this position in opposing the contention of the Southern railroads that the order should be set aside only in part because the Commission's invalid action prescribing an inflation in the Northern divisions was separable from its valid determination that the terminal factor in the pre-existing uniform divisional scales was prejudicial to the long-haul Southern railroads.[6]

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[5] Moreover, in this case, any new order would necessarily differ from the order herein found to be invalid. For example, the court below and this Court have held that the Southern railroads could not be burdened with "costs related solely to commuter service in the North." (393 U.S. at 94; see A. 344-346) Any future order of the Commission would have to reflect the cost adjustments which necessarily follow.

[6] The background of this contention is discussed in Appellee Southern Railroads' Brief (pp. 77-80). The district court agreed with the Northern railroads and the Commission in holding that "the Commission's order is not severable" (A. 330).

The Northern railroads unequivocally stated their position as to what the proper disposition of the case would be if the Southern railroads were successful in showing the Commission's order of February 3, 1965, "to be legally deficient in some respect":

> "Intervening Defendants are confident that, upon final review, the Court will conclude that the Commission's order is in all respects lawful. *But if the Court should find it to be legally deficient in some respect,* its decree, in the terms of the statute, would be one to enjoin, set aside, annul or suspend the said order. *Thereafter the Commission's report and order would have no effect.*
>
> "It is respectfully submitted, therefore, that any condition for readjustment of the divisions which would be required as a result of a possible annulment of the Commission's order *should be on the basis of the divisions which are now in effect and which have been in effect for the past twelve years, the divisions which represent the status quo.*" (emphasis supplied)[7]

The Northern railroads thus made it as plain as language permits that they fully understood, and indeed urged, that

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[7] Memorandum in Opposition to Application for Interlocutory Injunction, May 17, 1965, p. 26.

Counsel for the United States and for the Interstate Commerce Commission appeared at the hearing on the interlocutory injunction, but left it to the "parties having a financial interest" to argue the question of whether the injunction should or should not issue. (Memorandum of United States and I.C.C., May 21, 1965, pp. 1-2). The position of the Government was summarized as follows (*id.* at 7-8):

> "To preserve the status quo this Court should impose a condition which would require either resettlement from April 20, 1965, on the new prescribed basis if a preliminary injunction is granted or, if a preliminary injunction is not granted, resettlement from April 20, 1965, *on the basis of the divisions which have been in effect for the past 13 years . . .*" (emphasis supplied).

if the Commission's order of February 3, 1965, were found to be invalid "in some respect," that order should be set aside with the result that the pre-existing uniform basis of divisions would be restored and the resettlement conditions would become operative.

In view of the clarity of the provisions of the consent decree entered by the district court and the context in which that decree was entered, there exists no genuine question of interpretation with respect to that decree. If the issue which the Northern railroads seek to present were actually one of interpretation, they doubtless would have presented that issue to the district court, which ought to interpret its own decree, at least in the first instance. What the Northern railroads seek here, therefore, is not an interpretation of the consent decree but relief from that decree and from the obligation which they assumed in consenting to it. There is not the slightest basis for any such relief under the standards which govern the application of consent decrees.

The principles applicable to review of consent decrees were summarized as follows in *Walling* v. *Miller*, 138 F.2d 629, 631 (8th Cir. 1943), cert. denied, 321 U.S. 784 (1944):

> "The law is that a decree entered by consent may be reviewed upon appeal or bill of review where there is a claim of lack of actual consent to the decree as entered; or of fraud in its procurement; or that there was lack of federal jurisdiction. But 'a decree, which appears by the record to have been rendered by consent is always affirmed, without considering the merits of the cause.' All errors going to the merits and remediable on appeal are waived by consent to the decree. . . . *Swift & Co.* v. *United States*, 276 U.S. 311, 324, 326, 327. . . .
>
> "One reason for the rule is obvious. A court which, having jurisdiction of the parties and of the subject matter, renders a consent decree, if it sustains a motion

> of one of the parties to vacate such decree, not only sanctions the breach of a contract but in effect becomes a party to the breach. . . .
>
> "There is no claim here that the parties were not competent to contract; or that there was lack of consent; or that there was fraud in the procurement of the decree. Neither can it be doubted that the court at the time the decree was entered had general jurisdiction of the subject matter and of the parties. The court so found, and no appeal was taken by the defendants from that finding."

Having proposed the consent decree in the district court, the Northern railroads are now bound by their agreement. They fully understood that their obligation to resettle and restore the pre-existing divisions would become operative under the circumstances which now exist. And the Northern railroads proposed and consented to the decree with the full knowledge that they had waived any right to retroactive relief in the event of a remand to the Commission.[8]

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[8] In a pleading filed in another divisions case shortly before the entry of the consent decree here, the same counsel for the Northern railroads recognized that the decision of this Court requiring immediate refund in *Milwaukee Road,* 356 U.S. 906, had been

> "influenced by the fact that the carrier which held excess fares had consented to a distribution thereof if the administrative order were set aside *and thereby waived its right to retroactive relief in the event of a remand of the cause to the Interstate Commerce Commission."* (emphasis supplied)

(Objections of Intervening Railroad Defendants, February 3, 1965, p. 10, in *Atchison, T. & S. F. Ry. Co.* v. *United States,* S.D. Calif, Civil Action 63-745-EC).

In another divisions dispute between the same Northern roads and Western railroads, the North had agreed to resettle in the event the order of the Commission under review were set aside, as it was in *Atchison, T. & S. F. Ry. Co.* v. *United States,* 225 F.Supp. 584 (D. Colo. 1964). Although that case was also remanded to the Commission for further proceedings, the Northern railroads did not attempt to avoid their obligation but restored the pre-existing divisions and completed the resettlement in 1964.

Had it not been for the resettlement condition in the district court's order, which the Northern railroads proposed and to which they consented, the Commission's order of February 3, 1965, would have been enjoined pending this litigation, and the Southern railroads would today have in their possession the revenues in controversy. If the district court had known at the beginning of this action for judicial review what it later concluded on the merits—namely, that the Commission's order is not supported by substantial evidence—the Commission's order would have been enjoined at the outset. However, issuance of the interlocutory injunction pending determination of a judicial review proceeding requires a showing of irreparable injury. The purpose and effect of the Northern railroads' agreement to restore the uniform basis of divisions for the period after April 20, 1965, in the event the Commission's 1965 order were set aside, was to eliminate the Southern railroads' claim of irreparable injury. Having accomplished that purpose, and having thus obtained possession of the revenues which belong to the Southern railroads, the Northern railroads are now estopped from seeking to annul their agreement. The Northern railroads are not prejudiced by enforcement of the terms of the district court's order, to which they consented, since enforcement will simply restore the parties to the same position they would be in today if an interlocutory injunction had issued.

Accordingly, equity should leave the Northern railroads precisely where they agreed to be when they proposed and consented to restore the uniform basis of divisions in the event the Commission's order of February 3, 1965, were set aside.

II. THE ORDER SOUGHT BY THE NORTHERN RAILROADS IS CONTRARY TO THE POLICY OF SECTION 15(6) OF THE INTERSTATE COMMERCE ACT.

The Northern railroads' consent to restore the pre-existing uniform basis of divisions disposes of the issues raised by Appellants in their Petition for Rehearing. In addition, the order sought by the Northern railroads should be denied because it is flatly inconsistent both with the language of Section 15(6) of the Interstate Commerce Act (49 U.S.C. § 15(6)) and with the policy underlying that statutory provision.

Under Section 15(6), the Commission is empowered to prescribe divisions of joint rates for the future only. The single statutory exception relates to divisions of rates where the rates themselves have been prescribed by the Commission. The Northern railroads concede that, under Section 15(6), "the Commission is without authority to prescribe divisions retroactively except in circumstances not here present" (Petition, p. 4). However, the sole purpose and effect of the order sought by the Northern railroads' Petition for Rehearing is to avoid this statutory limitation. The Northern railroads are asking this Court to use its equity powers to give retroactive effect to inflated divisions which might be accorded the Northern railroads in the proceedings upon remand. This request is flatly inconsistent with the policy of Section 15(6).

In *Brimstone R.R. and Canal Co.* v. *United States,* 276 U.S. 104 (1928), this Court reviewed the legislative history of Section 15(6) and explained the purpose of Congress in precluding retroactive application of divisions of agreed joint rates, as follows (276 U.S. at 121-122):

> "Section 15(6) established the right to prescribe future divisions of agreed rates, but we think *the studied pur-*

pose was to grant no power to require readjustments of past receipts from agreed joint rates. Theretofore power in respect of past divisions existed only when rates had been determined and prescribed after full hearing—that is where the commission had passed upon the reasonableness of the rate and required observance. *Obviously a carrier may have assented to a through rate only because of the divisions accorded to it: to permit the Commission to change this arrangement as to past transactions would be exceedingly harsh if not wholly unreasonable.* Ordinarily, divisions of a particular rate are not of public interest if the rate itself is reasonable.

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"The power to require readjustments for the past is drastic. It may reasonably exist in cases where the particular rate has been approved by the Commission after full hearing: it ought not to be extended so as to permit unreasonably harsh action without very plain words." (emphasis supplied)

The limitations upon the Commission's power to prescribe retroactive divisions of agreed joint rates thus reflect the "studied purpose" of Congress to preclude such retroactivity. Retroactive application of divisions was held to be inequitable, indeed harsh, where a railroad voluntarily enters into joint rates and remains a party to the agreed joint rates because the divisions are acceptable. Once a shipment has moved, a railroad cannot retroactively withdraw from a rate already paid by the shippers. In all fairness, therefore, orders prescribing divisions of agreed rates must operate prospectively only.

The statutory policy precluding retroactive determination of divisions is particularly applicable in this case. The Southern railroads have entered into numerous joint rates with the Northern railroads since the litigation in this case began; and virtually all North-South rates have

been the subject of adjustment in general increase proceedings. In making and adjusting these joint rates, the parties have relied upon existing divisions arrangements, including the North's resettlement obligation. The Southern railroads have acted on their belief (since confirmed by the district court and this Court) that the Commission's 1965 order was invalid; their position with respect to new and adjusted rates has been based upon the statutory provision that the equal-factor basis of divisions established in 1953 could not be changed except prospectively, by virtue of a valid Commission order. The Northern railroads confirmed this premise by undertaking to refund revenues in excess of the equal-factor divisions if the 1965 order were held to be invalid. In this situation, it would be patently inequitable to nullify the limitations of Section 15(6) and give retroactive effect to a Commission order prescribing divisions.[9]

United States v. *Morgan,* 307 U.S. 183 (1939), heavily relied upon by the Northern railroads, arose out of an entirely different situation and was governed by an entirely different statute. Indeed, the Court emphasized in *Morgan* that: "Decision turns on the meaning and application of the Packers and Stockyards Act" (307 U.S. at 188). The Court cited the provisions of that Act which provided for reparations where rates were found to be unreasonable (307 U.S. at 189), and explained that the action of the district court in ordering that the rates in controversy be deposited in a court-administered fund had "obstructed any effective reparations order" (307 U.S. at 193) because the regulated

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[9] Moreover, such action could only produce chaos in the period preceding a Commission decision on remand, for without knowledge of the divisions that would ultimately apply to traffic that moved in that period, neither the Southern railroads nor the Northern railroads could sensibly decide upon their participation in many joint rate proposals.

market agencies no longer were in possession of the revenues for payment of reparations (307 U.S. at 197). *Morgan* held that equity would not allow the statutory policy favoring retroactive application of rates to be obstructed and frustrated by distribution of the impounded fund to the market agencies.

In *Brimstone,* on the other hand, the Court recognized that Congress had expressed its "studied purpose" in differentiating between divisions, as to which retroactive adjustments on "past transactions would be exceedingly harsh if not wholly unreasonable" (276 U.S. at 122), and rates, as to which the Commission was given extensive reparations power (49 U.S.C. §§ 8, 9). The Congressional determination of the essential equities with respect to divisions necessarily governs a court of equity in dealing with the same subject.

The *Morgan* principle that court and agency should work together to achieve "the plainly indicated objects of the statute" (307 U.S. at 191) required the retroactive judicial application of rate orders under the Packers and Stockyards Act, only because that Act itself provided for retroactive adjustments of rates through reparations. The same principle precludes a court of equity from fashioning a procedure which calls for the retroactive application of divisions contrary to the "studied purpose" of Congress.

The Northern railroads do not cite any case in which a divisions order has been given retroactive application, contrary to the purpose of Congress as described in the *Brimstone* case. The Northern railroads ask the Court to "See *B&O R. Co.* v. *United States,* 279 U.S. 781 (1929)" (Petition, p. 3). In that case, a Commission order had been set aside for lack of supporting evidence, *Baltimore & Ohio Ry. Co.* v. *United States,* 277 U.S. 291, 300-301 (1928), and it was thereafter held that the railroads which had lost

revenues under the invalid order were entitled to restitution (279 U.S. at 785-786). The case thus vindicates the purpose of Section 15(6) as stated in the *Brimstone* case by holding that, even if there had been no resettlement condition in the consent decree of the district court denying an interlocutory injunction in this case, the Northern railroads would still be obligated to resettle the divisions collected during the period of litigation under the invalid Commission order.[10]

The Northern railroads conceded in the district court that restitution of the revenues in controversy would be the necessary effect of a judgment setting aside the Commission's order of February 3, 1965,[11] and that this practice in divisions cases was reflected in the accounting rules of the railroad industry.[12]

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[10] In *United States* v. *Baltimore & Ohio Ry. Co.*, 284 U.S. 195 (1931), three Commission orders had been entered prescribing the same divisions. The first order was not supported by evidence; and the second order raised a question of adequacy of the statutory 30-day notice. This Court held that the divisions took effect with the third order, over a dissent contending that the second order was sufficient. No member of the Court believed that the divisions could be made effective retroactive to the date of the first order, which is the necessary effect of the Northern railroads' contention here.

[11] The Answer of Defendant Northern railroads to Plaintiff Southern railroads' Application for Interlocutory Injunction, April 7, 1965, stated (p. 2): "If there were no stay and the order were later held invalid, northern lines would have to resettle accounts on the basis of the present divisions."

[12] This is shown in the affidavits filed in the district court by the Northern railroads in opposition to the Southern railroads' Application for Interlocutory Injunction. Affiant E. T. Scheper, Auditor of Freight Accounts of the New York Central, testified (Affidavit dated April 8, 1965, p. 4): "If the Commission's order is not stayed and after hearing on the merits this Court sets aside the Commission's order, it will be necessary to resettle accounts. Affiant further says that in the last situation, although resettlement of accounts

Thus, the procedure now requested by the Northern railroads is not only inequitable and contrary to the statutory policy, but conflicts with court decisions and industry practice in divisions cases.

III. THERE ARE NO EQUITABLE CONSIDERATIONS THAT WOULD PERMIT THE NORTHERN RAILROADS TO RETAIN THE REVENUES IN CONTROVERSY.

As previously shown, both the Northern railroads' obligation to restore the pre-existing uniform basis of divisions, and the statutory policy forbidding retroactive application of division orders, require denial of the Petition for Rehearing. We shall now show in addition that the equities of this case independently support the conclusion that the Northern railroads should not be permitted to benefit from the Commission's invalid order.

A. Equitable Considerations Do Not Support an Order Permitting the North to Retain an Inflation in Divisions Which Has Not Been Supported by Evidence.

The Northern railroads' Petition assumes that this Court held the Commission's order to be deficient solely because

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would be required, such resettlement would not subject complainants to irreparable injury for the reason that the Freight Mandatory Railway Accounting Rules to which all parties to this proceeding are subscribers would require that the New York Central and other intervening defendants resettle their interline accounts with the complainants on the basis in effect prior to April 20, 1965."

Similarly, Affiant R. S. Bergey, Freight Auditor of the Pennsylvania Railroad, testified (Affidavit dated April 7, 1965, pp. 11-12): "If there were no stay and the order were later held invalid, the settling carriers would have to resettle accounts on the currently effective basis. This would be automatically necessary under the accounting rules, as invalidation of the order would destroy the basis on which the divisions prescribed by it depended."

the Commission failed to make "specific findings" with respect to three particular cost items (Petition, p. 2). In so construing this Court's opinion, the Northern railroads simpy ignore the principal holding of the Court that the Commission's order was not supported by substantial evidence. The Northern railroads are obliged to ignore this central holding of the Court because the cases upon which they rely have no application to the present case, in which Appellants have failed to present necessary supporting evidence.

Before the Commission, the Northern railroads conceded that they sought "disproportionate divisions of a uniform structure of rates" (A. 1543) on the basis of the costs of North-South traffic. However, the North relied upon the average costs of all traffic, and failed to present evidence relating to the cost of the North-South traffic in issue. The Commission's order granting the North inflated divisions was challenged in the three-judge district court, and again in this Court, on two grounds: first, that the order was not supported by substantial evidence, in violation of Section 10(e) of the Administrative Procedure Act; and, second, that findings of the Commission dealing with particular contested cost items were inadequate, in violation of Section 8(b) of that Act.

The opinion of this Court deals separately with the evidence issue and the findings issues (after quoting Sections 10(e) and 8(b)) (393 U.S. at 90, note 2). The opinion first deals with the question of lack of substantial evidence, and concludes as follows (393 U.S. at 91-92):

> "We agree with the District Court that there is no substantial evidence that territorial average costs are necessarily the same as the comparative costs incurred in handling North-South freight traffic. If we were to reverse the District Court, we would in effect be saying that the expertise of the Commission is so great that when it says that average territorial costs fairly repre-

sent the costs of North-South traffic, the controversy is at an end, even though the record does not reveal what the nature of that North-South traffic is."

Having concluded that the Commission's order must be set aside for lack of substantial evidence, the Court's opinion also holds that: "On remand of the case to the Commission we think specific findings must be made on . . . several [cost] items" (393 U.S. at 93). These directions in connection with the remand do not detract at all from the principal holding of the opinion that the order must be set aside for lack of substantial evidence.

None of the decisions upon which the Northern railroads' Petition relies sanctions equitable relief for a litigant who has failed to present evidence necessary to support his claim. In *Atlantic Coast Line R. Co.* v. *Florida,* 295 U.S. 301 (1935), the initial rate increase order of the Commission was held defective by the Court "solely upon the ground that the facts supporting the conclusion were not embodied in the findings" (295 U.S. at 311). The deficiencies of findings were regarded as "imperfections of form, . . . slips of procedure" (295 U.S. at 312). The railroad in that case had presented in evidence all of the facts necessary to support the rate increase ordered by the Commission, and these increased rates were collected until the Commission's order was held to be invalid, without any commitment by the railroad to refund the excess rates if the order were later set aside.[13] After these procedural slips were remedied by a second Commission order granting the same rate increase, this Court permitted the railroad to retain those rates because equity would not "make the

[13] The railroad did not collect the increased rates for the period between the judicial determination that the first Commission order was invalid, and the effective date of the second Commission order (295 U.S. at 307).

carrier pay the price of the blunders of the commerce board in drawing up its findings" (295 U.S. at 314).

Atlantic Coast Line was relied upon by the dissenting Justices in the *Milwaukee* case (*supra*, pp. 4-5) because the order of the Commission in *Milwaukee* had also been held defective "solely" on the ground of inadequacy of findings by the Commission, rather than because of any failure of the railroad to present necessary evidence (356 U.S. at 907).

The same principle was the basis for the decision in *United States* v. *Morgan*, 307 U.S. 183 (1939), where the Court ordered that rates deposited with the district court not be returned to the regulated market agencies[14] in light of the fact that the first order of the Secretary, like the Commission order in *Atlantic Coast Line*, was "voidable for procedural defects" (307 U.S. at 196). The procedural defect in *Morgan* was the "failure of the Secretary to follow the procedure prescribed by the statute" (307 U.S. at 185). No deficiency was found in the record, which contained voluminous evidence that was not even reviewed by the Court (307 U.S. at 188).

The equities in the cases upon which the Northern railroads base their Petition are thus just the opposite of the equities in the present case. This Court has held that, although the "Southern roads had offered evidence showing the costs of handling North-South traffic in the South," the North failed to present comparable evidence (393 U.S. at 91). The Northern railroads were the proponents of an

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[14] The fund consisted of the amount of the rate reduction paid into court during the litigation arising out of the first order of the Secretary. There was no claim that the Secretary's second order could be made effective for the period between the date the first order was held invalid and the date of the second order—the controversy over the rates for this period having become moot because the Secretary had agreed to increased rates (307 U.S. at 199).

order prescribing an inflation in the North; and under Section 7(c) of the Administrative Procedure Act, the proponents of an order "shall have the burden of proof" (5 U.S.C. § 556). The Northern railroads have only themselves to blame for the absence of substantial evidence in this record which resulted in the invalidity of the Commission's order. The present case having turned on the lack of essential evidence, the Northern railroads cannot now claim that they are in the position of the railroad in *Atlantic Coast Line,* or the rate-payers in *Morgan,* who had presented ample evidence to support their position but had seen an administrative order in their favor held defective for purely procedural defects which were solely the fault of the administrative agency.

The remaining two cases cited by the Northern railroads in their Petition are inapposite for similar reasons. In *Addison* v. *Holly Hill Fruit Products, Inc.,* 322 U.S. 607 (1944), there was no contention of any lack of evidence to support the employees' suit for wage payments. The case turned on the administrative definition of the coverage of the Fair Labor Standards Act (322 U.S. at 609). Similarly, in *Secretary of Agriculture* v. *United States,* 347 U.S. 645 (1954), there was no holding that there was any deficiency in the evidentiary record upon which the Commission had acted. The case was remanded because the Commission had "not adequately explained its departure from prior norms and . . . sufficiently spelled out the legal basis of its decision" (347 U.S. at 653).[15]

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[15] The Northern railroads state that in *Secretary of Agriculture* the case was remanded "but without setting the Commission's order aside" (Petition, p. 7). Whatever may be the extent of a court's power to remand a case for further findings or explanation by an administrative agency without setting aside the order, it is the statutory requirement of Section 10(e) of the Administrative Procedure Act that: "The reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . unsupported by substantial evidence. . . ." (5 U.S.C. § 706).

B. The Procedure Sought by the Northern Railroads Is Contrary to the Public Interest.

In *Morgan*, the Court invoked the principle (307 U.S. at 194):

> "It is familiar doctrine that the extent to which a court of equity may grant or withhold its aid, and the manner of moulding its remedies, may be affected by the public interest involved."

This principle was applied in *Morgan* to protect the public, for whose benefit the reparations provisions of the Packers and Stockyards Act had been passed, from the consequences of the district court's having taken possession of the excess rates (*supra*, pp. 14-15).[16] In divisions cases, however: "Ordinarily, divisions of a particular rate are not of public interest," as observed in *Brimstone* (276 U.S. at 122).

Unlike the *Milwaukee* case (supra, pp. 4-5) in which the dissenting Justices were of the opinion that the railroad should be relieved of its agreement to resettle because of "the rights of the public" and "the policy of the Federal Act protecting the revenues of interstate carriers" (356 U.S. at 909), in the present case the Northern railroads are unable to suggest any reasons of public interest or statutory policy that could justify relieving them of their agreement to make resettlement. No such reasons are pres-

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[16] The *Atlantic Coast Line* case concerned orders of the Commission which affected the public interest in preventing unjust discrimination against interstate commerce (295 U.S. at 306).

An additional equity stressed by the Court in *Atlantic Coast Line* was that the prior rates were so low as to be confiscatory (295 U.S. at 313). In the present case, the Northern railroads cannot invoke any such equity. Under the pre-existing uniform divisions, the profit of the Northern railroads exceeded $55 million per year ($221,430,000 revenue as compared with the overstated full costs found by the Commission of $165,746,000 (325 I.C.C. at 25-26; A. 48-49)).

ent in this case, as the Commission itself concluded in expressly disclaiming public interest considerations such as revenue needs as the basis for its order of February 3, 1965.[17]

Any possible doubt that carrier agreements to resettle divisions might conflict with the public interest was eliminated by the Commission itself when it modified its order of February 3, 1965 "to allow the establishment of a basis of divisions other than those prescribed, when agreed to by all parties affected thereby."[18] Where, as here, the Commission itself has expressly sanctioned carrier agreements

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[17] As this Court held (393 U.S. at 94):

"Revenue problems under § 15(6) at times have resulted in putting a part of one area's transportation costs upon other sections of the country. See *New England Divisions* Case, 261 U.S. 184, 191-195. But that issue is not presented in these cases. The issue in the present case was costs, not revenue. . . .

"On revenue needs the Commission said:

'We find that no affirmative reasons appear in this record which would warrant any adjustment of the divisions in question over and above the relative costs of service, either on the grounds of greater revenue needs or otherwise. 325 I.C.C., at 49.'"

[18] Order dated May 24, 1966, I.C.C. Docket No. 29885. The recital to that order states:

"That in the absence of reason or cause for the Commission to prescribe divisions of revenues from joint rates, *such divisions are ordinarily the concern of the carriers;* and that the parties should be permitted to negotiate and mutually agree upon the establishment of different divisions of revenue in lieu of those prescribed as conditions may warrant." (emphasis supplied)

This order, which was modified by order dated February 1, 1967, to require that notice of agreed divisions be given to all parties in the proceeding, formalized the Commission's prior practice of vacating its order of February 3, 1965, whenever the parties agreed upon divisions other than those prescribed.

which result in divisions other than those prescribed, there is no possible basis for any contention that enforcement of the Northern railroads' agreement to resettle and restore the pre-existing uniform basis of divisions is inconsistent with the public interest or the policy of the Interstate Commerce Act.

On the contrary, public interest considerations condemn the Northern railroads' efforts to avoid an immediate restoration of the pre-existing uniform basis of divisions. As the Court held (393 U.S. at 92):

> "If . . . [reliance upon costs unsupported by substantial evidence] were sanctioned in a North-South divisions case, whose solution turns solely on costs, the class rate discrimination in favor of the North and against the South which we condemned in *New York* v. *United States,* 331 U.S. 284, could well flourish in another form."

Under these circumstances, it would be contrary to the public interest in preventing territorial discrimination to perpetuate the Northern inflation prescribed in an invalid Commission order.

C. The Northern Railroads' Assertions With Respect to Accounting Expense Are Contrary to Their Representations in the District Court.

Counsel for the Northern railroads also argue that the Court should act to prevent enforcement of their agreement to restore the pre-existing uniform basis of divisions because resettlement "would entail a large amount of accounting work and expense" (Petition, p. 3). This claim, even if true, would not justify rescinding the Northern railroads' agreement to resettle. Moreover, this assertion of counsel is contrary to the affidavits of the Northern railroads' accounting officers, filed in the district court in opposition to the Southern railroads' Application for Interlocutory Injunc-

tion. These officers testified that no more than "nominal expense" would be involved in restoring the pre-existing divisions.[19] The present argument is also inconsistent with the position taken by the same counsel that in view of the Northern railroads' agreement to resettle, a court should not concern itself with the cost of resettlement.[20]

The Court should not countenance the Northern railroads' present effort to renege not only on their agreement to resettle but on their sworn representations to

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[19] New York Central Auditor E. T. Scheper (Affidavit dated April 8, 1965, pp. 2-3):

> "[T]he double (second) changeover which might be entailed if the Commission's order is ultimately not upheld should neither disrupt plaintiffs' accounting staffs, impair other Accounting Department procedures nor involve more than nominal expense because the accounting machine cards and tapes and charts now employed can be retained and readily substituted for the new cards, tapes and charts required on and after April 20, 1965."

Pennsylvania Auditor R. S. Bergey (Affidavit dated April 7, 1965, p. 15):

> "We would maintain our present file until the case is resolved, and, therefore, the cost in any reconversion would be nominal and is estimated to not exceed $1000.00 plus about $180.00 cost per month to convert new records established in the intervening period."

[20] Memorandum in Opposition to Application for Interlocutory Injunction dated May 17, 1965, p. 12:

> *"But the question of the exact cost of making the resettlement is not a material question for this Court to consider in arriving at its decision as to whether or not to grant an interlocutory injunction. The Intervening Defendants are willing to assume the obligation of paying Plaintiffs their reasonable costs for this work should the Commission's order go into effect and the Court should later decide that the order be set aside as unlawful.* They respectfully ask the Court to deny the application for an interlocutory injunction and to make such obligation to repay accounting costs, in the contingency specified, a condition of the order." (emphasis in the original)

the district court, on the basis of which they obtained possession of the revenues in question through denial of an interlocutory injunction below.

Furthermore, the Northern railroads have benefited from their possession of the revenues in dispute during the period of litigation to an extent far exceeding the costs of resettlement. Under the order of the district court, the Northern railroads have held this money subject to resettlement at a 5% rate of interest (A. 170) during a period in which interest rates have risen to 7% and above. Under these economic conditions, the Northern railroads have benefited to a very material extent from denial of the interlocutory injunction subject to the agreed conditions. Thus, the expense of resettlement lends no equity whatever to the Northern railroads' effort to annul their agreement and continue to reap the benefits which they would never have enjoyed if the district court had known at the outset of the litigation what it later concluded on the merits—that the Commission's order of February 3, 1965, was not supported by substantial evidence.

CONCLUSION

Denial of the Northern railroads' Petition for Rehearing will restore the Northern and Southern railroads to the equal basis of divisions which was in effect for over twelve years prior to this litigation, and will place the parties in precisely the situation that they would be in today if the Commission's invalid order had never gone into effect. An interlocutory injunction was not issued, and the Commission's order did go into effect, only because the Northern railroads agreed to return the money if the order were later found to be invalid. Reasons of statutory policy with respect to retroactive application of divisions, the public interest in uniformity of territorial relationships and the

equities of this case provide additional reasons for enforcing the Northern railroads' agreement, not for relieving those railroads of their bargain. It is not the function of this Court to relieve business corporations, represented by counsel, from the fully-contemplated consequences of an agreement under which those corporations have benefited since the beginning of this litigation.

For the foregoing reasons, the Northern railroads' Petition for Rehearing should be denied.

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February, 1969

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No. 13—Consolidated with No. 15

IN THE

Supreme Court of the United States

October Term, 1968

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,

Appellants,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees.

On Appeal From the United States District Court for the Eastern District of Louisiana, New Orleans Division

ANSWER TO NEW MATTER IN SOUTHERN LINES' REPLY TO PETITION FOR REHEARING

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.,

Appellants,

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

ANSWER TO NEW MATTER IN SOUTHERN LINES' REPLY TO PETITION FOR REHEARING

Northern lines will not answer all the assertions and arguments made in Southern lines' reply. They will deal with the new matters that are represented by Southern lines' arguments concerning Northern lines' promise to resettle in accordance with the condition in the District Court's order denying an interlocutory injunction, with Southern lines' argument based upon non-retroactivity of divisions prescribed under § 15(6) of the Interstate Com-

merce Act, and their argument based upon the public interest.

I. The Southern railroads urge that the Northern lines must pay over to Southern lines some $25 million and that the Southern lines shall forever keep this money regardless of whether the Commission should, on remand, validly find that the relative service costs of Northern and Southern railroads are such as to sustain the divisions prescribed by the order under review (Reply, pp. 6-7).

In support of this position, Southern lines argue, *inter alia,* that Northern lines promised to pay over to the Southern railroads the money collected under the Commission's order of February 3, 1965, if that order were subsequently held "to be invalid" (Reply, p. 2). The District Court's order, however, and Northern lines' promise was that they would resettle their accounts with Southern lines on the basis of the old divisions "if the Commission's order should be permanently set aside" (Petition, p. 2). The petition asks that final decree be stayed pending consideration by the Commission upon remand (Petition, p. 8) and points out that until the Commission makes the specific findings required by this Court's opinion it cannot be known whether a permanent setting aside of the order would be appropriate (Petition, p. 2). If the stay were granted, the obligation imposed by the District Court's order and the Northern lines' promise to be bound thereby would not arise at this time, at least.

It is said on p. 6 of the Reply that the District Court's final judgment "affirmed by this Court (393 U.S. at 96), sets aside the Commission's order" and that the Commission's order granting increased divisions "will never—under any circumstances—go into effect." The Commission's order granting increased divisions has been in effect since April 20, 1965, and, if this Court should grant the

instant petition for the withholding of final decree, and the Commission then makes valid findings in the remand proceedings, the order prescribing new divisions can continue in effect.[1]

In this connection, it should be noted that with respect to the three cost adjustments as to which this Court concluded the Commission's findings were defective, it will be possible for the Commission, on remand, to conclude that the Northern lines' costs are relatively as high or higher than those originally found. For example, the most important of these cost adjustment issues before the Court was the one relating to commutation deficits. The gist of the Southern lines' argument and the Court's holding with respect to this matter was that costs solely related to commutation service were not shown by the Commission's decision to have any relation to North-South freight transportation, the cost of which was the Commission's standard for decision. Southern lines admitted at the argument (Transcript of Argument, pages 60-63) and in their brief in this Court (fn. 20, p. 34) that deficits arising from costs which are solely related to the provision of other passenger services must likewise be excluded. Southern lines' own computation of the portion of their solely related passenger deficit that is allocated to North-South traffic was $1,502,181 (Southern lines' Exceptions to Recommended Report, p. 119). The cost study contained nothing for solely related

1. Southern lines' argument that a judgment holding an ICC order invalid may be stayed pending further Commission action only if the invalidity lies in the lack of necessary findings or some procedural defect is unsound. In *United States v. Morgan*, 307 U.S. 183 (1939) the defect involved was the lack of a fair hearing, and in *Addison v. Holly Hill Fruit Products, Inc.*, 322 U.S. 607 (1944), the defect was a mistake of law in the application of a statute. And see *Atlantic Coast Line R. Co. v. Florida*, 295 U.S. 301 (1935) where the Commission's action in the proceeding following the condemnation of its first order was based upon new *evidence* and new findings. (295 U.S. at p. 307).

passenger deficits of Northern lines; they had no such deficit. Accordingly, the effect of this cost adjustment (to exclude Southern lines' solely related passenger deficit) will be to substantially increase Northern lines' relative share of the cost of performing the North-South freight service. This example, based upon the most prominent of the defective findings, will serve to exemplify the fact that it is entirely reasonable to believe that the Commission may issue a valid report finding that Northern lines' costs are at least as high in relation to Southern lines as found in the original report. If, as Northern lines believe, their costs should be found to be somewhat higher in relation to Southern lines than as originally found, Northern lines would waive the difference and ask the Commission simply to confirm the divisions originally prescribed which would have remained in effect if the instant petition to this Court should be granted.[2]

II. Southern lines' § 15(6) argument is that to grant the relief sought by the petition would be contrary to the policy of that statute which withholds from the Commission the power to make a divisional order retroactive except in circumstances not here present. A grant of the relief sought by the petition would not entail the making of a retroactive divisions order by the Commission. It would simply require that a final decree by the lower court be withheld until the Commission has issued its report on

2. Southern lines argue (Reply, pp. 18-19) that this Court first decided that the evidence did not sustain the Commission's order and that it then separately held that the findings were defective. But the issue as to lack of substantial evidence involved only the Commission's findings with relation to seven proposed cost adjustments. Contrary to the action of the District Court, this Court held that as to four thereof the Commission's findings were adequate. This conclusion was not simply that they satisfied the requirement that findings must explain the basis for the Commission's action; it was clearly a conclusion that the findings had a substantial evidentiary basis.

remand. It will also be noted that the limitation in § 15(6) is on the power of the Commission, and not upon the powers of a court of equity.

III. Under their public interest discussion, entirely overlooking the $25 million which Southern lines say they should have and forever keep, those lines urge that the Northern lines' petition is predicated entirely upon accounting expenses in making settlements and resettlements and they refer (p. 5) to certain affidavits of Northern lines with respect to resettlement costs but do not disclose their own affidavits showing substantially higher figures. Thus, in the affidavit of Mr. Luckett, it is stated, with respect to the Southern Railway, that:

> "This [the Southern's] study shows that the additional accounting costs alone would be $190,000 plus $66,000 per month for each month that the new division basis is temporarily in effect. This means that if the divisions were changed on April 20 [1965] and the return to the present basis of divisions should be delayed for twelve months from the effective date of the Commission's order, the additional accounting expense incurred by Southern would amount to $982,000. In the event the Commission's order is set aside there would be no way in which Southern could recover the amount of this additional expense."

If Mr. Luckett is correct, for the four years since the new divisions went into effect the accounting expenses as to the Southern Railway alone—just one of many Southern railroads—would amount to over $3,350,000. The District Court made no finding as to the amount of this accounting cost, but dealt with the question by providing in its order that the Northern lines would have to bear the costs of resettlement if there were a resettlement.

With respect to the argument that there is no public interest involved in this matter, a requirement that the Northern lines pay $25 million to Southern lines, which Southern lines shall keep regardless of any other facts, would be a direct and severe blow to the public interest. In 1967, the latest year for which the figure is available, Northern railroads had a rate of return of 1.58% on net property investment, the lowest of any group of railroads in the country. *Increased Freight Rates, 1968,* 332 I.C.C. 590, 607. These are the railroads serving the most populous area of the United States.

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February 1969

SUPREME COURT OF THE UNITED STATES

NOS. 13 AND 15.—OCTOBER TERM, 1968.

The Baltimore & Ohio R. Co. et al., Appellants, 13 *v.* Aberdeen & Rockfish R. Co. et al. Interstate Commerce Comm'n, Appellant, 15 *v.* Aberdeen & Rockfish R. Co. et al.	On Appeals From the United States District Court for the Eastern District of Louisiana.

[November 12, 1968.]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

In these cases the Interstate Commerce Commission undertook to prescribe just, reasonable, and equitable divisions of joint rates pursuant to § 15 (6) of the Interstate Commerce Act.[1] The Commission found that exist-

[1] 49 U. S. C. §15 (6) provides in relevant part:

"Whenever . . . the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential . . . the Commission shall by order prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers . . . . In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an orginating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge."

ing divisions violated § 15 (6) because they allocated to Northern lines a lesser share of the revenues from the joint rates than would be warranted by their share of the expenditures made in providing the joint service. 325 I. C. C. 1, 50.

The Southern lines brought suit before a three-judge District Court to enjoin and to set aside the Commission's order. The District Court set aside the Commission's order and remanded the case for further proceedings. 270 F. Supp. 695. We noted probable jurisdiction. 390 U. S. 940.

Both Northern and Southern lines used Rail Form A as their basic formula, that form being a rail freight formula for determining freight service costs which utilizes the expenses and statistics for a given year as reported to the Commission by the carriers and supplemented by special studies of the carriers.

The Southern lines proposed 12 adjustments, five of which the Commission accepted and seven of which it rejected. The year 1956 was the one both Southern and Northern lines used in the final cost analysis. The cost level for that year, said the Commission, was higher in the North than in the South for like services; and it concluded that that situation would most likely continue in the immediate future. In that year the Northern lines received 44.64% of the revenue while incurring 46.35318% of the fully distributed costs. Accordingly, the Commission prescribed new divisions based on the fully distributed costs and divided the revenues in the same proportion to those costs. The shift in revenues resulting from the new divisions was approximately $8,000,000 a year, giving the Northern lines an overall increase in revenue from the traffic involved of 3.5% and a reduction in revenues of Southern lines of about 3%.

When the Southern lines sued to set aside the new divisions, the Northern lines intervened as defendants. The District Court held that the Commission's order was not supported by substantial evidence and reasoned findings within the meaning of §§ 8 (b)[2] and 10 (e)[3] of the Administrative Procedure Act and, as noted, remanded the case for further proceedings.

The present problem of divisions deals only with North-South traffic which represents 6% of the total traffic of the North and 21.4% of the total traffic of the South. The costs of that North-South traffic are not isolated in the findings. The average costs used relate to all Northern traffic and to all Southern traffic. Nearly 80% of the total Northern traffic is intra-territorial and handled entirely in the North and, it is therefore argued, that that traffic has the dominant influence on the Northern average. As the District Court said, it is difficult to maintain that these intra-territorial Northern costs are the same or approximately the same as Northern costs in handling traffic between North and South. In another division case, the Commission ruled that "territorial average costs are entitled to little weight

[2] Section 8 (b), now 5 U. S. C. § 557 (c), provides in relevant part:

"The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

"(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

"(B) the appropriate rule, order, sanction, relief, or denial thereof."

[3] Section 10 (e), now 5 U. S. C. § 706, provides in relevant part:

". . . The reviewing court shall . . :

"(2) hold unlawful and set aside agency action, findings, and conclusions found to be . . .

"(E) unsupported by substantial evidence . . . ."

in determining the costs of handling particular movements." *Increased Freight Rates*, 332 I. C. C. 280, 294. The use of "unsifted averages" of costs do not necessarily establish greater costs either in rate cases (*ICC* v. *Mechling*, 330 U. S. 567, 583) or in division cases. The ruling of the District Court was not that territorial average costs were irrelevant or that Rail Form A was not a usable and useful tool for cost determination, but that territorial average costs could not be used consistently with the statutory requirements for precise and relevant findings without any evidence relating the territorial average cost to North-South traffic. While Southern roads had offered evidence showing the costs of handling North-South traffic in the South, there was not always any such Northern offer; nor did the Commission always exercise its undoubted authority to gather it on its own.

On the question whether territorial average costs represent costs of the North-South traffic, the Commission only replies that where particular traffic uses physical facilities and employees' services in common with other traffic "and has been shown to have no distinguishing characteristics," the application of Rail Form A costs is proper. Yet the Commission stated "its exclusive standard" for resolving this divisions question to be "the relevant cost of handling the specific freight traffic to which the divisions apply." 270 F. Supp., at 710.

We agree with the District Court that there is no substantial evidence that territorial average costs are necessarily the same as the comparative costs incurred in handling North-South freight traffic. If we were to reverse the District Court, we would in effect be saying that the expertise of the Commission is so great that when it says that average territorial costs fairly represent the costs of North-South traffic, the controversy is at an end, even though the record does not reveal what the nature of that North-South traffic is. The requirement

for administrative decisions based on substantial evidence and reasoned findings—which alone make effective judicial review possible—would become lost in the haze of so-called expertise. Administrative *expertise* would then be on its way to becoming "a monster which rules with no practical limits on its discretion." *Burlington Truck Lines* v. *United States Lines*, 371 U. S. 156, 167. That is impermissible under the Administrative Procedure Act. If indeed that lax procedure were sanctioned in a North-South divisions case, whose solution turns solely on costs, the class rate discrimination in favor of the North and against the South which we condemned in *New York* v. *United States*, 331 U. S. 284, could well flourish in another form.

Rail Form A was used in *Chicago & N. W. R. Co.* v. *Atchison, T. & S. F. R. Co.*, 387 U. S. 326, and we approved its use. Moreover, ever since the *New England Divisions Case*, 261 U. S. 184, at 196–197, it has been held that mathematical exactness in dividing each rate of each carrier is not necessary, because practical necessities demand otherwise. In addition we repeat what we said in *Chicago & N. W. R. Co.* v. *Atchison, T. & S. F. R. Co., supra.*, at 358, that there are no "mechanical restrictions on the range of remedies from which the Commission may choose" in solving a divisions case or making its expert judgment as to what scale of costs should be used in making the allocation. Precision and exactitude in the mathematical sense are not possible. Yet the nature and volume of the traffic in question must be known and exposed, if the costs of other traffic are to govern a division of rates. Moreover, where Rail Form A costs are shown to be a distortion when applied to the particular traffic over which the divisions dispute arises, some effort must be exerted to make an adjustment which fairly reflects the difference in the costs or to make clear that there is in fact no basic, material difference. The

Commission states to us that it cannot be expected to know whether peculiar characteristics may exist respecting the traffic involved in the division dispute or whether special studies may be needed. Yet if that is true, the Commission's *expertise* is not equal to the task and the opposed carriers must be directed to expose the various versions of the conflict so that the Commission may make its informed decision. That was done on aspects of the present case (325 I. C. C., at 25) and no reason is apparent why it cannot be done on other aspects of the controversy.

The Commission in its argument before us says that Rail Form A territorial average costs were "adjusted" to reflect the costs attributable to the North-South traffic issue, which is true as respects five[4] of the 12 adjustments proposed by the Southern lines.

On remand of the case to the Commission we think specific findings must be made on the several items of so-called "adjustment" of average territorial costs to which we now turn.

One is the question of commuter deficits, which swell the average territorial costs in the North while they are less important in the South that does not yet have substantial commuter operations. Passenger deficits generally are considered as part of the costs of providing freight service, since the common facilities that support each must be maintained for both types of service. There is, however, evidence that in some territories as much as one-half of the track facilities are maintained solely because of the company's suburban service and even a larger proportion of other facilities such as stations, terminals,

[4] These five included way and through train separation, platform costs, switching and terminal companies, short lines (Class II railroads), train tonnage adjustment—all as discussed in Appendix B to the Commission's opinion. 325 I. C. C., at 55 *et seq.*

coach yards, and repair shops are maintained exclusively for commuter service.

The Commission, however, ruled that costs of commuter service "includes common costs which must be incurred to provide freight service or intercity passenger service" and that the deficit from suburban operations was properly included in "the constant costs." The Commission on the other hand found that "many individual items of suburban service can be considered solely related . . . to suburban service." 325 I. C. C., at 78. How these two findings can be reconciled is not apparent. The Commission in its argument before us rests primarily on revenue needs—"Such losses must be recovered from railroad freight operations if railroads are to remain solvent." Section 15 (6) makes plain that revenue needs come into focus in division cases. Revenue problems under § 15 (6) at times have resulted in putting a part of one area's transportation costs upon other sections of the country. See *New England Divisions Case*, 261 U. S. 184, 191–195. But that issue is not presented in these cases. The issue in the present case was costs, not revenue.[5] The allocation either to the North or to the South of costs peculiar to its territorial traffic is a task with which the Commission is familiar. Thus in this very case it excluded certain platform deficits incurred by the Northern lines because they were not related to North-South freight traffic. 325 I. C. C., at 56. There is no apparent reason why costs related solely to commuter service in the North cannot be determined.

As to the costs of interchanging cars in North-South traffic at territorial border points, there is evidence in

[5] On revenue needs the Commission said:

"We find that no affirmative reasons appear in this record which would warrant any adjustment of the divisions in question over and above the relative costs of service, either on the grounds of greater revenue needs or otherwise." 325 I. C. C., at 49.

the record that the interchange operations performed by Northern lines are no more costly than those performed by Southern lines. Yet the Commission allowed the Northern lines a border interchange cost that is 58% higher than the one allowed the Southern lines. That apparently was done solely because Rail Form A showed higher interchange costs when all territorial interchanges were considered. We cannot bridge the gap by blind reliance on expertise which in this instance would be a mere assertion that no difference means a substantial difference.

The empty freight car return ratios is another example of deficient findings. There is evidence that higher costs of Northern lines result from the Commission's use of higher Northern territorial average empty return ratios. There was no attempt made to show that the latter were at all applicable to North-South traffic. The problem arises in the North by reason of boxcars on shuttle from Detroit to automobile plants, most of which are in the North. These shuttle-box-returns return empty to Detroit. We know from the record that this is a major cost item as 800,000 carloads of automobile parts move out of Detroit each year. The record does not show the extent to which these empty return swell the territorial average costs in the North, though it does show that Northern use of these shuttle boxcars is substantially higher than the Southern proportion. The District Court concluded the territorial average boxcar empty return ratios could not be said, absent specific findings, to reflect the costs of the North-South freight traffic relevant to this problem of divisions.

There are other proposed adjustments[6] on which we think the Commission's findings are adequate.

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[6] *Car costs.* The Southern lines sought to substitute average car costs for the entire country in lieu of Rail Form A territorial average. The Commission concluded that the "use of a national average car

The judgment of the District Court is modified and as modified it is

Affirmed.

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cost conceals territorial differences in cost which are important in the consideration of divisions between the two involved territories. 325 I. C. C., at 64.

Cars interchanged between rail and water carriers at posts. The Southern and Northern lines submitted opposed evidence and views and the Commission concluded that the count of cars in Rail Form A was warranted. 325 I. C. C., 58–60, 91–94.

Transit commodities. They move under a single published rate and receive some kind of storage or processing in transit and the rate covers the movement of the raw material into and the movement of the finished product beyond the transit or processing point. The Southern lines would include deficits on pulpwood and wet phosphate rock which they claim to be related in transit to the outbound movement of paper products and dry phosphate rock. But these were intraterritorial costs of the Southern lines which the Commission found were not properly transferable to the interterritorial costs, the only costs pertinent to this divisions case. 325 I. C. C., at 80.

Switching costs. The Southern lines made special studies of switching costs which the Commission reviewed at length. 325 I. C. C. 71–77. The Northern lines sought to discredit the studies and the sample on which they rested. The Commission took Rail Form A territorial average switching costs as the most accurate measure of the relative switching costs, saying:

"Territorial average costs are particularly appropriate to the traffic in this case because it is a large and varied body of traffic moving to and coming from terminals in all parts of both territories. In our opinion, and we so find, the depressing effect, if any, of volume switching commodities on the average would affect both territories and, for purposes of comparison, would be largely offsetting." 325 I. C. C., at 76. Contrary to the District Court, we believe these are adequate findings.